

November 3, 2021

Chairman James E. Clyburn
U.S. House Judiciary Committee?
Select Subcommittee on the Coronavirus Crisis
2157 Rayburn House Office Building
Washington, DC 20515
Via E-mail: Brandon.White@mail.house.gov



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

RE: How the Meatpacking Industry Failed the Workers Who Feed America | ACLU of Nebraska Supplemental Testimony

Dear Chairman Clyburn, Ranking Member Scalise, and Members of the Select Subcommittee:

For over 50 years in Nebraska, the American Civil Liberties Union (ACLU) has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

On behalf of the ACLU of Nebraska, we submit the attached testimony for the record to supplement our written testimony in connection with the Select Subcommittee’s hearing, “How the Meatpacking Industry Failed the Workers Who Feed America,” which took place on October 27, 2021.

If you have any questions, please contact Interim Legal Director, Rose Godinez at rgodinez@aclunebraska.org.

Regards,

Rose Godinez
Interim Legal Director

Jane Seu
Immigration Legal Fellow



SUPPLEMENTAL TESTIMONY OF

**ROSE GODINEZ
INTERIM LEGAL DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF NEBRASKA**

**How the Meatpacking Industry Failed the
Workers Who Feed America**

**Select Subcommittee on the Coronavirus Crisis
U.S. House of Representatives**

Supplemental Testimony Submitted for the Record

November 3, 2021

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APPENDIX A

April 28, 2020

Honorable Pete Ricketts
Office of Governor Ricketts
P.O. Box 94848
Lincoln, NE 68509-4848

RE: Continued food production requires critical COVID-19 protections for meat and poultry workers. Community, worker, and public health groups highlight missing protections, offer assistance.

Dear Governor Ricketts,

As community, worker, and public health representatives deeply connected with Nebraska workers and communities across the state, we urge you to address key missing COVID-19 protections for Nebraska's meat and poultry workers – in order to ensure continued food production and to protect working Nebraskans and whole communities.

Maintaining food production requires 6-foot distancing, consistent paid sick leave, and other critical protections to keep workers and communities safe. A failure to institute these protections threatens our food production and our families and communities – as we can see from the current trend of nationwide plant outbreaks and closures.

We're hearing concerns from workers across Nebraska that they are still working shoulder to shoulder and without sufficient protections. The clock is ticking to institute physical distancing practices on the processing floor in all plants. **This is a critical risk for Nebraska's workforce health, community health, and food production.**

We have decades of experience with public health, meat and poultry workplace safety, and diverse Nebraska communities. Our family members, friends, and colleagues work in the plants and in community public health, and we would like to provide you with these perspectives to help find solutions that prioritize worker safety and community health, and keep our food supply running during this pandemic.

These are key protections that should be implemented consistently across plants without delay:

1. **Most importantly, 6-foot distancing between workers on the processing floor**, not only in lunch and break areas (by reducing the numbers of workers per shift, slowing the line, increasing the number of shifts, and/or other means).
2. **Paid sick leave, job protection, and shutdown pay** so people can afford to stay home and monitor symptoms or care for family with symptoms.
3. **Appropriate protective equipment is provided**, including masks.
4. **Frequent cleaning** of worksites.
5. **Transparency** about cases connected to the workplace and **information** to employees in the languages most prevalent in each worksite.
6. **More inspections** to ensure worker safety and compliance with best practices.
7. **Worker and community health representation** on weekly industry best practice conversations with our state government.

While we understand that there are a few, very specific work positions where 6-foot physical distancing is not possible, there are hundreds of people working elbow to elbow at tables and workstations where 6-foot distancing is absolutely possible and yet has not been implemented. This is a significant vector for our communities and a critical risk for food production.

Here are examples of what we're hearing from numerous communities:

- "We're working elbow to elbow, that's why we're getting infected."
- "What purpose does distancing serve as you check-in if when you punch in you're working elbow to elbow?"
- "[JBS] supervisors are telling people that even if they are positive they can go to work, to keep it on the DL. And to not say anything or they will get fired. An employee [said] her father works there and he was positive and they told him to come to work."
- "We don't have a choice. I don't want to go, but I have to go. I have to feed my family."
- "Managers tell us after receiving a positive COVID-19 case that we can just keep working and should keep working if we want to keep our job."
- "We've been told we're going to get fired if we complain of unsanitary or unsafe conditions."
- "A worker was pulled out with symptoms and sent home to quarantine or be tested and the company did not notify the workers around him to quarantine. Obviously, by the time he gets tested, the ones that were working around him will have continued to keep spreading."
- "Tyson started their precautions late and they are still obligating workers to go to work regardless if they are ill, especially now that they are short in some of their lines."
- "We hope that they take action on the matter and stop looking aside as if nothing happened, and that they start looking at all the murky things that happen in the plant."

Governor Ricketts, we can find a better way. We would very much like to help provide you with information and perspectives that can help create solutions to protect our community health and maintain our food production by keeping critical workers safe.

Sincerely,

ACLU of Nebraska
Center for Rural Affairs
Centro Hispano (Columbus)
Coalition for a Strong Nebraska
East Central District Health Department
Heartland Workers Center
Immigrant Legal Center
Multicultural Coalition (Grand Island)
Nebraska Appleseed
Nebraska Latino American Commission
Omaha Together One Community
Peace with Justice Ministries, Great Plains United Methodists
Solidarity with Packing Plant Workers
Trinidad Center (Lexington)
UFCW Local 293
Unity in Action (South Sioux City)
YWCA of Grand Island

Cc: Nebraska Department of Labor

APPENDIX B

Virtual Press Packet: COVID-19 Protections for Nebraska workers, families, communities, food production (4.29.20)

Nebraska Workers' Stories

"[JBS] supervisors are telling people that even if they are positive they can go to work, to keep it on the DL. And to not say anything or they will get fired. An employee [said] her father works there and he was positive and they told him to come to work. They say it is nothing serious as long as they get checked with the nurse when they come to work they are fine." - **Nebraska Worker**

"I have been working for 20 years. My wife and I made the decision that at this time of the pandemic, she will stay home with the boys. Our income will be lower, but our family is the priority. At home, we are all stressed. A coworker called me and said: "get tested, I tested positive and the only place I go is work." I went to the doctor and I am awaiting the results. My children ask: "Dad, did the doctor give you the results?" and I answer them, "stay calm, everything will be fine."

Although the company has taken some measures, with the way the work area is structured, it is difficult to keep our distance. There are many jobs where employees are working very closely and that closeness is what can infect us. I'm still afraid to go to work, for me and my family. Now there are quite a few employees who have the virus. At this time, going to work is a risk that we are facing every day." - **Nebraska Worker** [Note: We are very sorry to report this person has now tested positive for COVID-19.]

"I was talking to [X] today and she said the working situation at JBS only 'improved' for about a week. After that week it went back to normal (no soap in the dispenser, no antibacterial hand sanitizers, toilets over flooding in the bathroom). She says they work 3 feet apart from each other and the only reason there was more than 3 feet at times was because people were out sick. She said they advise to keep a 6ft distance while at lunch but everyone is in a hurry to get their lunch and back since they don't get a very long break that everyone seems to be bunched up together. She also advises, people KNOW what's going on, they know it's dangerous to go to work, but they also know their families won't eat if they don't show up." - **Nebraska Worker**

"Despite our efforts beginning weeks ago, many of our own parents have tested positive for COVID-19 and or have been sent home because they have been in contact with another worker who previously tested positive, my dad included. We couldn't protect our parents from their working conditions, but we continue to advocate to do something to protect all workers.

While every other sector of our community including schools and small businesses implemented health and safety measures and did just about everything in their power to prevent the spread, we did not see the same leadership from Smithfield.

Many of our parents have given 10, 15, 20, and 25 years of service to the company, proving their loyalty and their continued desire to provide for their families. What we ask for in return is responsibility, transparency, and protection for our workers and our community.” - ***A family member of a Nebraska Worker***

APPENDIX C

May 27, 2020

Commissioner John H. Albin
Nebraska Department of Labor
550 S 16th Street
P.O. Box 94600
Lincoln, NE 68509-4600



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

RE: Essential Protections for Our Essential Meatpacking Plant Workers

Commissioner Albin:

Today we write on behalf of [REDACTED] and the Children of Smithfield, an advocacy group organized by them. Children of Smithfield has been successful in its efforts to raise awareness of the worker safety issues at the Smithfield Plant in Crete through weekly demonstrations and public advocacy, culminating with a recent meeting with Governor Ricketts. Though grateful for their time with the Governor, the meeting left them hopeless that Governor Ricketts will take any action to ensure the safety of their family members.

Continuing our tradition of fighting for racial justice and equal protection of the law, we have agreed to represent these individuals, Children of Smithfield and other parties and to use all available legal means to ensure the safety of their family members and their community.

As predicted in our previous letter, the Governor's strategy of directing UNMC to share its expertise and informal recommendations with plant officials has failed to produce the safe work environment required by the law. We remain unaware of a single Nebraska plant spacing workers six feet apart, though this is the most fundamental method of preventing the spread of this disease, recommended universally by health officials, and incorporated into public health directives signed by executive officials all over the world.

The Lancaster County Health Department has opined that the spike of cases within their jurisdiction stems from the Smithfield plant in neighboring Saline County, yet Governor Ricketts has encouraged local health officials to refrain from reporting numbers traced to specific meatpacking plants.

Workers are getting sick at unacceptable rates. During the past few weeks, the number of meatpacking plant workers infected by COVID-19 has increased by at least 160%. They and their families understandably live in



fear of being infected. And most everyone is reluctant to speak out, scared of losing their job during this time of economic uncertainty. All the while the plants continue to reap profits from the labor provided in an undeniably dangerous environment, while the rest of us enjoy our beef, chicken, and pork.

The very reason government exists is to prevent such an intolerably immoral and inhumane situation. Yet, from your lack of response, we can only assume your Department intends to do nothing, instead surrendering your agency's regulatory and enforcement powers to the group from UNMC with no enforcement powers. While your Department has hired over 130 people to process claims, and contracted with Nelnet for another 100, it has not seen fit to spare more than one part-time staffer to focus on the Meatpacking Industry Workers' Bill of Rights.

Respectfully, Commissioner, it appears you are turning your back on workplace safety at a time when your duty could not be clearer. It appears that, under your leadership, the Department of Labor has chosen not to conduct its own on-site inspections and has not referred a single plant to OSHA, or to the local County Attorney, for failing to abate the imminent hazardous conditions within the plants.

As taxpayers who have helped fund the Department of Labor, the Children of Smithfield rightfully expect enforcement of the Workplace Safety Consultation Program, passed into law to "provide employees in Nebraska with safe and healthful workplaces." Certainly, the workers who provide labor at the plant have a legal right to enjoy the protections the law prescribes.

We have advised the Children of Smithfield and other advocates they should seek remedy through litigation. We are willing, however, to discuss our concerns with you in hopes of gaining a better understanding of the challenges you face, and of any efforts you have taken on their behalf.

We look forward to your response.

Respectfully,

A handwritten signature in blue ink, appearing to read "Adam J. Sipple".

Adam J. Sipple
Legal Director

A handwritten signature in blue ink, appearing to read "Rose Godinez".

Rose Godinez
Legal & Policy Counsel

Cc: Governor Pete Ricketts
Tad Eickman, Saline County Attorney



APPENDIX D

Sent via email: ajsipple@aclunebraaska.org

June 4, 2020

Mr. Adam Sipple
American Civil Liberties Union Foundation
134 S. 13th Street, # 1010
Lincoln, NE 68508

RE: FOIA SIMS #892529 – Nebraska Meat Processing

Dear Mr. Sipple:

This decision is in response to your Freedom of Information Act (FOIA) request dated May 11, 2010, received in our office on May 20, 2020, and amended on June 1, 2020. We located some of the records you seek and conducted a review of the material you requested.

With regard to your request for reports regarding Local Emphasis Program CPL 02-16-05E, dated October 1 2019, no records were found. With regard to your request for all OSHA 300 logs for the Smithfield Foods plant in Crete Nebraska related to illness, respiratory conditions, poisoning, infection, or disease, no records were found.

You will note some information has been redacted from the documents. This is authorized under the rules and regulations, including exemptions, contained in the Freedom of Information Act 5 USC 552(a) and 29 CFR 70. Actual sections deleted are indicated on the released portion of the record at the place where such deletion is made with numbered exemptions noted in each case. The failure to cite other specific exemptions, which may be applicable to the denial of disclosure, does not constitute a waiver of the exemptions.

Exemption	Description
7(c)	Personal identifying information such as names of non-management officials.

Exemption 7(C) permits an agency to withhold information contained in files compiled for law enforcement purposes if production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). Thus, the purpose of Exemption 7(C) is to protect the privacy of any person mentioned in law enforcement records. In determining whether a protected privacy interest exists, we must evaluate not only the nature of the personal information found in the records, but also whether release of that information to the general public could affect that individual

adversely. Thus, we must consider whether release of even seemingly innocuous personal information could lead to the harassment or annoyance of an individual through unsolicited inquiries. We find that release of personal identifying information withheld here reasonably could be expected to have a negative impact on an individual's privacy.

We have determined you are an "other" requester for fee purposes under FOIA. The fees for this particular request totaled less than \$25.00; consequently, all fees have been waived.

If you have any questions about this FOIA determination letter please contact Dee Cantu of my staff at (816) 283-8745.

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of this letter.

If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or fax your appeal to (202) 693- 5538. Alternatively, you may email your appeal to foiaappeal@dol.gov; appeals submitted to any other email address will not be accepted. The envelope (if mailed), subject line (if emailed), or fax cover sheet (if faxed), and the letter indicating the grounds for appeal, should be clearly marked: "Freedom of Information Act Appeal."

In addition to filing an Appeal, you may contact the Department's FOIA Public Liaison, Thomas G. Hicks, Sr. at (202) 693-5427 or hicks.thomas@dol.gov for assistance in resolving disputes.

You also may contact the Office of Government Information Services (OGIS) for assistance. OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may mail OGIS at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001. Alternatively, you may email or contact OGIS through its website at: ogis@nara.gov; Web: <https://ogis.archives.gov>. Finally, you can call or fax OGIS at: telephone: (202) 741-5770; fax: (202) 741-5769; toll-free: 1-877-684-6448.

It is also important to note that the services offered by OGIS, is not an alternative to filing an administrative FOIA appeal.

