

Testimony of Debbie Berkowitz

National Employment Law Project

Health and Safety Protections for Meatpacking, Poultry, and Agricultural Workers

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Introduction

Good morning Chairwoman DeLauro, Ranking Member Cole, and members of the Subcommittee. I am grateful for the opportunity to testify today. I am Debbie Berkowitz, Worker Safety and Health Program Director at the National Employment Law Project. Before coming to NELP five years ago, I was a senior official at the Occupational Safety and Health Administration for six years during the Obama Administration. I have also spent two decades working for and leading union-based worker safety programs where I advocated and negotiated for safer conditions for our nation's meat and poultry workers.

NELP is a nonprofit research, policy, and capacity building organization that for more than 50 years has sought to strengthen protections and build power for workers in the U.S., and now more than ever our advocacy centers Black, Latinx, Indigenous, and immigrant workers, and people who are unemployed. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work. Our primary goals are to build worker power, dismantle structural and institutional racism, and to ensure economic security for all.

At NELP, we have long known that worker health is public health—and this pandemic has tragically underscored that fact. Since the outset of the COVID-19 crisis, NELP has lent our expertise and advocacy to the cause of those who are out of work and need to access unemployment insurance, and those who are still at work during this dangerous and uncertain time and need the federal government to use its authority to protect their health and safety. We work with and advocate for the demands of workers, worker centers, unions, and other community-based organizations who are fighting every day to help workers and their families stay safe while earning a paycheck. I will focus my comments on the dangerous working conditions in our nation's meatpacking and poultry plants both during the pandemic and before.

Feed America or Protect Workers: A False Choice

COVID-19 is not only the largest public health crisis in over a generation, it is also the largest occupational health crisis in the U.S. We have known from the beginning of the pandemic that workplace exposures to COVID-19 could be and are a significant driver of the pandemic.ⁱ To mitigate the spread of COVID-19 to the public, we must also mitigate the spread of COVID-19 in the workplace. All communities are at risk when workers are not protected.

Protecting workers is not just a legal and moral imperative. It's an economic and human rights imperative. When we fail to protect workers, it affects the health and economic well-being of all of our families and communities. To fully reopen the economy, we must mitigate the spread of COVID-19 in the workplace. People deemed to be "essential" workers in the food-production industry have been key to assuring there was food on people's tables during the past year. They harvested the food and processed the meat and poultry we've depended on. Yet, these essential food workers are too often segregated into underpaid and very dangerous jobs.

You will hear from other witnesses how terrified these workers were, and still are, to speak up for their rights -- even when they've faced workplace risks that could have killed them. The meat industry told the public in full page ads that they cannot feed America and protect workers and communities at the same timeⁱⁱ. **That is a false choice.** As a society, we can and must do both. It is not inevitable that those who harvest and produce our food must also be subjected to these risks. It is not inevitable that they must sacrifice their health and even their lives to keep our supermarket shelves stocked with food. We can choose to change this. We can choose to both protect food workers and their communities and feed the people of this country at the same time. We can, in fact, and we must.

Meatpacking and Poultry Workers Face Dangerous Working Conditions

The overwhelming majority of meat and poultry workers are Black, Latinx, and immigrant workersⁱⁱⁱ. Meat and poultry plants are located in largely rural areas where they seek to hire the nation's most vulnerable workers.^{iv} Many of the workers in the industry are refugees and, in most plants, you will find dozens of languages spoken by workers.^v Meat and poultry plants are among the harshest working environments in U.S. manufacturing. In plants across the country, workers stand close together, side-by-side, on both sides of long conveyor belts, in cold, damp, dangerously loud conditions, holding knives and scissors. They make the same forceful cuts or movements thousands of times a day. A typical poultry worker handles dozens of birds **per minute**. In the holiday months, workers put in eight to 10-hour days, six or seven days a week to meet demand.^{vi} Turnover in these plants can average 60%; but it can run as high as 150%^{vii}.

The work is not only backbreaking; it is also dangerous. According to the industry's own self-reported statistics over the last few years, meat and poultry workers are injured at rates on average 50% higher than all other workers in the private sector, with injury rates in red meat plants running almost twice as high.^{viii} Further, the government has found that these

statistics are an undercount -- the real rates of injury and illness are much higher.^{ix} The meat and poultry slaughtering and processing companies report more severe injuries, such as amputations and injuries or illnesses that result in the overnight stay at a hospital, to OSHA than industries that are popularly recognized as hazardous, like sawmills, industrial building construction, and oil and gas well drilling.^x Among the tens of thousands of companies that reported severe injuries to OSHA, several meat and poultry slaughtering and processing companies ranked among the highest reporters: Tyson Foods is fifth, Pilgrim's Pride/JBS is sixth, Cargill Meat Solutions is sixteenth, and Smithfield, National Beef, and Koch Foods are all in the top thirty.^{xi}

The meat and poultry industry can and must do better. Workplace injuries and illnesses can be prevented by providing safe conditions. That means prioritizing worker safety over line speeds and profits for a few. I know from being a senior official at the Occupational Safety and Health Administration that safety pays—it saves the lives and health of workers, it saves money for employers and it creates good jobs.^{xii} As a nation, we must prioritize not only the humane treatment of the animals slaughtered in this industry, but the humane treatment of the workers who risk their health and safety to process and package the food we eat. It's a legal, moral and human rights imperative.

We cannot lose sight of the fact that in addition to this being a workers' rights issue, it is also a racial justice issue. The meat and poultry industry is built on the labor of workers of color.^{xiii} And it was workers of color and their unions, families, and community-based organizations, like the Children of Smithfield who are in solidarity with their parents and coworkers, which fearlessly fought for better protections.^{xiv} Employers' failure to ensure workers' safety means that COVID-19 is needlessly spreading throughout communities of color at rapid rates.^{xv} This is unacceptable. Pursuing racial equity measures would make the industry safer for all workers throughout the supply chain.

Meat and Poultry Worker Safety Conditions Deteriorated Rapidly in the Pandemic

The industry was already unsafe before COVID-19 hit, and safety conditions deteriorated rapidly as the pandemic hit the industry. According to the non-profit Food and Environment Reporting Network (the only organization attempting to gather publicly available data on the illnesses and deaths in the meat and poultry industry) as of mid-February 2021, at least 57,000 meatpacking and poultry workers have been infected with COVID-19 and over 280 have died^{xvi}. This is a severe undercount, however, because many big meatpacking states are not reporting these data.^{xvii} More workers have died from COVID-19 in meat and poultry plants to date during the pandemic than died from all causes in the industry in the past 15 years.^{xviii} COVID-19 continues to spread in the industry. In January 2021 alone, over 3,000 new infections among meat and poultry workers have been documented due to new and ongoing outbreaks.^{xix} We also know that more contagious variants of the virus are spreading in the country. Among the companies with the largest number of cases were profitable, billion-dollar companies such as Tyson Foods, JBS, Smithfield, Cargill, Sanderson Farms, National Beef, and Foster Farms.^{xx}

The Black, Latinx, and immigrant workers in meatpacking were also disproportionately impacted by the devastating spread of COVID -19 in the meat and poultry plants. The Centers for Disease Control and Prevention (CDC) estimates that 87% of all infections occurred among racial and ethnic minorities in the industry.^{xxi}

Workers, their families, and their communities paid a huge price when companies failed to mitigate the spread of COVID-19 in meat and poultry plants. The National Academy of Sciences published a study finding that in just the first few months of the pandemic, the unmitigated spread of COVID-19 in meat and poultry plants was associated with between 236,000 and 310,000 COVID-19 cases (6 to 8% of total) and 4,300 to 5,200 deaths (3 to 4% of total) as of July 21, 2020.^{xxii}

COVID-19 began spreading through meat and poultry plants in the U.S. right at the beginning of the pandemic.^{xxiii} At that time, the CDC released its first guidance for the public and for businesses to protect workers, which emphasized two key measures: social distancing (keeping six feet apart) and frequently washing hands.^{xxiv} As restaurants and offices downsized or closed to comply with CDC guidance and pandemic restrictions, and as factories retooled and supermarkets reshaped how they would do business, workers in meat and poultry plants were required to continue to work elbow to elbow and shoulder to shoulder. They were crowded together as they clocked in, they were crowded together in locker rooms, in bathrooms, and in break rooms.^{xxv} In most meat and poultry plants, workers rarely had time to visit the rest room even once to wash their hands, let alone be able to wash their hands repeatedly, especially before and after meals.^{xxvi}

While the entire country was told to practice social distancing, the CEO of Smithfield told the Governor of Nebraska that social distancing is a nicety that makes sense only for people with laptops.^{xxvii}

As COVID-19 raced through meat plants in March and April last year, and workers began dying, companies were slow to provide masks to workers congregated together on production lines. In some plants, workers were told to use their hair nets as face masks.^{xxviii}

In hundreds of meat and poultry plants around the country, tens of thousands of workers were infected in just a few months. Some plants had hundreds of their workers infected and in others there were over 1,000 workers infected in a single plant.^{xxix}