Sincerely,



[For] Kimberly A. Stille
Regional Administrator

Enclosures: Redacted FOIA Responsive Records

RID	Insp Id / Opt Rpt Id	Establishment Name Site City-State-Zip	Primary NAICS-SIC / Inspected NAICS	Open Conference Date	Iss. Date	Final Order Date	Case Closed Date	SWR Vios	Other Than Serious Vios	HALs	Penalty Initial / Current	Addl' Code
07-289-00	1436750 /	Cargill Meat Solutions Corp SCHUYLER, NEBRASKA, 68661	311611 / 311611	10/09/2019			12/20/2019	0	0			-
07-289-00	1438414 /	Fremont Beef Co. FREMONT, NEBRASKA, 68026	311612 / 311612	10/16/2019	03/27/2020	4/17/2020	04/30/2020	0	1		9,639 6,650.91	-
07-289-00	1440667 /	Tyson Foods, Inc. DBA : Tyson Fresh Meats LEXINGTON, NEBRASKA, 68850	311612 / 311612	10/22/2019	02/05/2020	2/28/2020	02/18/2020	0	0	1 0 0	0 0	-
07-289-00	1444419 / 661	Noah's Ark Processors DBA : Nebraska Prime Group HASTINGS, NEBRASKA, 68901	311611 / 311611	11/07/2019	03/09/2020			1	0		13,494 13,494	-
07-289-00	1445990 /	Quality Pork International, Inc OMAHA, NEBRASKA, 68127	311612 / 311612	11/20/2019			11/20/2019	0	0			-
07-289-00	1448443 /	Lincoln Premium Poultry LLC FREMONT, NEBRASKA, 68025	311615 / 311615	12/03/2019			12/09/2019	0	0			-
07-289-00	1450519 /	WholeStone Farms, Inc. FREMONT, NEBRASKA, 68025	311611 / 311611	12/12/2019	04/07/2020	4/29/2020	04/30/2020	0	0			-
07-289-00	1462665 /	Tecumseh Poultry - Smart Chicken WAVERLY, NEBRASKA, 68462	311615 / 311615	02/12/2020			03/20/2020	0	0			-
07-289-00	1463808 /	JBS USA GRAND ISLAND, NEBRASKA, 68801	311612 / 311612	02/19/2020	04/02/2020			1	1		9,639 9,639	-
07-289-00	1464643 /	SKYLARK MEATS OMAHA, NEBRASKA, 68137	311612 / 311612	02/20/2020	05/01/2020	5/19/2020	06/01/2020	0	2		13,108 7,000	-
07-289-00	1466443 /	Darling International Inc. DBA : DAR PRO LEXINGTON, NEBRASKA, 68850	311613 / 311613	02/25/2020	04/16/2020	5/11/2020	05/11/2020	3	0		18,024 12,616.8	-
07-289-00	1472925 /	Tyson Foods, Inc. DBA : Tyson Fresh Meats DAKOTA CITY, NEBRASKA, 68731	311611 / 311611	04/22/2020				0	0			N-16-COVID-19:
07-289-00	1474098 /	Lincoln Premium Poultry LLC FREMONT, NEBRASKA, 68025	311615 / 311615	05/05/2020				0	0			N-16-COVID-19:
07-289-00	1474112 /	Tyson Foods, Inc. DBA : Tyson Fresh Meats DAKOTA CITY, NEBRASKA, 68731	311611 / 311611	05/05/2020				0	0			N-16-COVID-19:
07-289-00	1474329 /	Tyson Foods, Inc. DBA : Tyson Fresh Meats DAKOTA CITY, NEBRASKA, 68731	311611 / 311611	05/07/2020				0	0			N-16-COVID-19:
07-289-00	1474536 /	JBS USA GRAND ISLAND, NEBRASKA, 68802	311611 / 311611	05/08/2020				0	0			N-16-COVID-19:
07-289-00	1475038 /	JBS USA GRAND ISLAND, NEBRASKA, 68801	311611 / 311611	05/12/2020				0	0			-
07-289-00	1475495 /	Tyson Fresh Meats MADISON, NEBRASKA, 68748	311611 / 311611	05/18/2020				0	0			N-16-COVID-19:
07-289-00	1476540 /	WholeStone Farms, Inc. FREMONT, NEBRASKA, 68025	311611 / 311611	05/28/2020				0	0			N-16-COVID-19:

RID	Act ID	Establishment Name Site City-State-Zip	County	Primary/Site NAICS	Receipt Date	Receipt Type	Formality	Insp ID	Addl' Code	Hazard Desc and Location	No Alleged Hazards/No Emp Exposed
07-289-00	C-1564228	JBS USA 555 SOUTH STUHR RD, GRAND ISLAND, NEBRASKA, 68801	HALL	311612 / 311612	4/3/2020	Phone	Nonformal		N-16-COVID-19:	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: 1) The site is still allowing large gatherings for lunch (300) persons and shift change is still allowing a large number of persons to be in the locker room simultaneously.	1/ 4,000
07-289-00	F-1576576	Tyson Foods, Inc. DBA Tyson Fresh Meats 1131 Dakota Ave., DAKOTA CITY, NEBRASKA, 68731	DAKOTA	311611 / 311611	4/22/2020	Media	-	1472925	N-16-COVID-19:	EE found deceased in his bed and cause of death is believed to be COVID-19 which may have been contracted as a result of contact with COVID-19 positive co-workers.	/
07-289-00	F-1583650	Lincoln Premium Poultry LLC 1325 E Cloverly Rd, FREMONT, NEBRASKA, 68025	DODGE	311615 / 311615	5/5/2020	Phone	-	1474098	N-16-COVID-19:	Employee died at home due to COVID-19 related infection	/
07-289-00	F-1583696	Tyson Foods, Inc. DBA Tyson Fresh Meats 1131 Dakota Ave., DAKOTA CITY, NEBRASKA, 68731	DAKOTA	311611 / 311611	5/4/2020	Media	-	1474112	N-16-COVID-19:	Employee died from COVID-19	/
07-289-00	F-1584888	Tyson Foods, Inc. DBA Tyson Fresh Meats 1131 Dakota Ave., DAKOTA CITY, NEBRASKA, 68731	DAKOTA	311611 / 311611	5/6/2020	Media	-	1474329	N-16-COVID-19:	Employee died from Covid-19	/
07-289-00	F-1589148	JBS USA 555 SOUTH STUHR RD, GRAND ISLAND, NEBRASKA, 68801	HALL	311611 / 311611	5/12/2020	Phone	-	1475038	N-16-COVID-19:	Employee died due to poss ble COVID-19 exposure	/
07-289-00	F-1589151	JBS USA 555 SOUTH STUHR RD, GRAND ISLAND, NEBRASKA, 68801	HALL	311611 / 311611	5/9/2020	Phone	-	1474536	N-16-COVID-19:	Possible COVID-19 death	/
07-289-00	F-1596848	WholeStone Farms, Inc. 900 South Platte Ave., FREMONT, NEBRASKA, 68025	DODGE	311611 / 311611	5/28/2020	Media	-	1476540	N-16-COVID-19:	COVID19 related fatality.	/
07-289-00	R-1568683	GREATER OMAHA PACKING CO., INC. 3001 L STREET, OMAHA, NEBRASKA, 68107	DOUGLAS	311611 / 311611	4/9/2020	Online	-		N-16-COVID-19:	Not maintaining social distancing with employees while they are in lunch room/break room. There are no safety measures in place as the employees are not wearing any type of face protection or taking their temperatures. There have been employees who vacationed out of the country that have returned to work and not self-quarantined.	/
07-289-00	R-1574194	Noah's Ark Processors, LLC DBA WR Reserve 1009 W. M Street, HASTINGS, NEBRASKA, 68901	ADAMS	311611 / 311611	4/20/2020	Media	-		N-16-COVID-19:	Employees exposed to COVID-19	/
07-289-00	R-1574618	Lincoln Premium Poultry LLC 1325 E Cloverly Rd, FREMONT, NEBRASKA, 68025	DODGE	311615 / 311615	4/20/2020	Phone	-		N-16-COVID-19:	1) Three employees tested positive for COVID-19	/
07-289-00	R-1575494	Smithfield Foods 200 S. 2nd St., LINCOLN, NEBRASKA, 68508	LANCASTER	311612 / 311612	4/21/2020	Phone	-		N-16-COVID-19:	1)Employee tested positive for COVID-19	/
07-289-00	R-1591483	Tyson Fresh Meats 1200 INDUSTRIAL PARKWAY, MADISON, NEBRASKA, 68748	MADISON	311611 / 311611	5/18/2020	Phone	-	1475495	N-16-COVID-19:	1) Greater than 10% of employees tested positive for COVID-19	/

From: Ex 7(c) on behalf of [OSHA - Complaints - OMAHA \(F164\)](#)
To: jluebbe@smithfield.com
Subject: RRI
Date: Tuesday, April 21, 2020 10:48:00 AM
Attachments: [COVID CDC Poster\(Spanish\).pdf](#)
[COVID CDC Poster.pdf](#)
[RRI.doc](#)

Joni,

Attached you will find the Rapid Response Investigation (RRI) that we discussed over the phone. Please complete and return by April 28, 2020. If you need additional time or if you have any questions after reading this document, please feel free to contact me.

As part of the investigation please identify the percent of their employees that are immigrant workers, the total number of employees at the facility, and if employees are represented by a union.

Duty Officer
OSHA Omaha Area Office
402-553-0171



April 21, 2020

Joni Luebbe
Smithfield Foods
200 S. 2nd St.
Lincoln, NE 68508

RE: OSHA Activity No. 1575494

Dear Joni Luebbe

This letter is to follow up the conversation we had on April 21, 2020 in reference to the employee injury that occurred on 4/20/20 at your worksite. As we discussed, there are some important steps you should be taking to ensure the safety of your workers and avoid the need for an OSHA inspection.

In most cases, a serious injury indicates the presence of workplace hazards that threaten the health and safety of other workers. OSHA is very concerned that additional employees at your worksite are at risk of being injured. As we discussed, it is in everyone's interest that you conduct a thorough investigation to determine the reasons for the work related incident, to identify hazards related to the incident and to implement corrective actions.

Please complete each of the following by April 28, 2020:

- Conduct an incident investigation. (See Non-Mandatory Investigative Tool – Attachment A)
- Provide OSHA with written, signed documentation of findings from the investigation.
- Provide OSHA with written, signed abatement certification documenting action taken to correct hazards related to the incident.
- Document findings and send corrective actions to (402) 551-1288 or complaints.fl64@dol.gov
- Post a copy of this letter in a conspicuous place where all affected employees will have notice or near the location where the incident occurred.
- Fax or email a copy of the signed Certificate of Posting (Attachment B) to (402) 551-1288 or complaints.fl64@dol.gov

If you have a problem meeting this deadline or have any further questions, please call me.

If we do not receive the investigation results, abatement verification and certificate of posting by April 28, 2020, your worksite may be considered for an on-site inspection.

The goal of your incident investigation will be to identify both the immediate and the underlying causes of the incident. To assist you in conducting an investigation, I have attached a guide for your use, to ensure your employees are protected from future injuries. Additional resources are available at OSHA's Safety and Health Topics website at <https://www.osha.gov/dcsp/products/topics/incidentinvestigation/index.html> to assist you with conducting an Incident Investigation.

After correcting any immediate hazards, small and medium-sized businesses may be interested in requesting free, confidential assistance from the On-Site Consultation Program. Consultants from a state agency or university will work with you to identify workplace hazards, provide advice on compliance with OSHA standards, and assist you in establishing a safety and health management program. These services are separate from enforcement and do not result in penalties or citations. To find out more information about OSHA's On-Site Consultation Program, please visit the programs website at <https://www.osha.gov/dcsp/smallbusiness/consult.html> or call [State Consultation Office Contact Information] to reach your local On-Site Consultation office. Also, please find a copy of the OSHA pamphlet, "[FREE Safety and Health Consultation Services](#)" for your use in [English](#) or [Spanish](#).

Please note that it is against the law for employers to retaliate or discriminate in any way against an employee for raising safety and health issues or for exercising their rights under the OSHA law. This includes the right to report a work-related injury or illness to their employer, or to contact OSHA. More information about the Whistleblower Protection Program can be found at <http://www.whistleblowers.gov/>.

If you have any questions, please call me at (402) 553-0171 or email me at complaints.fl64@dol.gov. Your support and interest in the safety and health of your employees is appreciated.

Sincerely,

Matthew Thurlby
Area Director

Currently, there is an outbreak of COVID-19, also known as Coronavirus. OSHA's website, www.osha.gov, offers a wide range of safety and health-related guidance in response to the needs of the working public, both employers and employees. The following guidance may help employers prevent and address workplace exposures to pathogens that cause acute respiratory illnesses, including COVID-19 illness. The guidance includes descriptions of the relevant hazards, how to identify the hazards, and appropriate control measures. Additional resources are provided that address personal protective equipment supply issues and contain industry-specific guidance.

1. For OSHA's latest information and guidance on the COVID-19 outbreak, please refer to OSHA's COVID-19 Safety and Health Topics Page, located at www.osha.gov/coronavirus.
2. Preventing Worker Exposure to Coronavirus (COVID-19), OSHA publication 3989), www.osha.gov/Publications/OSHA3989.pdf.
3. Guidance on Preparing for COVID-19, (OSHA publication 3990), www.osha.gov/Publications/OSHA3990.pdf.

Depending on the specific circumstances at your worksite, several OSHA requirements may apply to the alleged hazards at your worksite, including:

- [29 CFR § 1904](#), Recording and Reporting Occupational Injuries and Illness.
- [29 CFR § 1910.132](#), General Requirements - Personal Protective Equipment.
- [29 CFR § 1910.133](#), Eye and Face protection.
- [29 CFR § 1910.134](#), Respiratory Protection.
- [29 CFR § 1910.141](#), Sanitation.
- [29 CFR § 1910.145](#), Specification for Accident Prevention Signs and Tags.
- [29 CFR § 1910.1020](#), Access to Employee Exposure and Medical Records.
- [Section 5\(a\)\(1\)](#), General Duty Clause of the OSH Act.

OSHA's Bloodborne Pathogens standard ([29 CFR § 1910.1030](#)) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may contain SARS-CoV-2 (unless visible blood is present). However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to [body fluids](#) (e.g., respiratory secretions) not covered by the standard.

Information about these and other OSHA requirements can be found on OSHA's website at www.osha.gov/laws-regs.

The Centers for Disease Control and Prevention (CDC) also maintains a website that provides information for employers concerned about COVID-19 infections in the workplace. The CDC has provided specific guidance for businesses and employers at the following CDC webpage, which is updated regularly: www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html.

1. For general information and guidance on the COVID-19 outbreak, please refer to the CDC's main topic webpage at www.cdc.gov/coronavirus/2019-ncov/index.html.
2. Resources for businesses and employers, www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html.

The CDC is recommending employers take the following steps to prevent the spread of COVID- 19:

- **Actively encourage sick employees to stay home**
- **Accommodate employees through social distancing or telework (if possible)**
- **Emphasize respiratory etiquette and hand hygiene by all employees**
- **Perform routine environmental cleaning**
- **Check government websites (CDC, State Department) for any travel advisories (where applicable)**

Plan for infection disease outbreaks in the workplace

NON-MANDATORY INVESTIGATIVE TOOL

A. ESTABLISHMENT INFORMATION

- 1) Name of Investigator: _____
- 2) Job Title: _____
- 3) Name of Company _____
- 4) Address: _____
- 5) Contact Phone: _____
- 6) Fax _____
- 7) E-Mail _____
- 8) NAICS _____
- 9) How many Employees at: a) Work site _____ b) All Locations _____
- 10) Union : Yes _____ No _____
- 11) Union Name and Contact Info: _____

B. INJURED EMPLOYEE INFORMATION

- 1) Injured Employee Name: _____
- 2) Age: _____
- 3) Gender Male ___ Female ___

(For additional employees, use continuation section at end of form.)

- 4) Employee Typical Job Title: _____
- 5) Job at Time of Incident: _____
- 6) Type of Employment (check all that apply): Full Time Part Time Seasonal
 Temporary Other:
- 7) Length of Employment with the Company: _____
- 8) Amount of time in current position at time of incident: _____
- 9) Nature of Injury: _____
- 10) Part of Body: _____

C. INCIDENT INVESTIGATION

- 1) Date and time of the incident: _____
- 2) Location of incident: _____

3) What was the employee doing just before the incident occurred? *Instructions: Describe the activity; including the tools, equipment, or material the employee was using. Be specific. Example: "climbing a ladder while carrying roofing materials" and "changing gasket on a chlorine line".*

4) What Happened? *Instructions: Provide a detailed description of the incident and how the injury occurred. Provide details such as measurements, sequence of events, equipment RPMs, trench dimensions, the type of vehicle(s) involved, discuss use of hazard controls such as guards or PPE. Examples: "bucket of chemical X spilled on the floor", "ladder slipped on wet floor", "worker fell 20ft.", "employee was sprayed with chlorine when gasket broke during replacement" and "employee was not wearing PPE".*

5) What was the injury or illness? *Instructions: Describe the part of the body that was affected and how it was affected. Be more specific than "hurt", "painful" or "sore". Examples: "fractured vertebrae" and "chemical burn to the hand".*

6) What object or substance directly harmed the employee? *Instructions: Provide the type, brand, size, distinguishing features, condition, or specific part that harmed the employee. Example: "band saw blade".*

D. WHAT CAUSED OR ALLOWED THIS INCIDENT TO HAPPEN?

Instructions: What were the underlying reasons the incident occurred – and are the factors that need to be addressed to prevent future incidents? If safety procedures were not being followed, why were they not being followed? If a machine was faulty or a safety device failed, why did it fail? It is common to find factors that contributed to the incident in several of these areas: equipment/machinery, tools, procedures and policies, training or lack of training, work environment. If you identify these factors, try to determine why these factors were not addressed before the incident.