In the Tyson hog processing plant in Waterloo, Iowa, for example, which produces pork for China, 1,500 workers got sick and 8 died – in just one plant^{xxx}. This is the same plant where managers had a callous betting pool on how many workers would get infected.^{xxxi}

As workers got sick in the plants, the big meat companies found they were so short-staffed, there were not enough workers to do the job. Many plants had to shut down for weeks because they couldn't find workers to staff their lines. Mind you, they did not shut down as a protective measure, but because they didn't have enough workers to run the lines.^{xxxii}

Then the companies came up with a new plan. Instead of implementing social distancing and getting the best masks for workers, big meatpackers like Tyson Foods, JBS, and Smithfield implemented policies that incentivized sick workers to come back to work, no

matter the risks and regardless of whether they were healthy or not. Though CDC guidance was clear that to mitigate the spread of COVID-19 in the workplace and in the community, sick workers should be removed from the plants and quarantined,^{xxxiii} much of the meat and poultry industry decided to ignore that guidance. These policies, some that lasted well into the summer, provided a \$500-\$600 bonus to workers who worked every day in a month.^{xxxiv} For some companies, workers could not miss a day in three months to qualify. If workers missed one day, they were denied the bonus. For meat and poultry workers whose average pay is \$13.60 an hour, this a big incentive to come back to work even if you are sick.^{xxxv} The companies snidely called these bonuses “hazard pay” or “responsibility bonuses.”^{xxxvi} Further, companies also tried to intimidate workers to come back to work. JBS sent letters to all the employees in an Iowa packing house, where COVID-19 was spreading and a worker had already died, warning of consequences for excessive absenteeism.^{xxxvii xxxviii}

These policies added fuel to the wildfire of COVID-19 already spreading through the meat and poultry industry in the U.S.

Though some politicians and even administration officials tried to blame the spread on immigrant workers in the plants, the CDC did a study which burst that racist balloon. The study showed clearly that the conditions in meatpacking plants themselves were the key vectors for the spread of COVID-19 among workers.^{xxxix} In a study of poultry workers in Maryland, the CDC confirmed that the workers who worked in positions that involved close proximity to others—less than six feet apart—got sick at higher rates than others.^{xl}

Today, workers in meat and poultry plants are still working shoulder to shoulder and elbow to elbow. Adding insult to injury, although CDC specifically told the plants this would not mitigate the spread of COVID-19 in meat plants, the plants embarked on an effort to hang plastic sheeting along the sides of workers congregated together on production lines. But workers were still close together, and the sheets were neither in front of their faces nor between the space they reached out to every few seconds for the meat on conveyor lines. In fact, when CDC saw this effort in April, they told the companies that there is no evidence that these plastic sheets would do anything on production lines to protect workers, and they should be used along with social distancing—not instead of.^{xli}

Moreover, we now know that it’s not only exposure to larger droplets at close range that transmit the virus; it’s also the small aerosol particles that are emitted when an infected person simply breathes or talks.^{xlii} Plastic barriers and partitions do nothing to block exposure to these small particles that are a major source of exposure to COVID-19. What is needed is physical distancing (6 feet apart) and improved ventilation.

If it isn’t bad enough that the meat companies failed to protect workers, recent news reports are documenting that meat companies are denying workers’ compensation cases for sick workers with medical bills and those who died from COVID-19 in plants with outbreaks.^{xliii}

I want to make it clear that it was not inevitable that meat and poultry workers, and their communities, would pay such a high price for going to work every day in our slaughterhouses and processing plants. From the outset of this pandemic, we knew how to mitigate the spread of COVID-19 in our communities and in our workplaces: mandatory use

of quality masks, adequate social distancing, frequent hand washing, improved ventilation, notification and quarantine of exposed workers, and quarantine of infected and potentially infected workers. This is not rocket science, and the failure of these companies to observe all of these precautions shows an absolutely reckless disregard for the lives of their workers, their families, and all of our communities.

For years, the industry had been warned that it must prepare for a possible pandemic. News reports documented that as far back as during the Bush administration, the industry was “warned that during a pandemic there may be as many as 40% of workers absent due to fear, illness or quarantine and that social distancing would be necessary, even if it affected business operations.”^{xliv} But the industry did not prepare.