E. CORRECTIVE ACTIONS TAKEN TO PREVENT FUTURE INCIDENTS

1) Hazardous condition(s) identified and corrective action taken by employer. *Instructions: Describe the immediate measures taken, interim and/or long-term actions necessary to correct hazardous condition(s). Also, use this section to track the completion of multi-step corrective actions as well as final corrective actions used to abate the hazardous condition.*

2) Additional notes and comments *Instructions: Provide additional comments, including statements from eye-witnesses and injured employee(s).*

3) Date Hazardous Condition was Abated: _____

F. Employer Name:

Employer Signature:	Date:
----------------------------	--------------

This Constitutes my Electronic Signature **Date:** _____
(If this box is checked, this submission shall be considered as an authorized written signature.)

NOTE:

This investigation tool is provided to assist employers in finding the cause of incidents and to prevent similar incidents in the future. It contains criteria that may be used to evaluate the capabilities of current safety practice(s). The employer is encouraged to use this document or other equivalent form, as a means for abatement verification and submit their corrective actions in Section E and sign Section F. This is a **non-mandatory** tool.

Additional resources are available at:

OSHA’s website, “www.osha.gov”.

OSHA’s Safety and Health Topics Page, “Incident Investigation”.

OSHA Guidance Document, “Incident [Accident] Investigations: A Guide for Employers”.

National Safety Council, “How to Conduct an Incident Investigation”.

OSHA’s On-site Consultation Program (Free Service):

https://www.osha.gov/dcsp/smallbusiness/consult_directory_text.html

CERTIFICATION
OF POSTING OSHA NOTIFICATION
OF EMPLOYER REPORTED INCIDENT

Activity No.: 1575494

Date of Posting: _____

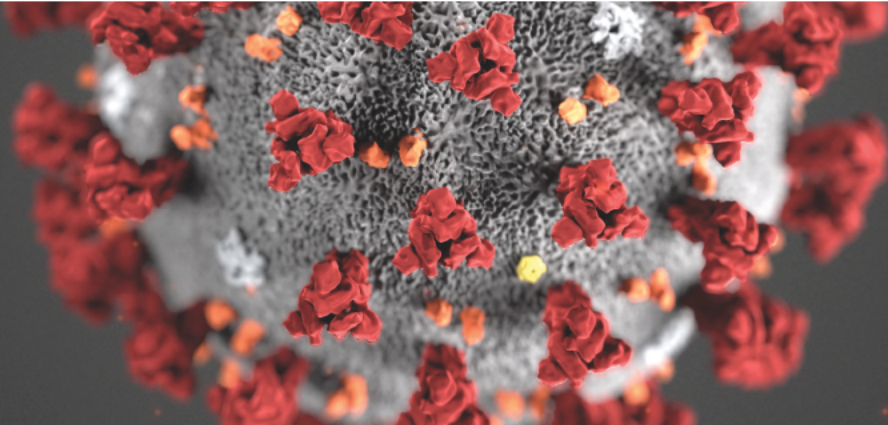
Date Copy Given to
an Employee Representative: _____

On behalf of the employer, I certify that a copy of the letter received from the Occupational Safety and Health Administration (OSHA) concerning the workplace injury that occurred on 4/20/20 has been posted in a conspicuous place where all affected employees will have notice or near such location where the incident occurred, and a copy of the letter has been given to each authorized representative of affected employees, if any. The letter was or will be posted for a minimum of ten (10) working days or until any hazardous condition(s) are corrected.

Signature

Title

Employer/Establishment name



Diez Medidas que Todos los Lugares de Trabajo Pueden Tomar para Prevenir la Exposición al Coronavirus

Todos los lugares de trabajo pueden tomar las siguientes medidas para la prevención de infecciones y proteger a los trabajadores:

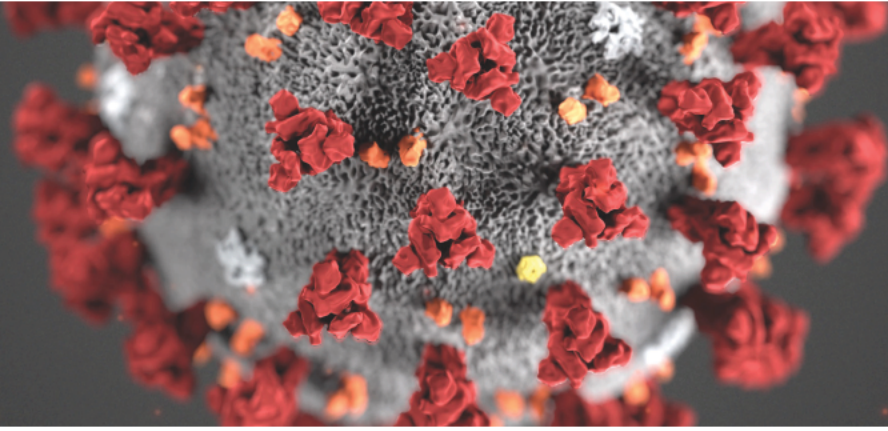
- 1** Alentar que los trabajadores permanezcan en sus hogares si están enfermos.
- 2** Alentar buenos hábitos respiratorios, incluyendo cubrirse la boca al toser y estornudar.
- 3** Proveer un lugar para lavarse las manos o toallitas de mano que contengan al menos un 60% de alcohol.
- 4** Limitar el acceso al lugar de trabajo sólo al personal esencial, de ser posible.
- 5** Establecer la flexibilidad para el lugar de trabajo (e.g., trabajos desde la casa) y el horario de trabajo (e.g., turnos de trabajo escalonados), en cuanto sea posible.
- 6** Desalentar que los trabajadores utilicen los teléfonos, escritorios, u otras herramientas y equipo de trabajo de sus compañeros de labores.
- 7** Limpiar y desinfectar con frecuencia las superficies, equipo y otros elementos del ambiente de trabajo.
- 8** Usar químicos de limpieza con etiquetas de desinfectantes aprobados por la Agencia de Protección Ambiental (EPA, por sus siglas en inglés).
- 9** Seguir las instrucciones del fabricante para el uso de todo producto de limpieza y desinfección.
- 10** Alentar que los trabajadores denuncien cualquier preocupación acerca de la seguridad y la salud en el trabajo.

Para más información, visite www.osha.gov/coronavirus o llame al 1-800-321-OSHA (6742).



Administración de Seguridad y Salud Ocupacional

1-800-321-OSHA (6742)
TTY 1-877-889-5627



Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus

All workplaces can take the following infection prevention measures to protect workers:

- 1** Encourage workers to stay home if sick.
- 2** Encourage respiratory etiquette, including covering coughs and sneezes.
- 3** Provide a place to wash hands or alcohol-based hand rubs containing at least 60% alcohol.
- 4** Limit worksite access to only essential workers, if possible.
- 5** Establish flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), if feasible.
- 6** Discourage workers from using other workers' phones, desks, or other work tools and equipment.
- 7** Regularly clean and disinfect surfaces, equipment, and other elements of the work environment.
- 8** Use Environmental Protection Agency (EPA)-approved cleaning chemicals with label claims against the coronavirus.
- 9** Follow the manufacturer's instructions for use of all cleaning and disinfection products.
- 10** Encourage workers to report any safety and health concerns.

For more information, visit www.osha.gov/coronavirus or call 1-800-321-OSHA (6742).



From: [OSHA - Complaints - OMAHA \(F164\)](#)
To: ["pthompson@smithfield.com"](mailto:pthompson@smithfield.com)
Subject: RRI
Date: Thursday, April 23, 2020 12:42:00 PM
Attachments: [RRI.doc](#)
[COVID CDC Poster\(Spanish\).pdf](#)
[COVID CDC Poster.pdf](#)

Pam,

Attached you will find the Rapid Response Investigation (RRI) that we discussed over the phone. Please complete and return by April 30, 2020. If you need additional time or if you have any questions after reading this document, please feel free to contact me.

As part of the investigation please identify the percent of their employees that are immigrant workers, the total number of employees at the facility, and if employees are represented by a union.

Duty Officer
OSHA Omaha Area Office
402-553-0171

Currently, there is an outbreak of COVID-19, also known as Coronavirus. OSHA's website, www.osha.gov, offers a wide range of safety and health-related guidance in response to the needs of the working public, both employers and employees. The following guidance may help employers prevent and address workplace exposures to pathogens that cause acute respiratory illnesses, including COVID-19 illness. The guidance includes descriptions of the relevant hazards, how to identify the hazards, and appropriate control measures. Additional resources are provided that address personal protective equipment supply issues and contain industry-specific guidance.

1. For OSHA's latest information and guidance on the COVID-19 outbreak, please refer to OSHA's COVID-19 Safety and Health Topics Page, located at www.osha.gov/coronavirus.
2. Preventing Worker Exposure to Coronavirus (COVID-19), OSHA publication 3989), www.osha.gov/Publications/OSHA3989.pdf.
3. Guidance on Preparing for COVID-19, (OSHA publication 3990), www.osha.gov/Publications/OSHA3990.pdf.

Depending on the specific circumstances at your worksite, several OSHA requirements may apply to the alleged hazards at your worksite, including:

- [29 CFR § 1904](#), Recording and Reporting Occupational Injuries and Illness.
- [29 CFR § 1910.132](#), General Requirements - Personal Protective Equipment.
- [29 CFR § 1910.133](#), Eye and Face protection.
- [29 CFR § 1910.134](#), Respiratory Protection.
- [29 CFR § 1910.141](#), Sanitation.
- [29 CFR § 1910.145](#), Specification for Accident Prevention Signs and Tags.
- [29 CFR § 1910.1020](#), Access to Employee Exposure and Medical Records.

- [Section 5\(a\)\(1\)](#), General Duty Clause of the OSH Act.

OSHA's Bloodborne Pathogens standard ([29 CFR § 1910.1030](#)) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may contain SARS-CoV-2 (unless visible blood is present). However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to [body fluids](#) (e.g., respiratory secretions) not covered by the standard.

Information about these and other OSHA requirements can be found on OSHA's website at www.osha.gov/laws-regs.

The Centers for Disease Control and Prevention (CDC) also maintains a website that provides information for employers concerned about COVID-19 infections in the workplace. The CDC has provided specific guidance for businesses and employers at the following CDC webpage, which is updated regularly: www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html.

1. For general information and guidance on the COVID-19 outbreak, please refer to the CDC's main topic webpage at www.cdc.gov/coronavirus/2019-ncov/index.html.
2. Resources for businesses and employers, www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html.

The CDC is recommending employers take the following steps to prevent the spread of COVID-19:

- **Actively encourage sick employees to stay home**
- **Accommodate employees through social distancing or telework (if possible)**
- **Emphasize respiratory etiquette and hand hygiene by all employees**
- **Perform routine environmental cleaning**
- **Check government websites (CDC, State Department) for any travel advisories (where applicable)**

Plan for infection disease outbreaks in the workplace



April 23, 2020

Pam Thompson
Smithfield Foods
P.o. Box 67
Crete, NE 68333

RE: OSHA Activity No. 1577201

Dear Pam Thompson

This letter is to follow up the conversation we had on April 23, 2020 in reference to the employee injury that occurred on 4/22/20 at your worksite. As we discussed, there are some important steps you should be taking to ensure the safety of your workers and avoid the need for an OSHA inspection.

In most cases, a serious injury indicates the presence of workplace hazards that threaten the health and safety of other workers. OSHA is very concerned that additional employees at your worksite are at risk of being injured. As we discussed, it is in everyone's interest that you conduct a thorough investigation to determine the reasons for the work related incident, to identify hazards related to the incident and to implement corrective actions.

Please complete each of the following by April 30, 2020:

- Conduct an incident investigation. (See Non-Mandatory Investigative Tool – Attachment A)
- Provide OSHA with written, signed documentation of findings from the investigation.
- Provide OSHA with written, signed abatement certification documenting action taken to correct hazards related to the incident.
- Document findings and send corrective actions to (402) 551-1288 or complaints.fl64@dol.gov
- Post a copy of this letter in a conspicuous place where all affected employees will have notice or near the location where the incident occurred.
- Fax or email a copy of the signed Certificate of Posting (Attachment B) to (402) 551-1288 or complaints.fl64@dol.gov

If you have a problem meeting this deadline or have any further questions, please call me.

If we do not receive the investigation results, abatement verification and certificate of posting by April 30, 2020, your worksite may be considered for an on-site inspection.

The goal of your incident investigation will be to identify both the immediate and the underlying causes of the incident. To assist you in conducting an investigation, I have attached a guide for your use, to ensure your employees are protected from future injuries. Additional resources are available at OSHA's Safety and Health Topics website at <https://www.osha.gov/dcsp/products/topics/incidentinvestigation/index.html> to assist you with conducting an Incident Investigation.

After correcting any immediate hazards, small and medium-sized businesses may be interested in requesting free, confidential assistance from the On-Site Consultation Program. Consultants from a state agency or university will work with you to identify workplace hazards, provide advice on compliance with OSHA standards, and assist you in establishing a safety and health management program. These services are separate from enforcement and do not result in penalties or citations. To find out more information about OSHA's On-Site Consultation Program, please visit the programs website at <https://www.osha.gov/dcsp/smallbusiness/consult.html> or call [State Consultation Office Contact Information] to reach your local On-Site Consultation office. Also, please find a copy of the OSHA pamphlet, "[FREE Safety and Health Consultation Services](#)" for your use in [English](#) or [Spanish](#).

Please note that it is against the law for employers to retaliate or discriminate in any way against an employee for raising safety and health issues or for exercising their rights under the OSHA law. This includes the right to report a work-related injury or illness to their employer, or to contact OSHA. More information about the Whistleblower Protection Program can be found at <http://www.whistleblowers.gov/>.

If you have any questions, please call me at (402) 553-0171 or email me at complaints.fl64@dol.gov. Your support and interest in the safety and health of your employees is appreciated.

Sincerely,

Matthew Thurlby
Area Director

NON-MANDATORY INVESTIGATIVE TOOL

A. ESTABLISHMENT INFORMATION

- 1) Name of Investigator: _____
- 2) Job Title: _____
- 3) Name of Company _____
- 4) Address: _____
- 5) Contact Phone: _____
- 6) Fax _____
- 7) E-Mail _____
- 8) NAICS _____
- 9) How many Employees at: a) Work site _____ b) All Locations _____
- 10) Union : Yes _____ No _____
- 11) Union Name and Contact Info: _____

B. INJURED EMPLOYEE INFORMATION

- 1) Injured Employee Name: _____
- 2) Age: _____
- 3) Gender Male ___ Female ___

(For additional employees, use continuation section at end of form.)

- 4) Employee Typical Job Title: _____
- 5) Job at Time of Incident: _____
- 6) Type of Employment (check all that apply): Full Time Part Time Seasonal
 Temporary Other:
- 7) Length of Employment with the Company: _____
- 8) Amount of time in current position at time of incident: _____
- 9) Nature of Injury: _____
- 10) Part of Body: _____

C. INCIDENT INVESTIGATION

- 1) Date and time of the incident: _____
- 2) Location of incident: _____

3) What was the employee doing just before the incident occurred? *Instructions: Describe the activity; including the tools, equipment, or material the employee was using. Be specific. Example: "climbing a ladder while carrying roofing materials" and "changing gasket on a chlorine line".*

4) What Happened? *Instructions: Provide a detailed description of the incident and how the injury occurred. Provide details such as measurements, sequence of events, equipment RPMs, trench dimensions, the type of vehicle(s) involved, discuss use of hazard controls such as guards or PPE. Examples: "bucket of chemical X spilled on the floor", "ladder slipped on wet floor", "worker fell 20ft.", "employee was sprayed with chlorine when gasket broke during replacement" and "employee was not wearing PPE".*

5) What was the injury or illness? *Instructions: Describe the part of the body that was affected and how it was affected. Be more specific than "hurt", "painful" or "sore". Examples: "fractured vertebrae" and "chemical burn to the hand".*

6) What object or substance directly harmed the employee? *Instructions: Provide the type, brand, size, distinguishing features, condition, or specific part that harmed the employee. Example: "band saw blade".*

D. WHAT CAUSED OR ALLOWED THIS INCIDENT TO HAPPEN?

Instructions: What were the underlying reasons the incident occurred – and are the factors that need to be addressed to prevent future incidents? If safety procedures were not being followed, why were they not being followed? If a machine was faulty or a safety device failed, why did it fail? It is common to find factors that contributed to the incident in several of these areas: equipment/machinery, tools, procedures and policies, training or lack of training, work environment. If you identify these factors, try to determine why these factors were not addressed before the incident.

E. CORRECTIVE ACTIONS TAKEN TO PREVENT FUTURE INCIDENTS

1) Hazardous condition(s) identified and corrective action taken by employer. *Instructions: Describe the immediate measures taken, interim and/or long-term actions necessary to correct hazardous condition(s). Also, use this section to track the completion of multi-step corrective actions as well as final corrective actions used to abate the hazardous condition.*

2) Additional notes and comments *Instructions: Provide additional comments, including statements from eye-witnesses and injured employee(s).*

3) Date Hazardous Condition was Abated: _____

F. Employer Name:

Employer Signature:	Date:
----------------------------	--------------

This Constitutes my Electronic Signature **Date:** _____
(If this box is checked, this submission shall be considered as an authorized written signature.)

NOTE:

This investigation tool is provided to assist employers in finding the cause of incidents and to prevent similar incidents in the future. It contains criteria that may be used to evaluate the capabilities of current safety practice(s). The employer is encouraged to use this document or other equivalent form, as a means for abatement verification and submit their corrective actions in Section E and sign Section F. This is a **non-mandatory** tool.

Additional resources are available at:

OSHA’s website, “www.osha.gov”.

OSHA’s Safety and Health Topics Page, “Incident Investigation”.

OSHA Guidance Document, “Incident [Accident] Investigations: A Guide for Employers”.

National Safety Council, “How to Conduct an Incident Investigation”.

OSHA’s On-site Consultation Program (Free Service):

https://www.osha.gov/dcsp/smallbusiness/consult_directory_text.html

CERTIFICATION
OF POSTING OSHA NOTIFICATION
OF EMPLOYER REPORTED INCIDENT

Activity No.: 1577201

Date of Posting: _____

Date Copy Given to
an Employee Representative: _____

On behalf of the employer, I certify that a copy of the letter received from the Occupational Safety and Health Administration (OSHA) concerning the workplace injury that occurred on 4/22/20 has been posted in a conspicuous place where all affected employees will have notice or near such location where the incident occurred, and a copy of the letter has been given to each authorized representative of affected employees, if any. The letter was or will be posted for a minimum of ten (10) working days or until any hazardous condition(s) are corrected.

Signature

Title

Employer/Establishment name



Appendix E

DONALD W. KLEINE

Douglas County Attorney

BRENDA BEADLE, CHIEF DEPUTY
909 CIVIC CENTER / OMAHA, NEBRASKA 68183-1000

June 30, 2020

SENT VIA ELECTRONIC MAIL & USPS

Rose Godinez
Legal and Policy Counsel
ACLU of Nebraska
132 S 13th Street Suite 1010
Lincoln, NE 68508
rgodinez@aclunebraska.org

Re: Public Records Request Response – Received by Douglas County Health Department on May 27, 2020

Dear Ms. Godinez,

This letter is in response to your written request for public records, received by the Douglas County Health Department on May 27, 2020, seeking:

- Any and all documents related to adoption or enforcement of, regulations to provide for a safe workplace, including any documents or regulations related to the adoption or enforcement of the Meat Processing Facility COVID-19 Playbook from the Global Center for Health Security; the Center for Disease Control Interim Guidance for Meat and Poultry Processing Workers and Employers; or related guidance statements of the Occupational Safety and Health Agency (OSHA), or any of the recommendations made therein.
- Any safety, sanitation, or health complaints related to any meatpacking plant and the Department's action or response thereto.
- Any document reflecting the aggregate number of positive COVID-19 cases identified as employees of meatpacking plant workers in Douglas County disaggregated by the meatpacking plant.
- Documents reflecting correspondence between the Department and any representative of the Office of the Nebraska Governor regarding the aforementioned.
- Documents reflecting correspondence between the Department and any representative of a meatpacking plant or any meatpacking plant union representative.

The records you requested are enclosed. Further information related to your request is publicly posted on the Health Department website (see specifically, guidance for meat and poultry processing workers and employees) at the follow URL: <https://www.douglascountyhealth.com/infectious-disease/diseases-and-conditions/2019-novel-coronavirus-2019-ncov> .

The Nebraska public records statutes allow persons the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. Those statutes do not require a public agency to review documents and create abstracts or other lists, to answer questions, or to create documents that do not otherwise exist. *See* Neb. Rev. Stat. § 84-712. Although the Nebraska public records statutes provide for access to public documents, such access is not absolute. As of 2019, the statutes provide for 22 exceptions. At the discretion of the agency involved, an agency may keep a document confidential from the public. *See* Neb. Rev. Stat. § 84-712.05.

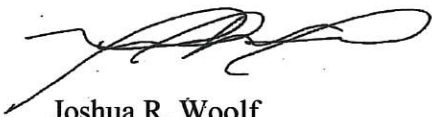
Here, records responsive to your request were located. However, the following requested records fall under a different statute controlling access and exceptions to the public records statutes that allows them to be withheld; specifically, Neb. Rev. Stat. §71-503.01(1) and §84-712.05[5] and [8]:

- Any document reflecting the aggregate number of positive COVID-19 cases identified as employees of meatpacking plant workers in Douglas County disaggregated by the meatpacking plant.

Records related to the aggregate number of Covid-19 positive cases for plants located *within* Douglas County are contained. A copy of your request is contained and plants within Douglas County for which aggregate data was supplied are circled.

Please be advised that this request was denied by Dr. Adi Pour, Health Director of the Douglas County Health Department. *See* Neb. Rev. Stat. § 84-712.04(1)(b). You may seek administrative or judicial review under section 84-712.03.

Sincerely,



Joshua R. Woolf
Deputy County Attorney

Cc: Dr. Adi Pour, Douglas County Health Department, sent via email
Douglas County Clerk's Office, countyclerk@douglascounty-ne.gov, sent via email
Nicole Day, Douglas County Attorney's Office, sent via email

See the below checked items regarding any withheld records along with appended explanations:

Other laws control access to these records. Neb. Rev. Stat. §84-712.01(1); [Neb. Rev. Stat. 71-503.01(1)].

Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on February 1, 2013, and regulations adopted thereunder. Neb. Rev. Stat. § 84-712.05(1).

Medical records, other than records of births and deaths and except as provided in subdivision (5) of Neb. Rev. Stat. § 84-712.05, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act. Neb. Rev. Stat. § 84-712.05(2).

Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose. Neb. Rev. Stat. § 84-712.05(3).

Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503. Neb. Rev. Stat. § 84-712.05(4).

Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment if, after an investigation is concluded, a family member of the deceased employee makes a request for access to or copies of such records. This subdivision does not require access to or copies of informant identification, the names or identifying information of citizens making complaints or inquiries, other information which would compromise an ongoing criminal investigation, or information which may be withheld from the public under another provision of law. For purposes of this subdivision, family member means a spouse, child, parent, brothers, sisters, grandchild, or grandparent by blood, marriage, or adoption.

Neb. Rev. Stat. § 84-712.05(5).

Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale. Neb. Rev. Stat. § 84-712.05(6).

Personal information in records regarding personnel of public bodies other than salaries and routine directory information. Neb. Rev. Stat. § 84-712.05(7).

Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law. Neb. Rev. Stat. § 84-712.05(8).

Job application materials submitted by applicants, other than finalists or a priority candidate for a position described in section 85-106.06 selected using the enhanced public scrutiny process in section 85-106.06, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant who is not an applicant for a position described in section 85-106.06 and (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants. Neb. Rev. Stat. § 84-712.05(16).

Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens. Neb. Rev. Stat. § 84-712.05(18).

The record does not exist in the format requested. Neb. Rev. Stat. § 84-712(3)(e); *see also* § 84-712.01(2).

May 27, 2020

Adi Pour
Director
Douglas County Health Department
1111 South 41st Street
Omaha, NE 68105-1803

Re: Public Health Regulations – COVID-19

Dear Director Pour:

I am writing to you in your capacity as Director of the Douglas County Health Department (hereinafter “Department”) governing Douglas County. This is a request under Nebraska public records law.

I am seeking documents relating to adoption of regulations providing for a safe workplace for employees of meatpacking plants in Douglas County, Nebraska.

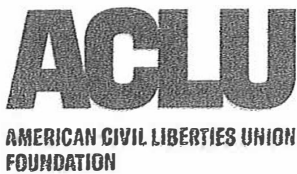
In the following request:

“**Documents**” includes emails, memos, and letters whether in paper format or electronic format.

“**Regulations**” include any health regulations, directives, policies or guidance statements, including proposals or drafts of such regulations.

“**Meatpacking Plant(s)**” refers to the following companies in Douglas County:

1. JBS
2. Skylark Meats
3. Smithfield Packaged Meats
4. Quality Pork International, Inc.
5. Rabe’s Meats
6. J F O’Neill & Packing Co.
7. Omaha Meat Processors
8. Westin Packaged Meats
9. Halal Transactions, Inc.
10. Jarvis Products Corp.
11. Cargill Meat Solutions
12. Henningsen Foods, Inc.
13. Rick’s Meats
14. R&L Meat Processing



Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

JUN 02 RECD

The materials I am requesting are limited to the time period of March 1, 2020 to the present.

Please provide:

1. Any and all documents related to adoption or enforcement of regulations to provide for a safe workplace, including any documents or regulations related to the adoption or enforcement of the *Meat Processing Facility COVID-19 Playbook* from the Global Center for Health Security; the *Center for Disease Control Interim Guidance for Meat and Poultry Processing Workers and Employers*; or related guidance statements of the *Occupational Safety and Health Agency (OSHA)*, or any of the recommendations made therein.
2. Any safety, sanitation, or health complaints related to any meatpacking plant and the Department's action or response thereto.
3. Any document reflecting the aggregate number of positive COVID-19 cases identified as employees of meatpacking plant workers in Douglas County disaggregated by the meatpacking plant. ✓
4. Documents reflecting correspondence between the Department and any representative of the Office of the Nebraska Governor regarding the aforementioned.
5. Documents reflecting correspondence between the Department and any representative of a meatpacking plant or any meatpacking plant union representative. ✓

As you know, Nebraska state law requires a response to an open records request to be made within four (4) days of receipt. However, due to the breadth of our request, we are willing to extend the response due date to close of business day Friday, June 5, 2020.

When the documents relevant to this request are ready, you may provide them in electronic form to rgodinez@aclunebraska.org or, if you are providing in paper form, please mail to: ACLU of Nebraska, Attn: Rose Godinez, 134 South 13th Street, #1010, Lincoln, NE 68508.

Thank you for your cooperation. Please contact me at 402.476.8091 ext. 105 if you have questions or concerns.

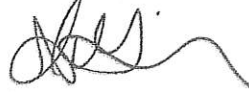
ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Nebraska

JUN 02 REC'D

Sincerely,



Rose Godinez
Legal & Policy Counsel

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Nebraska

JUN 02 REC'D

APPENDIX F

UNITED STATES
DEPARTMENT OF LABOR



Occupational Safety and Health Administration

[CONTACT US](#) [FAQ](#) [A TO Z INDEX](#) [ENGLISH](#) [ESPAÑOL](#)

[OSHA](#) ▾ | [STANDARDS](#) ▾ | [TOPICS](#) ▾ | [HELP AND RESOURCES](#) ▾

Thank You!

Your Safety and Health Hazard Notice has been forwarded to the OSHA Federal Area Office listed below.

If you identified yourself, you will be contacted by OSHA.

Please call the OSHA Federal Area Office below if you are not contacted.

Complaint Number: 32193832

Nebraska

Omaha Area Office
444 Regency Parkway Drive, Suite 303
Omaha, Nebraska 68114
(402) 553-0171
(402) 551-1288 FAX
(800) 642-8963 Toll Free - Nebraska Only

Establishment Name: Tyson Foods, Inc.
Site Street: 1500 Plum Creek Parkway
Site City: Lexington
Site State: Nebraska
Site Zip: 68850

Management Official: [REDACTED]
Telephone Number: [REDACTED]
Type of Business: Meatpacking Plant

Hazard Description:

The Tyson plant in Lexington (the plant) is facing a growing outbreak of COVID-19 cases. Despite hundreds of cases so far, the plant is engaging in practices that are likely to lead to more workers becoming infected. 1. There have already been hundreds of cases at the plant. According to Two Rivers Public Health Department, the local health department for Dawson County, where the Lexington Tyson plant is located, there are at least 389 COVID-19 cases related to meatpacking employees as of June 12, 2020. (https://www.trphd.org/) Another 214 cases were reported without identifying the employer but given that the overwhelming majority of cases in Dawson County are meatpacking workers, it is likely that many or most of these 214 are Tyson employees or family members of Tyson employees as well. I know of at least one Tyson employee and one employee's family member who have died as a result of COVID-19, at least two employees of the plant who have been hospitalized, and at least one child of an employee of the plant has been hospitalized. At least five entire families have contracted COVID-19 from an employee family member. Workers' children report to me that they fear for their parents many of whom have underlying conditions or are older than 60 years old who must continue to work despite Tyson's refusal to take appropriate measures to protect them from the rapid spread of COVID-19. Tyson has refused to report the total number of new COVID-19 cases at the Lexington plant to its workers and the public. Workers and nearby community members need this information to protect themselves from further infection spikes. 2. The plant is regularly crowding workers together closer than 6

feet. At least one worker has reported to me that workers are not being spaced 6 feet apart while working on the production lines. The worker notes that this is happening now more than before because the plant is operating at full capacity with more employees back at work. Workers stand much closer than 6 feet to the workers next to them, and closer than 6 feet to the workers standing across the line. This is of particular concern because shifts last for many hours. At least five workers have reported to me of significant crowding in Tyson's locker rooms, where the majority of the employees change into their work gear and clothing. The locker room is designed in a way that the lockers are stacked three lockers high with several aisles which does not allow for proper spacing. At least one worker reported to me that while in the crowded locker room, workers often have to remove their mask in order to put on their hair net, bandana, and helmet. At least five workers have reported to me that their regular break and restroom break times are not staggered which results in crowded locker rooms and lines of employees outside of the restroom leaving people less than 6 feet apart. At least five workers report that the sole cafeteria where employees can eat is crowded at meal time due to the company's failure to enforce proper distancing and stagger lunch times for a cafeteria that holds over 300 employees at a time for meal breaks. The workers further report that there is a long line to use the microwaves where employees are not distanced 6 feet apart from each other. This crowding is particularly hazardous because workers cannot wear masks while eating food. At least one worker has reported to me that temperature screenings at the entrance of the plant are conducted in groups and workers are not spaced 6 feet apart. The worker describes the process of entering the plant as follows: workers crowd at the entrance while awaiting a mask, then two nurses ask how they are feeling, then the group of workers proceeds all at once through a machine that takes their temperatures, and the group continues together to the locker room to change into their work gear. This process leaves workers confused as to whose temperature has been registered, because the temperature machine tests several workers at the same time. 3. The plant's policies require potentially contagious workers to come to work. At least three workers at the plant have reported to me that those who have tested positive for COVID-19 are being encouraged to return to work without being re-tested for COVID-19. According to a talking points document (attached) from Tyson to employees dated April 10, 2020, "CDC guidelines now permit Tyson team members, who have had Close Contact to a person diagnosed with COVID-19, to remain at work, so long as they wear a face covering and are not showing symptoms of illness." At least one worker at the plant has reported to me that when they called Tyson's Human Resources Department to tell them they were feeling unwell, Tyson HR responded that the worker was lying and told them that if they miss work, they will accumulate points against the attendance point policy system. The worker reports that this practice has made them afraid and so they must go to work even if they are sick for fear of losing their job. At least one worker has reported to me that so long as a symptomatic worker is not suffering from a fever or visible symptoms, they can continue working while awaiting their COVID-19 test results. The worker believes this is happening because the plant does not adequately screen workers and because Tyson has reinitiated the absentee point system which deters workers from missing work for health reasons. At least 20 workers report to me that Tyson is not informing them of when they are exposed to COVID-19 positive coworkers. Workers only occasionally learn of exposures through word of mouth. 4. Cleaning, ventilation, and PPE are inadequate. Tyson handed out letters to workers on May 6, 2020 announcing that there would be hand sanitizers in the plant, yet workers continue to report to me that hand sanitizers are empty most if not all of the time. At least one worker reported to me that the bathrooms are not regularly cleaned, and the plant fails to provide them with any disinfectant wipes or disinfectant spray to allow workers to clean the bathroom stall before or after use. At least one worker reported to me that the cafeteria is not regularly cleaned, and the plant fails to provide them with any disinfectant wipes or disinfectant spray to allow workers to clean the area where they eat before or after use. One worker reported to me that the computers in the training rooms, which new workers and trainers must use often, are not being sanitized in between uses. One worker reported to me that the ventilation system on the cut floor is inadequate to mitigate an airborne virus like COVID-19. The worker reports that large fans above the workers push air up and down the line, which exposes workers to the air that others are breathing. At least three workers have reported to me that they are only given one mask a day, even if the mask breaks or becomes water-logged. The workers report sweating through their face masks onto the meat as it goes down the assembly line and conveyor belt.