How is it that the meat and poultry industry, apart from all other manufacturing workplaces, was given a pass on implementing the key protective measures -- number one being social distancing? While other industries retooled and reconfigured their workplaces at the beginning of the pandemic, the meat industry kept things the same and had workers congregating together on the lines and in community spaces.^{xlv} At every turn, the industry prioritized production and keeping those lines running at any cost. As one local official said about the illnesses and deaths from COVID-19: “Those deaths were needless, absolutely needless. That was just poor policy, poor implementation, bad defensive moves by a corporate greed kind of approach.”^{xlvi}

Giving the Meat Industry a Pass: Government Failure

Perhaps the number one reason why the industry was given a pass is because the Occupational Safety and Health Administration (OSHA) abdicated all responsibility to ensure that companies would implement measures to mitigate the spread of COVID-19. Though petitioned on March 6, 2020 by a coalition of unions to write an Emergency Standard on COVID-19 that would require basic protections in the workplace, OSHA refused.^{xlvii} The agency also severely cut back on enforcement, so that during FY 2020, OSHA conducted 35% fewer inspections than the previous year.^{xlviii} OSHA received over 13,000 COVID-19 complaints from terrified workers about dangerous conditions in their workplaces, and almost all of these complaints were simply closed with no inspections.^{xlix}

Repeatedly, meat and poultry workers and their families filed complaints with OSHA, letting OSHA know that there was no social distancing in the plants, sick workers were incentivized to come back to work, sick workers were kept on the lines, there was no ability for workers to wash their hands, masks were wet and not replaced, and OSHA still refused to conduct inspections. For example, on April 3, 2020, OSHA received a complaint that workers were in danger at the JBS meat plant in Grand Island, Nebraska. The complaint read in part: “The company has had a number of positive cases of COVID-19 and is not practicing social distancing and other protective measures. This includes, but is not limited to, the site is still allowing large gathering for lunch (300 person)”.ⁱ The agency did not inspect. Three weeks later, there was an outbreak at this plant with hundreds of infections.ⁱⁱ

In late April, another complaint was filed regarding a Tyson poultry plant in Noel, Missouri. The complaint alleged that workers were required to stand close together as they processed

and packaged chickens and that workers were throwing up in the drains at the poultry plant. Without so much as conducting an inspection, OSHA closed the complaint. A month later, there was a huge outbreak of COVID -19 at this facility with nearly 400 workers infected.^{lii}

These are only two examples; there are many more in the meat and poultry plants, as well as other essential workplaces.^{liii} Had OSHA done its job and inspected these plants, these outbreaks could have been mitigated. But OSHA abandoned its mission and its responsibility in this pandemic and failed to protect workers. It was a total dereliction of duty.

After almost a full year of the pandemic, the agency issued just a few hundred small citations, mostly to health care facilities where there were deaths, and many of these were not for the underlying conditions that led to COVID-19 related deaths, but rather, for not reporting those deaths. Just before the 2020 election, OSHA issued a few citations to meatpacking companies for failing to protect workers, but the fines were so low, they were insulting. For the workers in these plants, where many of their coworkers died and where they are still working elbow to elbow, this was almost worse than no citation—because it was a signal to the entire industry that there would be no real consequences for failing to protect workers.

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Not only did the agency fail to inspect workplaces that were endangering workers, it also failed to protect workers who were retaliated against for raising concerns about workplace safety during the pandemic. Less than two percent of all complaints filed with the agency alleging discrimination were resolved, while over half of the complaints were dismissed with no investigation.^{lv}

It is important to understand that when OSHA fails, workers are on their own. Worker safety rights are very weak in the United States. When a worker files a complaint and OSHA decides not to inspect, workers cannot then go into court and sue the company to enforce their OSHA rights. When a worker is fired or retaliated against for raising safety and health concerns, and OSHA dismisses their case, there is no right under OSHA for the worker to take their case to court and sue the company (rights absent from the OSHA law but provided in all whistleblower statutes issued after 2020). So, when OSHA abandoned its mission and responsibility in this pandemic, it left workers in danger.^{lvi} And that decision clearly had enormous consequences for workers' health and lives.

OSHA is not the only government agency whose actions jeopardized the lives and health of packinghouse workers and their communities during the pandemic. The U. S. Department of Agriculture (USDA) also intervened repeatedly to ensure that the meatpacking industry could place profits for a few over workers' health.

Stunningly, during the first few months of the pandemic, over a dozen poultry plants, such as Tyson Foods and Wayne Farms, were given permission from the USDA (in the form of waivers from existing regulations) to actually increase their production line speeds,^{lvii} making it impossible to move workers further apart. In fact, the USDA' s actions flew in the face of the CDC's top recommendation to the industry on how to mitigate the spread of COVID-19 in their plants which was to keep workers six feet apart on production lines, in break rooms, and in locker rooms. To achieve social distancing on production lines, CDC further explained to the meat and poultry industry that “[c]hanges in production practices

(e.g., line speed reductions) may be necessary in order to maintain appropriate distancing among employees.”^{lviii} The USDA’s actions allowing poultry plants to increase their line speeds during a pandemic directly undermined the CDC recommendations for protecting poultry workers from exposure to COVID-19.