Hazard Location:

Reports received arise out of the main building at Tyson Foods, 1500 Plum Creek Parkway, Lexington, NE 68850, which houses the production and harvest lines, locker rooms, and cafeteria.

This condition has previously been brought to the attention of:

* The employer

I am a representative of employees.

Do NOT reveal my name to my employer.

Complainant Name:

[REDACTED]

[SIGNED]

(Complainant checked the electronic signature checkbox to indicate this submission shall be considered as having an authorized written signature.)

Complainant Telephone Number:

[REDACTED]

Complainant Mailing Address:

[REDACTED]
Lexington
Nebraska
68850

Complainant Email: [REDACTED]
Complainant Organization Name: [REDACTED]
Complainant Title: Executive Director

UNITED STATES DEPARTMENT OF LABOR

Occupational Safety and Health
Administration
200 Constitution Ave NW
Washington, DC 20210
☎ 800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
Severe Storm and Flood Recovery
Assistance
Disaster Recovery Assistance
DisasterAssistance.gov
USA.gov
No Fear Act Data
U.S. Office of Special Counsel

OCCUPATIONAL SAFETY AND HEALTH

Frequently Asked Questions
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Subscribe to the OSHA Newsletter
OSHA Publications
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Freedom of Information Act
Privacy & Security Statement
Disclaimers
Important Website Notices
Plug-Ins Used by DOL
Accessibility Statement

APPENDIX G

August 5, 2020

Business & Labor Committee
Attn: Sen. Matt Hansen
Chairperson
Room #2010
P.O. Box 94604
Lincoln, NE 68509
mhansen@leg.ne.gov

RE: AM 3238 to LB 667- Adopt the Youth Opportunities in Learning and Occupations Act

Dear Business & Labor Committee,

The below signatories write to urge the Business & Labor Committee to advance LB 667 with AM 3238 to General File. Already, thousands of Nebraska meatpacking plant workers have tested positive for COVID-19, causing some Nebraska counties to lead the nation in infection rates.¹ As of July 28th, 21 deaths and 223 hospitalizations had been tied to Nebraska meatpacking plants.² These outbreaks are disproportionately hurting people of color, particularly Latinx, Black Nebraskans, and immigrants. In fact, according to the COVID Tracking Project, in no other state are Latinx people more overrepresented among those dying of COVID-19 than in Nebraska.³

President Trump and Governor Ricketts have both said meatpacking plants are essential infrastructure and have thereby recognized the workers as essential. Like other essential workers, meatpacking plant workers need essential protections. Yet, despite rising infection, hospitalization, and death rates; one of every four confirmed COVID-19 cases in our state is tied to meatpacking plants, the plants have not fully implemented the recommendations of the Centers for Disease Control and Prevention (CDC), Occupational Safety and Health Administration

¹ Henry Cordes, *Death comes home to Dakota County, one of nation's biggest coronavirus hot spots*, Omaha World Herald, July 19, 2020, available at https://omaha.com/news/local/death-comes-home-to-dakota-county-one-of-nations-biggest-coronavirus-hot-spots/article_5d45bbbb-badf-5be1-892f-b7b72ce5d764.html.

² Erin Duffy, *'Essential should not mean expendable': Lincoln rally seeks to protect meatpacking workers*, Omaha World Herald, July 28, 2020, available at https://omaha.com/news/state-and-regional/essential-should-not-mean-expendable-lincoln-rally-seeks-to-protect-meatpacking-workers/article_6c18ab17-8788-5f13-81dc-2d9047910e5d.html.

³ Telephone Interview with Christopher Petrella, Associate Director of Advocacy, COVID Tracking Project, Boston University's Center for Antiracist Research (July 15, 2020).

(OSHA) and University of Nebraska Medical Center (UNMC).⁴ Furthermore, local, state, and federal officials charged with ensuring the safety of workers have also decided against exercising any regulatory or enforcement powers to make conditions in meatpacking plants safer. Both the private sector and our local, state, and federal officials have failed to implement basic public health protections, leaving this amendment and now the decision to protect our meatpacking plant workers and our communities more broadly solely in your hands.

Information from public officials makes undeniably clear that testing, transparency, and social distancing, all of which are included in this amendment, are critical to fighting the disease in every community and in every workplace.⁵ Nonetheless, we continue to receive reports that workers are working shoulder to shoulder, are only provided one mask which is constantly soiled with blood and sweat, and are only learning of potential exposure to a COVID-19 positive colleague through word of mouth or their absence from work, among many other hazards. This amendment rightly provides workers basic protections from the hazards commonly reported by workers, including:

- Requiring a minimum of six foot distance between workers in all areas of the plant to avoid contact or inhaling airborne droplets containing infectious agents;
- Requiring that an employer provide workers with face shields and face masks (replaced at least once daily and multiple times if needed);
- Requiring employers to frequently sanitize commonly used tools and areas and allow workers to frequently and routinely sanitize their hands; and
- Require a screening and contact-tracing procedure to prevent further exposure of COVID-19 in the plant.

Each of these measures are consistent with guidance from the CDC, OSHA,⁶ UNMC's Playbook,⁷ our Nebraska Meatpacking Bill of Rights,⁸ and can be implemented without closing plants or disrupting the food supply, and more importantly protects our Nebraskan meatpacking plant workers and communities.

⁴ UNMC, *Concerns and perceptions of COVID-19 among meatpacking plant workers in Nebraska*, available at <https://www.unmc.edu/healthsecurity/covid-19/playbooks/UNMC-Meatpacking-study-results-1-page-bilingual.pdf>.

⁵ Jocelyn Herstein et al., *Meat Processing Facility COVID-19 Playbook*, Global Center for Health Security and Center for Agricultural Safety and Health (June 2020) available at <https://www.unmc.edu/healthsecurity/covid-19/playbooks/Meat-Processing-Playbook-Final.pdf>; Centers for Disease Control and Prevention, *Meat and Poultry Processing Workers and Employers Interim Guidance from CDC and the Occupational and Safety and Health Administration (OSHA)* July 9, 2020 available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>.

⁶ *Id.*

⁷ UNMC, *supra* note 4.

⁸ Neb. Rev. Stat. § 48-2213.

We thank Senator Vargas for introducing this bill and introducing this amendment and urge the committee to advance this bill with AM 3238 to General File.

Respectfully,

ACLU of Nebraska
Anti-Defamation League
Centro Hispano Comunitario de Nebraska
Children of Smithfield
Coalition for a Strong Nebraska
Completely Kids
GC Resolve
Heartland Workers Center
Immigrant Legal Center
Mothers and Others: Justice and Mercy for Immigrants
Multicultural Coalition
Solidarity with Packing Plant Workers
Nebraska Appleseed
Nebraska Coalition to End Sexual and Domestic Violence
Nebraska Farmers Union
Nebraska State AFL-CIO
OTOC Immigration and Refugee Action Team
The Trinidad Center
Voices for Children in Nebraska
Women's Fund of Omaha

CC: Sen. Ernie Chambers
Sen. Sue Crawford
Sen. Steve Halloran
Sen. Ben Hansen
Sen. Steve Lathrop
Sen. Julie Slama

APPENDIX H

U.S. Department of Labor



Sent via email: ajsipple@aclunebraaska.org

September 3, 2020

Mr. Adam Sipple
American Civil Liberties Union Foundation
134 S. 13th Street, # 1010
Lincoln, NE 68508

RE: FOIA SIMS #894653 – Nebraska Meat Processing

Dear Mr. Sipple:

This decision is in response to your Freedom of Information Act (FOIA) request dated July 14, 2020 and amended on September 3, 2020. We located the records you seek and conducted a review of the material you requested.

With regard to your request for the full file with regard to C-1564228, JBS, Grand Island, we have located approximately 22 pages of records responsive to your request. However, the records you have requested are part of an enforcement proceeding at JBS, Grand Island, where the inspection is not yet complete. We find that these proceedings are not concluded and release of the records in these proceedings could reasonably be expected to reveal OSHA's case prematurely, and otherwise interfere with OSHA's ability to effectively enforce the law. As a result, we are withholding the records you seek pursuant to exemption 7(A) of FOIA.

FOIA requires that agencies generally disclose records. Agencies may withhold requested records only if one or more of nine exemptions apply. Exemption 7, 5 U.S.C. § 552(b)(7), allows agencies to refuse to disclose records compiled for law enforcement purposes under any one of six circumstances (identified as exemptions 7(A) through 7(F)). "Law enforcement" within the meaning of exemption 7 includes enforcement pursuant to both civil and criminal statutes. See, e.g., *Tax Analysts v. Internal Revenue Serv.*, 294 F.3d 71, 76-77 (D.C. Cir. 2002). More specifically, enforcement of labor legislation, such as the enforcement activity at issue in this case, has been held to be "law enforcement" within the meaning of exemption 7. See, e.g., *Cooper Cameron Corp. v. U.S. Dep't of Labor, Occupational Safety and Health Admin.*, 280 F.3d 539, 545 (5th Cir. 2002) (finding that OSHA inspection records are law enforcement records for purposes of exemption 7).

Exemption 7(A) is one of the six instances in which law enforcement records may be withheld. Exemption 7(A) applies when production of information compiled for law enforcement purposes could reasonably be expected to interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A).

This exemption does not permanently exempt records from disclosure. However, exemption 7(A) does exempt records as long as the relevant enforcement proceedings are prospective or remain pending. Proceedings are prospective or pending until all reasonably foreseeable administrative and judicial proceedings are completed.

As indicated above, exemption 7(A) does not bar disclosure of the requested records indefinitely. You may file another request for these records with OSHA after the enforcement matter is closed. You can view the status of OSHA inspections on our establishment search page located at: <https://www.osha.gov/pls/imis/establishment.html>. Please note that when we apply exemption 7(A), our practice is not to determine whether other FOIA exemptions also might allow the withholding of any or all of the sought records.

With regard to your request for the employers' response correspondence on all closed complaints in Nebraska for NAICS code 311611 or 311612 related to COVID-19 and a log reflecting all inspections at any Nebraska meatpacking plants, the records are attached.

You will note some information has been redacted from the documents. This is authorized under the rules and regulations, including exemptions, contained in the Freedom of Information Act 5 USC 552(a) and 29 CFR 70. Actual sections deleted are indicated on the released portion of the record at the place where such deletion is made with numbered exemptions noted in each case. The failure to cite other specific exemptions, which may be applicable to the denial of disclosure, does not constitute a waiver of the exemptions.

Exemption	Description
7(c)	Personal identifying information such as names of non-management officials.

Exemption 7(C) permits an agency to withhold information contained in files compiled for law enforcement purposes if production "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Thus, the purpose of Exemption 7(C) is to protect the privacy of any person mentioned in law enforcement records. In determining whether a protected privacy interest exists, we must evaluate not only the nature of the personal information found in the records, but also whether release of that information to the general public could affect that individual adversely. Thus, we must consider whether release of even seemingly innocuous personal information could lead to the harassment or annoyance of an individual through unsolicited inquiries. We find that release of personal identifying information withheld here reasonably could be expected to have a negative impact on an individual's privacy.

We have determined you are an "other" requester for fee purposes under FOIA. The fees for this particular request totaled less than \$25.00; consequently, all fees have been waived.

If you have any questions about this FOIA determination letter please contact Dee Cantu of my staff at (816) 502-9007.

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of

this letter.

If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or fax your appeal to (202) 693- 5538. Alternatively, you may email your appeal to foiaappeal@dol.gov; appeals submitted to any other email address will not be accepted. The envelope (if mailed), subject line (if emailed), or fax cover sheet (if faxed), and the letter indicating the grounds for appeal, should be clearly marked: "Freedom of Information Act Appeal."

In addition to filing an Appeal, you may contact the Department's FOIA Public Liaison, Thomas G. Hicks, Sr. at (202) 693-5427 or hicks.thomas@dol.gov for assistance in resolving disputes.

You also may contact the Office of Government Information Services (OGIS) for assistance. OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may mail OGIS at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001. Alternatively, you may email or contact OGIS through its website at: ogis@nara.gov; Web: <https://ogis.archives.gov>. Finally, you can call or fax OGIS at: telephone: (202) 741-5770; fax: (202) 741-5769; toll-free: 1-877-684-6448.

It is also important to note that the services offered by OGIS, is not an alternative to filing an administrative FOIA appeal.

Sincerely,

A handwritten signature in blue ink that reads "Dee Carter". The signature is written in a cursive style.

[For] Kimberly A. Stille
Regional Administrator

Enclosures: Redacted FOIA Responsive Records

- [Section 5\(a\)\(1\)](#), General Duty Clause of the OSH Act.

OSHA's Bloodborne Pathogens standard ([29 CFR § 1910.1030](#)) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may contain SARS-CoV-2 (unless visible blood is present). However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to [body fluids](#) (e.g., respiratory secretions) not covered by the standard.

Information about these and other OSHA requirements can be found on OSHA's website at www.osha.gov/laws-regs.

The Centers for Disease Control and Prevention (CDC) also maintains a website that provides information for employers concerned about COVID-19 infections in the workplace. The CDC has provided specific guidance for businesses and employers at the following CDC webpage, which is updated regularly: www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html.

1. For general information and guidance on the COVID-19 outbreak, please refer to the CDC's main topic webpage at www.cdc.gov/coronavirus/2019-ncov/index.html.
2. Resources for businesses and employers, www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html.

The CDC is recommending employers take the following steps to prevent the spread of COVID-19:

- **Actively encourage sick employees to stay home**
- **Accommodate employees through social distancing or telework (if possible)**
- **Emphasize respiratory etiquette and hand hygiene by all employees**
- **Perform routine environmental cleaning**
- **Check government websites (CDC, State Department) for any travel advisories (where applicable)**

Plan for infection disease outbreaks in the workplace

APPENDIX I

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**pro hac vice application forthcoming

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA LINCOLN DIVISION

Alma*; Isabel*; Antonio*; and Daniel J. Leonard,

Plaintiffs,

v.

Noah's Ark Processors, LLC

Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DESIGNATION OF PLACE OF TRIAL**

* Proceeding under pseudonym

INTRODUCTION

1. The COVID-19 pandemic has killed more than 250,000 people and sickened millions more in the United States. The impact of the pandemic, however, has not been felt equally.

2. Workers at meatpacking plants have been hit harder than almost any other industry. Tens of thousands of meatpacking workers have become infected in major outbreaks at hundreds of plants across the country. The outbreaks have spread among workers' families, neighborhoods, and towns, upending entire communities.

3. Despite these large clusters throughout the industry, some companies have been slow to adopt common-sense protections—protections that doctors, researchers, and public-health officials agree are necessary to prevent further spikes—like physical distancing, testing, masks, and sick leave. As a result of these failures, major meatpacking outbreaks have continued to occur throughout the pandemic. Companies that do not implement these protections are exposing their workers and the surrounding community to an enormous and continuing risk.

4. Defendant Noah's Ark Processors, which owns and operates a beef processing plant in Hastings, Nebraska, stands out for its refusal to take reasonable and obvious precautions to protect its workers and the community from a new surge of COVID-19 cases. Despite the consensus that has emerged around these precautions, Noah's Ark has failed to implement them, even after its workers suffered a major wave of infections in April and May.

5. Noah's Ark ("the plant") has refused to make any effort to physically distance workers from one another while they are in the plant. Every day, they stand shoulder to shoulder for hours at a time on the processing lines, and they sit crowded together in a small windowless cafeteria where they cannot wear masks while eating.

6. Noah's Ark does not promptly replace workers' masks when they become soiled with blood, fat, and sweat, forcing workers to leave part or all of their faces uncovered, even though they are inches from each other throughout their shifts.

7. The plant does not offer adequate sick leave to ensure that sick workers can stay home. It has pressured sick people to work, allowed others to keep working despite symptoms, and refused to pay many who have stayed home because of symptoms. It has not posted or announced any sick-leave policies to its workers.

8. On top of everything else, Noah's Ark is not providing any onsite testing. If and when there is another surge in cases, the plant and its workers will once again have no idea until it is too late.

9. All of these protections—distancing, masks, sick leave, testing—are basic and eminently feasible. Other plants are providing them. While other protections are also desirable, these four are non-negotiable, especially at a crowded indoor workplace like Noah's Ark. At this point in the pandemic, there is no excuse for failing to implement them.

10. By forcing its employees to work in these dangerous conditions, Noah's Ark is putting them at enormous risk of becoming infected with COVID-19 and transmitting it to their families and communities. That risk is growing dramatically as winter and flu season approach, when the CDC Director and others have warned that major new clusters are likely.

11. The plaintiffs—recent Noah's Ark workers and members of the surrounding community—are therefore seeking an order that the plant implement these four most basic practices. The plant's continuing failure constitutes a public nuisance, violates its common-law duty to provide a reasonably safe workplace, and violates the Families First Coronavirus Response Act. These violations can be remedied by this Court. Other courts have recently issued similar orders against employers that lacked basic protections.

12. Plaintiffs have no other meaningful avenue for redress. Noah's Ark has refused to make these changes despite multiple requests from workers. State and local officials have taken no action to ensure adequate health protections at the plant. The Occupational Safety and Health Administration ("OSHA") has not ordered any changes at the plant for months despite receiving multiple complaints, and has declined to require any particular safety practices during the pandemic.

13. Without these protections, workers and others in the community face imminent and irreparable harm. Plaintiffs therefore bring this action seeking declaratory and injunctive relief.

JURISDICTION AND VENUE

14. This Court has federal question jurisdiction, 28 U.S.C. § 1331, and pendent jurisdiction, 28 U.S.C. § 1367. The Court also has subject matter jurisdiction under 28 U.S.C. § 1332. Each Plaintiff is a resident of Nebraska. Defendant is a limited liability corporation and no member is a citizen of Nebraska. The amount in controversy exceeds \$75,000.

15. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

16. Plaintiff Alma¹ is a recent employee at the Noah's Ark plant and lives in Grand Island, Nebraska. She worked at Noah's Ark until this Fall, when she quit because of poor working conditions. She remains in close touch with workers at the plant.

17. Plaintiff Isabel worked at Noah's Ark until late this Summer. She lives in Grand Island and remains in close touch with workers at the plant.

¹ Alma, Isabel, and Antonio are pseudonyms to protect Plaintiffs' identities. A motion to proceed under pseudonym is being filed along with this Complaint.

18. Plaintiff Antonio worked at the Noah's Ark plant until this Fall. He lives in Grand Island and remains in close touch with workers at the plant.

19. Plaintiff Daniel J. Leonard is a doctor in Hastings, Nebraska, and owns a pediatrics practice. He treats the children of meatpacking workers and people infected with COVID-19.

20. Defendant Noah's Ark Processors, LLC, owns and operates a meatpacking plant in Hastings, Nebraska. The LLC's members are citizens of New York, Wyoming, and Colorado. No member of the LLC is a citizen of Nebraska.

BACKGROUND

Hundreds of Meatpacking Plants, Including Noah's Ark, Have Had Serious Outbreaks

21. The COVID-19 pandemic has devastated people across the country, but its burden has been especially great on meatpacking workers and their communities.

22. Beginning in April 2020, meatpacking plants began experiencing huge spikes in COVID-19 cases. Workers at hundreds of plants have experienced at least one spike, many of which have been enormous.² A Smithfield plant in South Dakota became the country's single biggest hotspot in late April, with over a thousand cases.³ In Nebraska, 786 workers at a Tyson beef plant in Dakota City were infected in May. That plant's outbreak turned the surrounding

² Leah Douglas, *Mapping Covid-19 Outbreaks in the Food System*, Food & Env. Reporting Network (last updated Nov. 23, 2020), <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>; Sky Chadde, *Tracking COVID-19's Impact on Meatpacking Workers & Industry*, Midwest Ctr. for Investigative Reporting (last updated Nov. 23, 2020), <https://investigatamidwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/>.

³ Caitlin Dickerson & Miriam Jordan, *South Dakota Meat Plant Is Now Country's Biggest Coronavirus Hot Spot*, N.Y. Times (May 4, 2020).

community into a hotspot, with the fourth highest infection rate in the country.⁴ Four other Nebraska plants have reported hundreds of cases each.

23. The Noah's Ark plant in Hastings has had at least one spike so far. In April and May, dozens of its workers became sick with COVID-19. Managers initially told workers that they had to keep working despite their symptoms, but ultimately a number of workers had to stay home with severe infections. At least one Noah's Ark worker died. Following this outbreak, Adams County, where the plant is located, had a much higher rate of infection compared to nearby counties without a meatpacking plant. So did neighboring Hall County, where many workers live and which also contains a major meatpacking plant.

24. To date, at least 49,000 meatpacking workers have become infected with COVID-19, and at least 253 have died. They are disproportionately low-income immigrants and people of color.

25. These numbers, however, do not nearly capture the full extent of COVID-19 outbreaks at meatpacking plants. The true numbers of infections and deaths remain unknown because, in recent months, many plants have stopped sharing that information with the public.⁵ In Nebraska, the Governor in May instructed local health departments to stop reporting which meatpacking plants were experiencing outbreaks.

26. Despite this lack of transparency, the limited reporting shows that large meatpacking outbreaks have continued throughout the pandemic. For instance, a poultry plant in

⁴ Henry Cordes & Erin Duffy, *What Do New York City and a Nebraska Meatpacking Center Have in Common? They Rank Among U.S. Communities Hit Hardest by Coronavirus*, Omaha World-Herald (May 3, 2020).

⁵ Leah Douglas, *Few States Release Data About COVID-19 in the Food System*, Food & Env. Reporting Network (Aug. 17, 2020) (“[N]one of the major meatpackers are regularly disclosing COVID-19 outbreaks or cases at their facilities.”); Sky Chadde, *We've Been Tracking Meatpacking Plant Outbreaks. Not All Are Accounted For*, Midwest Ctr. for Investigative Reporting (Aug. 19, 2020).

Merced County, California was forced to close in September after reporting hundreds of cases and multiple deaths. In Kansas, six plants reported thousands of active cases as of September. Between June and October, major outbreaks have been reported in many states including North Carolina, Mississippi, Minnesota, Ohio, Kansas, Colorado, California, and Utah.

Meatpacking Plants Are Uniquely Susceptible to Spreading COVID-19

27. There is little doubt as to why meatpacking workers have so consistently faced these outbreaks, as hundreds of people work close together, indoors, for hours at a time. That is the most dangerous possible environment when faced with a highly contagious airborne virus. Without proper infection-control practices, continuing spikes are inevitable.

28. The virus that causes COVID-19 spreads rapidly. It is primarily transmitted through the air when an infected person exhales liquid particles containing the virus when breathing, talking, sneezing, or coughing. People are contagious days before they have any symptoms.

29. The risk of transmission is greatly increased by several factors: Physical proximity is the most important, because it allows the virus to travel through the air from one person to another. The amount of time in proximity matters too, because a longer exposure means that more virus will transfer. Indoor settings lead to faster transmission than outdoor. And the harder a person breathes, the more virus they exhale.

30. Meatpacking plants maximize each of these factors. Workers stand shoulder to shoulder for hours at a time along the processing lines, which are conveyor belts that move carcasses and meat between workers. On the “kill floor,” cows are stunned and killed, the skin and organs are removed, and the carcasses are processed for cold storage. After cold storage, the carcasses are sent to the “fabrication area,” where workers take pieces of meat off the line,

perform cutting tasks, and return the meat to the line. On the “packaging floor,” meat is put in boxes, sealed, labeled, and placed in a freezer prior to shipment.

31. In all three areas, workers are often placed so close together that their elbows are touching. Everyone is breathing hard because the work is so physically demanding. Shifts often last for more than 8 hours at a time. Cafeterias and other common areas are similarly crowded, which is particularly dangerous because people must remove their masks to eat.

32. At Noah’s Ark, hundreds of workers are subjected to these conditions day after day, as explained in more detail below.

Basic COVID-19 Protections Are Essential to Prevent Further Meatpacking Outbreaks

33. In this setting, it is critical to implement meaningful protections like distancing, masks, sick leave, and testing. There is widespread consensus—among scientists, doctors, public health officials, and other experts—that these practices are necessary to prevent rapid COVID-19 transmission in congregate settings like a meatpacking plant. While additional precautions should be implemented as best practices, these four are essential to prevent further outbreaks at meatpacking plants. The absence of any one of them is a severe hazard to workers and the surrounding community.

Physical Distancing

34. Physical distancing is universally recognized as one of the most important ways to protect against COVID-19 transmission. Distancing is critical because the virus travels through the air and is most likely to infect people who are close by.

35. Researchers widely agree that at least six feet of distance is necessary to protect against transmission of the virus. The World Health Organization, CDC, state health departments, the University of Nebraska Medical Center, and countless other institutions

recommend that people remain six feet apart in the workplace, schools, and anywhere else they might congregate. State and federal guidance universally calls for the same thing.

36. Spacing workers at least six feet—both on the production lines and in common areas like the cafeteria—is critical to prevent the spread of COVID-19 in meatpacking plants. In its study of the nation’s largest meatpacking outbreak, the CDC concluded that because the plant had not implemented physical distancing, lesser measures—like temperature checks, masks, and plastic barriers—failed to prevent the rapid spread of infection.

37. Multiple states have issued rules requiring meatpacking plants to implement physical distancing. Numerous plants have done so across the country.

Face Masks

38. Another key mitigation measure is providing workers with a face mask that fits over the nose and mouth and can be worn continuously throughout a shift. To be effective, mask wearing must be universal. When workers must remove or lower their masks for part of their shifts, they are breathing directly onto nearby workers.

39. Meatpacking workers’ masks quickly become soiled with blood, fat, and sweat. Soiled and wet masks do not allow the wearer to breathe, and so must be replaced immediately or else they will not provide any protection, because workers will have to remove them to avoid suffocation.

Sick Leave

40. It is critical that workers with COVID-19 symptoms stay home so they do not infect their co-workers. This precaution is universally recognized in the rules and guidance that have been issued during the pandemic. A workplace that allows or pressures sick people to keep working is exposing its other workers to an extraordinary risk of infection.

41. To ensure that sick workers stay home, employers must clearly communicate to workers that if they have COVID-19 symptoms or test positive, they may not work but will be provided paid sick leave. Workers must not be penalized for staying home sick.

42. In recognition of the need for paid sick leave during the pandemic, Congress has required employers to pay sick leave for COVID-related absences, and to prominently post their sick-leave policies so that workers know they do not need to work while sick. *See* Families First Coronavirus Response Act, Pub. L. No. 116-127 (Mar. 18, 2020), 29 U.S.C. § 2601 note; 85 Fed. Reg. 19327; 29 C.F.R. § 826.10 *et seq.*

Onsite Testing

43. In high-risk settings like meatpacking plants, widespread testing is necessary to identify case clusters before they spiral out of control. Without a testing regime, a plant and its workers will have no idea that the virus is rapidly spreading until it is too late.

44. The meatpacking industry has largely recognized the need for testing. Multiple companies have announced onsite testing programs to catch spikes early.

45. Effective programs test workers with COVID-19 symptoms, workers with close exposure to COVID-positive co-workers, and asymptomatic workers to identify burgeoning hotspots. Testing asymptomatic workers is essential because of the prevalence of asymptomatic infection and transmission.

46. Numerous private companies provide workplace testing services. And now that thousands of workplaces and other institutions have instituted testing programs, there are numerous viable models for their design.

47. Plants that have not implemented these protections have faced continuing outbreaks. These outbreaks have persisted despite rudimentary practices like temperature checks and masks.

48. As one example, between July and September, 392 employees at a Foster Farms plant in California were infected and eight workers died. Although the plant had been providing masks, workstation dividers, and temperature checks, it had not implemented physical distancing or onsite testing. The plant was ultimately forced to shut down and implement an onsite testing program.

Noah's Ark Has Refused to Implement Basic COVID-19 Protections

49. Noah's Ark employs 300-400 people. It is the largest meatpacking plant in Hastings, Nebraska, a city that is home to about 25,000 people.

50. The plant has committed a number of workplace safety violations in recent years. In 2019, OSHA fined the plant \$182,926 after a worker suffered severe burns because of the plant's deficient safety practices. In 2020, the Department of Labor's Wage and Hour Division fined the plant for failing to pay a worker COVID-related sick leave. Other recent legal violations include a 2016 USDA citation and multiple recent contempt orders issued by federal district courts for the plant's refusal to let its workers meet with union representatives.⁶

51. Noah's Ark has refused to take the most critical and basic steps to protect its workers from another large COVID-19 outbreak. Its refusal to provide adequate distancing, masks, sick leave, and testing creates an unacceptable risk to its employees, their families, and the rest of the local community. Individually and together, these failures constitute a public nuisance and breach the plant's duty to provide a reasonably safe workplace. Its failure to communicate or provide adequate sick-leave policies violates the Families First Act.

⁶ The same plant, under previous ownership, was issued a \$195,100 fine by OSHA in 2012 after a worker died using the plant's machinery.

Physical Distancing

52. Noah's Ark has made no effort to ensure physical distancing within the plant. Instead, it forces workers to stand right next to each other on the processing lines, sometimes touching elbows and shoulders with their neighbors, and to crowd together in a small cafeteria and other common areas during lunch and breaks.

53. Throughout the plant, workers stand within one to two feet of each other during their eight-hour shifts.

54. On the kill floor, where the cows are stunned, killed, and processed for initial storage, workers are crowded together and the plant has not installed any barriers between workstations. Workers on the kill floor spend most of their shift within 1-2 feet of their coworkers.

55. On the fabrication floor, where meat is cut into smaller pieces, workers stand side by side along the processing lines for hours at a time. Rather than provide any meaningful protection, the plant has only installed ineffective movable plastic sheets between some of the workstations on the fabrication floor.

56. On the packaging floor, where meat is packed, labeled, and placed in a storage freezer, workers stand within one foot of each other at several packaging tables. There are no barriers between them.

57. There are numerous feasible ways for the plant to space workers at least 6 feet apart on the kill, fabrication, and packaging floors. Other plants in Nebraska and around the country have done so to protect against further outbreaks during the pandemic, for instance by adding shifts, using excess line space, slowing the lines, or leaving every other workstation empty. Noah's Ark has done none of this.

58. Crowding is just as bad in the Noah's Ark cafeteria, where the plant has made no effort to distance workers. Dozens of workers, and sometimes more than 100, fill a small windowless room, touching each other constantly as they sit together on benches, stand together in line for the microwaves, and squeeze past one another in the cafeteria's narrow passageways.

59. The cafeteria is made even more dangerous by the fact that, despite the high level of crowding, workers must remove their masks to eat. Noah's Ark has thus created a situation where, every day during their 30-minute lunch break, dozens or hundreds of workers are breathing and coughing directly onto each other, with no mask, often with less than one foot of space between them.

60. The plant has placed plastic barriers on the cafeteria tables, but the sheets are movable and small, and do not extend past the table's edge, which means they do not separate people who are sitting side by side on the bench. They also do not separate people walking around or standing at the microwave. Throughout the pandemic, the sheets have often been ripped, broken, or missing.

61. There are many feasible ways to decrease crowding in the cafeteria, which many other companies have done, such as scheduling multiple lunch shifts with fewer workers each, or expanding the cafeteria. Noah's Ark has done neither of these things. Instead, it recently *added* more tables in the cafeteria, which leads to further crowding.