Further, there are decades of research showing that increasing line speeds in meat and poultry plants also increases serious injuries such as repetitive trauma disorders and cuts and amputations.^{lix}

Equally stunning was the USDA’s involvement in weakening the guidance by the CDC for how to prevent and mitigate the spread of COVID-19 in meat plants. After the USDA’s involvement, and in order to “placate the meat industry,” the CDC weakened its guidance on the meat industry, to ensure that any recommendations were preceded with words not normally seen in CDC guidance such as “if possible” or “consider this.”^{lx} Thus, all a company had to do to be in so-called compliance with CDC guidance was to say they thought about implementing measures but determined that it was just not possible to do so.^{lxi}

The USDA also repeatedly intervened when local health departments wanted to close meatpacking plants where hundreds were sick to mitigate the spread in the plants and in the communities. The USDA intimidated health departments to make sure plants would stay open—despite no social distancing and the lack of other measures to protect workers.^{lxii} This was not about feeding America: this was about allowing the industry to choose to prioritize profits for a few over protecting the health and lives of workers and communities of color. If the plants had implemented protective measures to mitigate against the spread of COVID-19 right from the beginning of the pandemic, the industry would have avoided any need to close their plants.

Conclusion and recommendations

On the first full day of the Biden-Harris administration, the president issued a new “Executive Order to Protect Worker Health and Safety.” It directed OSHA to protect workers from COVID-19 by issuing updated guidance, which the agency did in record time; consider whether emergency temporary standards should be issued and, if such standards are determined to be necessary, to issue them by March 15th; and to increase enforcement efforts related to COVID-19, especially in workplaces that put the largest number of workers at serious risk.

To protect meat and poultry workers, OSHA must follow the directions of President Biden and:

- Issue the COVID-19-related Emergency Temporary Standard by March 15. It is critical that this standard recognize that the coronavirus can be inhaled in tiny particles called aerosols that linger indoors in stagnant air. The standard must limit the airborne transmission of this virus in high-risk settings (like meatpacking) through requirements for upgraded masks (such as respirators if needed), social distancing, and improved ventilation.^{lxiii}

- Restart enforcement in response to complaints and reports of fatalities, and launch a nationwide emphasis program targeted to the meat and poultry industry;
- Fill the 42% of leadership positions vacant at OSHA;^{lxiv}
- Hire and fill all vacancies for inspectors (during the previous administration, OSHA had the lowest number of inspectors in the history of the agency);^{lxv}
- Review and strengthen OSHA's Whistleblower Protection program, including by centralizing it in the national headquarters;
- Launch a multilingual outreach campaign by partnering with unions and community groups to inform workers and their representatives of their rights under the OSHA law; and
- Conduct a robust investigation of the Complaints Against State Programs filed with the agency and assure that all state OSHA agencies provide the required protections.

In addition, the USDA must abandon all rulemaking that increases line speeds in meat and poultry plants and withdraw all existing line speed waivers in poultry and beef slaughter plants. The CDC, the National Institute for Occupational Safety and Health, and the Bureau of Labor Statistics must also launch comprehensive efforts to obtain information and data on all COVID-19 cases among meatpacking and poultry workers, as well as a complete count of all COVID-19 related fatalities among this vulnerable worker population.

CDC and OSHA must rescind the weak and inadequate joint COVID-19 guidelines for Meat and Poultry Processing Workers and Employers initially published last April, and issue updated guidelines based on the latest science. New guidelines must address airborne transmission, and include recommendations for physical distancing, ventilation, and upgraded masks.

OSHA is also woefully under-staffed. OSHA's budget is less than one-fourteenth the size of the Environmental Protection Agency's budget. OSHA has not had a real increase in its budget for years. At current staffing levels, it would take OSHA over 160 years to inspect every workplace under its jurisdiction just once.^{lxvi} Congress must double the number of safety and health inspectors at OSHA, as well as double the number of whistleblower investigators. Congress must also amend the OSHA law to modernize the burden of proof and provide for a private right of action for all those filing whistleblower complaints.

Finally, meat and poultry workers should not be forced by greedy employers to endanger their health and their lives in order to put food on our tables and bring in a paycheck. Those who speak out, must be protected from retaliation.

Endnotes

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