62. The plaintiffs and other workers have raised these issues with Noah's Ark managers, explaining that this widespread crowding is creating a major risk of infection. The plant has refused to take any action.

Face Masks

63. Workers are unable to wear their masks throughout their shifts, because Noah's Ark does not promptly replace masks when they become wet or soiled.

64. The plant gives each worker a paper mask when they start their shift. But the masks very quickly become saturated with blood, sweat, and fat. Workers cannot breathe with soiled masks, so they are forced to either wear the masks below their noses or remove them entirely.

65. Noah's Ark is not promptly replacing soiled masks. The nurse often runs out of masks, in which case workers cannot get new masks for the rest of their 8-hour shift. And masks are not provided throughout the plant—only a single nurse has them. Workers are not allowed to leave their workstations while the line is moving, so unless a co-worker can cross the plant to find the nurse, workers with soiled masks must continue without a mask until their next break.

66. As a result, Noah's Ark has people working without masks for part of their shift almost every day. This means they are breathing and coughing directly onto their neighbors, who are only a foot or two away.

Sick Leave

67. Throughout the pandemic, Noah's Ark has allowed or pressured workers to come to work even when they have clear COVID-19 symptoms. In May, when the plant first became a hotspot, managers initially told many workers who reported symptoms that they would be fired if they missed a shift.

68. In more recent months, workers report instances in which they and their co-workers have been either pressured or allowed by managers to keep working despite symptoms. The plant has therefore kept workers on the lines despite clear symptoms of COVID-19, like fever, headache, achiness, cough, and sore throat.

69. For instance, Plaintiff Isabel's temperature check showed a fever in July 2020, and the nurse told her she could keep working if she wanted to. In September 2020, Plaintiff Alma spoke with a co-worker who had a fever but was told by a manager she would be fired if

she missed her shift. After she missed one day because she was too weak to work, her manager was about to fire her but Alma helped convince the manager not to. She worked with symptoms for weeks after.

70. The plant has not distributed or posted any policies to workers to inform them about the requirements of the Families First Coronavirus Response Act, including that they will be paid sick leave if they have COVID-19 symptoms or test positive. The plant also has not provided its workers with any information about how to file complaints with the Department of Labor about violations of the Families First Act. The plant's failure to post this information has interfered with its employees' right to take sick leave.

71. While the nurse sometimes tells workers to find a test when they show a high fever, the plant does not arrange or pay for the test.

72. Given the lack of clear sick-leave policies, and the many recent episodes in which sick people have been kept at work, the widespread understanding among the workers is that they must keep working even if they have symptoms.

73. In May 2020, the U.S. Department of Labor's Wage and Hour Division found that, by failing to pay sick leave to an employee who tested positive for COVID-19 and self-quarantined, Noah's Ark had violated the Families First Act and ordered it to pay back wages.

74. Other plants across the country are giving sick leave to all workers who have symptoms of COVID-19, and are taking proactive steps to make sure that symptomatic people do not stay at work. Some plants are going even further and paying sick leave to asymptomatic people in high-risk categories, or people with recent exposures to a COVID-positive person. But Noah's Ark is not even consistently providing the bare basics.

Onsite Testing

75. No testing for COVID-19 is happening at Noah's Ark. The plant is not testing its workers when they have symptoms, or when they are exposed to a co-worker with symptoms. It does not perform any random testing of asymptomatic workers to identify emerging spikes.

76. Noah's Ark does not do any contact tracing when it learns that a worker has tested positive. Nor does it inform workers who were in close proximity that they may have been exposed.

77. The only screening at the plant is a temperature check when workers arrive for their shift. But temperature checks cannot identify infected and contagious workers who do not have a fever. Temperature checks alone do not prevent infected workers from entering the plant and infecting others.

78. Though the plant is open every day, temperature checks are not offered on Sundays because the plant's nurse does not work that day. The same is true every other Saturday. No health screening occurs on those days.

79. When a worker has a high fever, at most the plant will tell them to find a test on their own outside the plant. The plant does not offer to pay for the test. Many workers at Noah's Ark are uninsured and cannot afford a COVID-19 test or a doctor's visit.

80. Many other meatpacking plants have arranged for private testing companies to test their workers. Testing services are widely available in Nebraska for Noah's Ark to hire.

An Outbreak at Noah's Ark Would Quickly Spread into the Surrounding Community

81. The risk of COVID-19 infection and death is not borne by Noah's Ark workers alone. Individuals who become infected at work bring the virus home to their families and communities, causing infections to spread through their households, places of worship, local

businesses, schools, and medical facilities. Noah's Ark's failure to protect its workers represents a threat to the entire Hastings and Tri-Cities community.

82. Nationally, meatpacking plants have played an outsized role in spreading COVID-19. Counties with meatpacking plants have significantly higher rates of infection—meaning a greater percentage of the population has been infected—compared with counties that do not have meatpacking plants. As of May 2020, six of the ten counties with the highest infection rates in the United States had meatpacking outbreaks. Their rates were higher than the hardest-hit cities, like New York, Detroit, Chicago, and Los Angeles. After the first major wave of outbreaks, rural counties with meatpacking outbreaks had infection rates five times higher than rural counties without a meatpacking outbreak.

83. Some of Nebraska's worst outbreaks have been in rural counties with meatpacking plants. For example, an outbreak at the Tyson beef plant in Dakota City turned the surrounding community into a hotspot, with the fourth highest infection rate in the country at the time.

84. The same is true of Adams County, where the Noah's Ark plant is located. After the plant's first outbreak, Adams County had an infection rate far higher than neighboring counties without a meatpacking outbreak. As of June 1, its infection rate of 873 cases per 100,000 people was between twice as high and thirty-six times as high as neighboring counties without a meatpacking cluster, including Nuckolls, Webster, and Clay Counties.

85. The same occurred in nearby Hall County, where some of the plaintiffs live in the city of Grand Island, and which had a meatpacking outbreak in April and May. During that time, Hall County's infection rate skyrocketed far above that of neighboring Hamilton and Merrick Counties, which do not have a major meatpacking plant.

86. The community spread that results from a meatpacking outbreak also crosses county lines. For instance, in May, Lancaster County health officials attributed almost one-third of Lancaster County cases to a recent outbreak at the Smithfield pork processing plant in neighboring Saline County.

87. It is therefore clear that outbreaks in meatpacking plants quickly spread to the surrounding community and greatly increase the rate of community transmission.

88. Hastings and Grand Island are close geographically, economically, and socially. Many workers commute from one city to the other to work, do business, and socialize. Together with Kearney, they are known as the Tri-Cities.

89. A surge of cases originating at Noah's Ark would have severe consequences for hospitals and clinics in the Tri-Cities area. During the first spike of cases in May, Plaintiff Leonard's medical practice had to engage in an onerous contact tracing effort after just one employee became infected. The hospital where he works faced a shortage of personal protective equipment (PPE) and ventilators. Another surge of cases in the region could flood his practice and others with COVID-19 patients, divert resources to contact tracing and other precautions, and cause renewed PPE shortages.

90. An outbreak at Noah's Ark could similarly affect countless people and businesses in the region. By fueling community spread, it could result in local shutdown orders, businesses having to close their doors to the public, family members unable to visit each other, and places of worship having to cancel in-person services.

91. If Noah's Ark does not implement meaningful COVID-19 protections soon, it is likely to cause or exacerbate all of these problems by increasing the rate of spread in the broader community. This danger is becoming more acute as winter approaches and large spikes become

more likely. The entire region has a strong interest in ensuring that Noah's Ark implements basic COVID-19 protections for its workforce.

Noah's Ark Workers Have No Other Avenue for Redress

92. This lawsuit is the only remaining avenue for Noah's Ark workers and their community to ensure that the plant protects against another outbreak.

93. Plaintiffs and other workers have raised the problems described above with managers multiple times. Plaintiffs Alma and Antonio also raised these issues with the plant's nurse. The managers and nurse have refused to address them.

94. Plaintiffs have reported these dangers to the Occupational Safety and Health Administration ("OSHA"). OSHA has not taken any action to make Noah's Ark improve its precautions.

95. In August and September 2020, Plaintiff Antonio called the OSHA Area Office in Omaha to report the dangers at Noah's Ark. He explained that Noah's Ark was not taking adequate COVID-19 precautions, including failing to distance workers, replace soiled masks, and conduct temperature checks on Sundays. OSHA's field manual requires the agency to act on workplace-danger reports made by telephone. Yet OSHA personnel declined to investigate Antonio's complaint.

96. In August 2020, another worker filed a written complaint with OSHA. The complaint raised all of the problems described above: no physical distancing, soiled masks not being replaced, workers kept in the plant despite symptoms, no testing. Three months later, OSHA has yet to provide even an update, and none of the primary failures identified in the complaint have been fixed. On information and belief, OSHA has not ordered Noah's Ark to fix these conditions.

97. On information and belief, an OSHA inspector visited the plant in early September. He spent under an hour touring the plant. Managers told workers that the plant was given advance notice of the visit, contrary to OSHA's field manual. None of the four failures described above has changed since the inspector's visit.

98. OSHA has refused to issue any binding COVID-19 rules for meatpacking plants or any other workplace. It has put out a guidance document that lists more than a dozen possible precautions that plants can take, but the document does not make any of the precautions mandatory.

99. In response to complaints at other plants, OSHA has declined to seek a single emergency order to require a plant to adopt basic precautions. After outbreaks at hundreds of plants across the country, OSHA has issued a total of four citations to meatpacking plants, none of which has any effect while the citations are being adjudicated—a process that typically takes several years.

100. No state or local agency in Nebraska has imposed any safety requirements on the Noah's Ark plant, even after the plant's initial outbreak in May. On information and belief, the Nebraska Department of Labor has instituted no enforcement actions to protect meatpacking workers from COVID-19.

FIRST CLAIM FOR RELIEF

(Public Nuisance)

101. All the foregoing allegations are repeated and realleged as if fully set forth herein.

102. Noah's Ark's failure to implement the most basic and essential COVID-19 protections has caused and is reasonably certain to cause the transmission of COVID-19 both inside and outside the plant.

103. This transmission has caused and will cause widespread disease, hospitalizations, and death, not only among Noah's Ark workers, but also their family members, the people they live and socialize with, and members of the public with whom they interact. Such transmission caused by Noah's Ark will lead to the closing of businesses, schools, and places of worship.

104. Noah's Ark's policies and practices constitute a public nuisance. They substantially and unreasonably interfere with the common public right to public health and safety, because they create a substantially heightened risk of spreading a deadly virus.

105. Absent prompt and immediate injunctive relief, Plaintiffs face a significant and unique risk of irreparable harm in the form of physical, emotional, and economic injuries.

106. Defendant's past and ongoing conduct is a direct and proximate cause of Plaintiffs' injuries and threatened injuries.

107. Defendant knows and should have known that its conduct as alleged herein would be the direct and proximate cause of Plaintiffs' injuries.

108. Plaintiffs therefore request a declaration that Noah's Ark's policies and practices constitute a public nuisance, and they request injunctive relief to abate the nuisance.

SECOND CLAIM FOR RELIEF

(Breach of Duty to Provide a Safe Workplace; Negligence)

109. All the foregoing allegations are repeated and realleged as if fully set forth herein.

110. Noah's Ark has a duty to furnish its employees with a reasonably safe place in which to work. Noah's Ark voluntarily assumed this duty of care.

111. By failing to implement basic and critical protections against COVID-19, Noah's Ark breached and continues to breach this duty.

112. Noah's Ark's breach of its duty has caused harm to Plaintiffs, who have suffered physical harm associated with COVID-19 infection, emotional harm, and in some cases monetary harm. These injuries were foreseeable.

113. Plaintiffs are likely to experience future harm if Noah's Ark does not immediately satisfy its duty to provide a reasonably safe workplace.

114. Plaintiffs request a declaration that Noah's Ark has breached and is breaching this duty, and they request injunctive relief to ameliorate the breach.

THIRD CLAIM FOR RELIEF

(Violation of the Families First Coronavirus Response Act)

115. The Families First Coronavirus Response Act requires employers to "post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice . . . of the requirements described in the Act," including its paid sick and family leave provisions. 29 U.S.C. § 2601 note; *see* 29 C.F.R. § 826.80. Employers must also provide "information concerning the procedures for filing complaints of violations of the [Families First Act] with the [Department of Labor's] Wage and Hour Division." 29 C.F.R. § 826.80(a).

116. Noah's Ark has not posted any notice about the Act, including its requirements or the procedures for filing complaints for violations of the Act.

117. Noah's Ark is in violation of the Families First Coronavirus Response Act's notice requirement. That violation has interfered with workers' ability to exercise their rights to paid sick leave under the Act.

118. Plaintiffs request a declaration that Noah's Ark is in violation of the Families First Coronavirus Response Act and an injunction ordering it to comply with the Act's requirements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

- a. A declaration pursuant to 28 U.S.C. § 2201 that Defendant has caused a public nuisance, violated its common-law duty to provide a reasonably safe workplace, and violated the Families First Coronavirus Response Act;
- b. A preliminary and permanent injunction requiring Defendant to:
 - i. Space workers at least six feet apart in the processing areas, the cafeteria, and in the other common areas;
 - ii. Provide workers with a constant supply of clean masks;
 - iii. Provide paid sick leave to any worker who has any symptom of COVID-19 or a positive COVID-19 test or diagnosis;
 - iv. Provide onsite COVID-19 testing in accordance with accepted testing standards;
 - v. Implement all other precautions required to remedy these violations;
 - vi. Communicate all of these policies clearly to workers;
 - vii. Comply with the requirements of the Families First Coronavirus Response Act, including the notice requirement.
- c. An order awarding Plaintiffs the costs of suit and reasonable attorneys' fees pursuant to any applicable law;
- d. Such further relief as the Court deems equitable, just, and proper.

DESIGNATION OF PLACE OF TRIAL

Plaintiffs request a trial to the Court in Lincoln, Nebraska.

Dated: November 23, 2020

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APPENDIX J

COVID-19 conditions from Nebraskans working in meat and poultry plants

Descriptions shared in December 2020. Conditions reconfirmed in April 2021.

All descriptions are from different plants across the state.

Worker story:

“It’s not safe to walk in the lobby....In the cafeteria, we stand elbow to elbow because there’s no room. [At] the break time we have just 15 min. We take 5 min to take off our [work clothes] and run, and we come together 200 people at the same time. There’s no distancing. And we don’t have a chance to wash our hands, to eat our food. That’s why I’ve been affected. I’ve been sick. Not just me. And the worst part, a [coworker] friend of mine, he died from Coronavirus. At the beginning the company tried to do something. But now it’s different. They don’t really care about it.

The people are crowded together all the time: in groups coming in to work and out, and in the areas where we are working.

I know the Coronavirus is not a joke. And our bosses, they try all the time to intimidate us.... I want the company to do something. They have to separate the groups during breaks...clean the locker rooms more, and the bathrooms. And use better masks. The kind of masks we use, they’re not very good. So please, senators, help us. Do something.”

Worker story:

“We’ve lost 6 people. [One] gentleman, they made him come to work and tested him...He had COVID symptoms....they have the quick 15 min test - which is completely unreliable. He tested negative. They made him go to work and 2 days later he died of COVID. That was right before Thanksgiving.

They’ve put up the plastic dividers -- which do nothing – because...the way the lines are set up, you’re right up against the line, so when you breathe the breath is in front of the dividers anyway, and the blowers blow it right up and down the line in front of everybody else.....So that’s just to make them look better. It does nothing to protect us. We’re still shoulder to shoulder, elbow to elbow and the breath is still going in front of all of us.

The cafeteria, it’s terrible. You have a 15 minute break...and then you have to try to get all your equipment off and get up there, which takes anywhere from 3 to five minutes. Then you have to hurry up and eat, you have to hurry up and go to bathroom, and get back *and* get all your equipment on before the meat gets to you again.....You’re running the whole time, so you can’t social distance - it’s impossible. We don’t have enough bathrooms for everybody. And so everybody’s in there in lines....

It just to me shows their cruelty and their neglect to their employees. They really mistreat people...they try to hide it. And they think they can...intimidate them and bully them into doing whatever. And it's not right. And it needs to change. We need laws in place to protect the people.”

Worker story:

“I’m a covid-19 survivor. I’m here to tell you how my employer’s delayed response led to more than 700 people infected at the plant. As a result of this, covid-19 has been highly active in my community since the first spike in March.

My struggle and that of many workers began when my employer kept secret the numbers of infections at the plant....We saw how countless numbers of people were disappearing daily....The delay in receiving PPE and lack of social distancing resulted in the massive outbreak. Many people died, including 7 of my own coworkers.

Disability benefits were delayed for months and as a consequence I didn’t have income until I returned to work. Company nurses pressured us to return to work as quickly as possible and before we were fully recovered.

Line speeds have been significantly increased....Meanwhile we continue to work understaffed.

I feel lucky to be alive even though I continue to have health issues...and trouble breathing. I feel tired, I feel sick, and I feel used. I have been with the company for [many years] and I feel betrayed. Today, senators, I ask you to pass enforceable safety measures for me and my coworkers to be able to perform our job with dignity.”

Worker story:

“The COVID problem is now. You can’t maintain any distancing. In the bathroom, there are only 5 bathrooms for women, 3 of them are always broken down and the lines are very long. Many [people] have husbands, children, or other family members working in other departments. They contract [COVID] on the kill floor and then they take it to other departments. This is where you’re seeing the biggest problem.

There’s another area where...workers there work *really* close to each other, one next to the other, and don’t have enough protection to not get infected.

The cafeteria...is very small for far too many people. It has barriers but they are broken and they don’t fix them.

I am a survivor of COVID and thank God I am here, but I would hope people knew that even though you had covid once you can still get it again.”

APPENDIX K

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

ALMA, et al.,

Plaintiffs,

vs.

NOAH'S ARK PROCESSORS, LLC,

Defendant.

4:20-CV-3141

MEMORANDUM AND ORDER

The defendant in this case, Noah's Ark Processors, LLC, operates a meat processing facility in Hastings, Nebraska. *See* [filing 1 at 2, 4](#). According to the plaintiffs, Noah's Ark has not taken measures needed to protect its employees from COVID-19. *See* [filing 1](#). But the plaintiffs are not employees of Noah's Ark—instead, they're *former* employees, along with a local doctor. *See* [filing 1 at 3-5](#). While the Court does not question their sincere concern for the well-being of Noah's Ark's employees, the Court finds that they lack standing to assert the claims they have alleged, and will dismiss their complaint.

BACKGROUND

There are four plaintiffs in this case, and three of them are proceeding under pseudonyms. *See* [filing 20](#). Alma lives in Grand Island, Nebraska and worked for Noah's Ark until fall 2020, "when she quit because of poor working conditions." [Filing 1 at 4](#). Isabel and Antonio also live in Grand Island and worked at Noah's Ark until last year. [Filing 1 at 4-5](#). All three former employees "remain[] in close touch with workers at the plant." [Filing 1 at 4-5](#). The named plaintiff, Dr. Daniel J. Leonard, is a doctor in Hastings who

practices pediatrics. [Filing 1 at 5](#). He treats the children of meat processing facility workers, and people afflicted with COVID-19. [Filing 1 at 5](#).

The plaintiffs sued Noah's Ark late last year—after all of the former employees had left their employment with Noah's Ark—alleging that Noah's Ark was not taking needed precautions to protect its workforce and the community at large from COVID-19, and that Adams County and Hall County had COVID-19 outbreaks more serious than neighboring counties.¹ *See* [filing 1](#). They asserted state-law claims for public nuisance and negligence and a federal claim purporting to arise from the [Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat 178-220 \(2020\)](#). They also sought a preliminary injunction ordering Noah's Ark to take the safety measures they thought necessary. *See* [filing 17](#). In response, Noah's Ark moved to dismiss the plaintiffs' complaint pursuant to [Fed. R. Civ. P. 12\(b\)](#) for, among other things, lack of standing.

STANDARD OF REVIEW

A motion pursuant to Rule 12(b)(1) challenges whether the court has subject matter jurisdiction. Rule 12(b)(1) motions can be decided in three ways: at the pleading stage, like a Rule 12(b)(6) motion; on undisputed facts, like a summary judgment motion; and on disputed facts. *Jessie v. Potter*, 516 F.3d 709, 712 (8th Cir. 2008).

A court deciding a motion under Rule 12(b)(1) must distinguish between a "facial attack" and a "factual attack." *Branson Label, Inc. v. City of Branson*,

¹ Hastings and Grand Island are closely neighboring cities in Central Nebraska. Grand Island, where several of the plaintiffs live, is a city of just over 50,000 located in Hall County. Hastings, where Dr. Leonard practices and where Noah's Ark's has its facility, is a city of about 25,000 located in Adams County roughly 20 miles south of Grand Island.

Mo., 793 F.3d 910, 914 (8th Cir. 2015). In a facial attack, the Court merely needs to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction. *Id.* Accordingly, the Court restricts itself to the face of the pleadings and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6)—that is, the Court accepts all factual allegations in the pleadings as true and views them in the light most favorable to the nonmoving party. *Id.*; *Hastings v. Wilson*, 516 F.3d 1055, 1058 (8th Cir. 2008).

Conversely, in a factual attack, the existence of subject matter jurisdiction is challenged in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, may be considered. *Branson Label*, 793 F.3d at 914. Thus, the nonmoving party would not enjoy the benefit of the allegations in its pleadings being accepted as true by the reviewing court. *Id.* But factual challenges do not arise only when a court considers matters outside the pleadings. *Faibisch v. Univ. of Minnesota*, 304 F.3d 797, 801 (8th Cir. 2002). A district court engages in a factual review when it inquires into and resolves factual disputes. *Id.*

Although Noah's Ark did not present evidence in support of its motion to dismiss, the plaintiffs have pointed to evidence they adduced in support of their motion for preliminary injunction as also supporting their standing to sue. *See filing 40 at 16-20*. So at least technically, this case presents a factual attack, but the Court doesn't understand the facts—at least as relevant to standing—to be disputed. *See filing 51 at 13-18*. Accordingly, the Court will resolve this case on the complaint supplemented by undisputed facts evidenced in the record. *See Johnson v. United States*, 534 F.3d 958, 962 (8th Cir. 2008).²

² The Court recognizes that prudential standing, discussed below, may not implicate the Court's jurisdiction, *see June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2117-18 (2020),

DISCUSSION

The jurisdiction of federal courts is limited to "cases" and "controversies," *see* U.S. Const., Art. III, § 2, and standing to sue is a doctrine rooted in the traditional understanding of a case or controversy, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The doctrine developed to ensure that federal courts do not exceed their authority, and limits the category of litigants who may maintain a lawsuit in federal court to seek redress for a legal wrong. *Id.* Plaintiffs must have "such a personal stake in the outcome of the controversy as to justify the exercise of the court's remedial powers on their behalf." *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017).

The "irreducible constitutional minimum" of Art. III standing consists of three elements: the plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo*, 136 S. Ct. at 1547; *Glickert v. Loop Trolley Transp. Dev. Dist.*, 792 F.3d 876, 881 (8th Cir. 2015). The plaintiff, as the party invoking federal jurisdiction, has the burden to establish these elements. *Spokeo*, 136 S. Ct. at 1547.

The "first and foremost" of these three elements is the existence of an "injury in fact": a plaintiff must show that he or she suffered an invasion of a legally protected interest that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* at 1548; *see Trump v. New York*, 141 S. Ct. 530, 535 (2020); *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). For an injury to be "particularized," it "must affect the plaintiff in a personal and

posing the question whether Rule 12(b)(1) (and its authority to consider evidence beyond the pleadings) is the right procedural vehicle to decide the issue. But neither party has objected to the Court addressing standing in this procedural posture. *See* filing 56 at 3 n.8.

individual way. *Spokeo*, 136 S. Ct. at 1548. And a "concrete" injury must actually exist. *Id.*

In analyzing standing, the Supreme Court has repeatedly found that a plaintiff lacks standing to sue when the plaintiff cannot demonstrate specific injuries. *Pucket v. Hot Springs Sch. Dist. No. 23-2*, 526 F.3d 1151, 1160 (8th Cir. 2008). In other words, for a federal court to have authority under the Constitution to settle a dispute, the party before it must seek a remedy for a personal and tangible harm: "the presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III's requirements." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). The "injury in fact" test requires more than an injury to a cognizable interest—it requires that the party seeking review be himself among the injured. *Lujan v. Defs. of Wildlife*, 112 S. Ct. 2130, 2137 (1992).

The plaintiffs' alleged injuries are neither concrete nor particularized: the gist of their claim to standing is that there could be another COVID-19 outbreak at Noah's Ark, and that could cause widespread disease in the community in which they live, and that could endanger them and affect the community. See [filing 40 at 16](#). But implicit in their argument is that (1) their interests are the same as the rest of their community, and (2) their interests are diffuse and derivative, depending on a sequence of causation that is nearly impossible to predict or assess. And a plaintiff cannot establish standing by asserting an abstract general interest common to all members of the public, no matter how sincere or deeply committed a plaintiff is to vindicating that general interest on behalf of the public. *Carney*, 141 S. Ct. at 499.

Similarly, the injuries the plaintiffs allege are neither actual nor imminent. They seek no damages for past conduct, see [filing 1 at 23](#), and their predictions of what *could* happen in the absence of injunctive relief fall short

of describing an imminent injury. To be sure, a future injury may be sufficiently actual or imminent "if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019); see *Park v. Forest Serv. of U.S.*, 205 F.3d 1034, 1037 (8th Cir. 2000). But a theory of standing "which relies on a highly attenuated chain of possibilities" does not suffice. *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1148 (2013); see *Shain v. Veneman*, 376 F.3d 815, 818 (8th Cir. 2004). The plaintiffs claim precisely such a chain of possibilities, and "[i]f the plaintiffs [in this case] have alleged a cognizable injury, then as [a] practical matter, any plaintiff who conceivably could be harmed by a defendant's conduct would possess standing to sue in federal court." *Shain*, 376 F.3d at 818.

In addition to lacking an injury in fact, the plaintiffs' claims fall short of establishing traceability and redressability—a problem that's actually exacerbated by the plaintiffs' efforts to claim an imminent injury. In attempting to show that injury is imminent, the plaintiffs assert that "there was *already* a large outbreak at Noah's Ark and the surrounding community; hundreds of meatpacking plants have had similar outbreaks, which have universally led to spikes in community spread; [and] these outbreaks continue. . . ." But if that's the case, how are the putative injuries the plaintiffs allege—the effects of disease *in the community*—uniquely attributable to Noah's Ark, and how would enjoining Noah's Ark mitigate those effects?

It would be different were the plaintiffs, say, current employees of Noah's Ark. Then, their risk of COVID-19 might be fairly traceable to their workplace, and injunctive relief in their favor might mediate that risk. But where the alleged injury is to the community at large, the plaintiffs can only speculate as to whether an outbreak of disease in the community would be attributable to

Noah's Ark or some other cause. *Cf. Clapper*, 133 S. Ct. at 1149. And "it must be more than merely speculative that the relief requested would have any effect to redress the harm *to the plaintiff*." *Hall v. Lhaco, Inc.*, 140 F.3d 1190, 1196 (8th Cir. 1998) (emphasis supplied); *accord*, e.g., *Young Am. Corp. v. Affiliated Computer Servs. (ACS), Inc.*, 424 F.3d 840, 845 (8th Cir. 2005).

The plaintiffs rely on the threat COVID-19 poses to their community . . . but as we've all learned over the past year, there are lots of ways for COVID-19 to spread in a community, through other meat processing facilities (as the plaintiffs point out), other employers, and other gathering places. The risks faced by these plaintiffs as members of the community come from an incalculable number of sources, and while the plaintiffs are certainly entitled to be concerned, the Court finds it difficult to see a limiting principle if the Court's authority can be invoked by these plaintiffs against this defendant just because some of the plaintiffs *used to work there*. Nor can the Court be in any way assured that if it afforded the relief requested, the risk to the plaintiffs would be meaningfully abated. *See Warth v. Seldin*, 95 S. Ct. 2197, 2208 (1975).

The plaintiffs specifically rely on Dr. Leonard's situation as establishing Art. III standing, because they say his medical practice could suffer the consequences of a COVID-19 outbreak. *See filing 40 at 17*. In that regard, the Supreme Court's decision in *Diamond v. Charles* is instructive. 106 S. Ct. 1697, 1705 (1986). The doctor in *Diamond* sought to intervene in a federal lawsuit to defend an Illinois abortion law, contending that because he was a pediatrician, enforcement of a law that reduced abortion would mean more live births and more patients. *Id.* at 1705. But the Supreme Court found that his asserted standing rested on speculation, as opposed to the situation of physicians against whom enforcement of the law was directed, or whose actual fees were limited by the challenged law. *Id.* The Supreme Court explained that the

intervenor had "an interest, but no direct stake" in the process, and his "abstract concern" did not suffice for purposes of Art. III. *Id.* at 1706.

The Court finds the same to be true here: Dr. Leonard's claim to standing rests on the hypothetical and speculative effects on his practice of a sequence of events that is itself speculative. And the Court again struggles to see a limiting principle if the Court's authority can be invoked by a doctor against any conduct that poses a threat to the health of his or her patients.

Beyond that, even if the Court could find Art. III standing, the plaintiffs' claims would run squarely into the doctrine of prudential standing. It's also a fundamental restriction on the Court's authority that in the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2663 (2013); *Glickert*, 792 F.3d 881; *Hodak v. City of St. Peters*, 535 F.3d 899, 904 (8th Cir. 2008). So-called "prudential standing," which is separate from Art. III standing, embodies judicially self-imposed limits on the exercise of federal jurisdiction. *United States v. Windsor*, 133 S. Ct. 2675, 2685 (2013); *Hodak*, 535 F.3d 903-04; see *Lucas v. Jerusalem Cafe, LLC*, 721 F.3d 927, 938 (8th Cir. 2013).

In this case, of course, the people directly put at risk by Noah's Ark's alleged misconduct are the people who work there now, and the plaintiffs cannot assert their claims for them. The "emotional distress and fear" the plaintiffs say they would suffer if their former co-workers caught COVID-19, see [filing 40 at 18](#), won't suffice to allow them to sue in their own right.

The plaintiffs argue that they have third-party standing to assert claims belonging to current employees of Noah's Ark, because they have close relationships to people who still work there and those people, the plaintiffs say, face retaliation if they sue in their own right. See [filing 40 at 19](#). There is an

exception to prudential standing where the party asserting the right has a close relationship with the person who possesses the right and there is a hindrance to the possessor's ability to protect his own interests. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017). But only in exceptional cases may a party have standing to assert the rights of another. *Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin Cty.*, 115 F.3d 1372, 1378-79 (8th Cir. 1997). Specifically, the Supreme Court has been willing to lessen the prudential limitations on standing within the context of the First Amendment. *Kowalski v. Tesmer*, 125 S. Ct. 564, 567 (2004). And the Supreme Court has allowed third-party standing when enforcement of a challenged regulation against the litigant would indirectly violate the rights of third parties. *Id.* at 568. But outside of those examples, the Supreme Court has not looked favorably upon third-party standing. *Id.*

In this case, the plaintiffs offer little to explain why third-party standing is appropriate when, by their own allegations, both plant employees and local, state, and federal officials would be highly motivated to regulate and monitor the conduct the plaintiffs allege. See *Thole v. U. S. Bank N.A.*, 140 S. Ct. 1615, 1621 (2020). The former-employee plaintiffs have been proceeding in this case pseudonymously because of possible retaliation, but the plaintiffs haven't articulated any reason why *current* employees couldn't do the same.³ And of course, third-party standing exists as an exception to *prudential* standing requirements. See *Kowalski*, 125 S. Ct. at 567. Even in the rare instances when litigants may assert the interests of others, the litigants themselves still must have suffered an injury in fact, thus giving them a sufficiently concrete interest

³ Were the current employees' union to attempt to assert the rights of its members, that would present an interesting question of associational standing. See, e.g., *Higgins Elec., Inc. v. O'Fallon Fire Prot. Dist.*, 813 F.3d 1124, 1128 (8th Cir. 2016). But the union's not here either.

in the outcome of the issue in dispute. *Hollingsworth*, 133 S. Ct. at 2663. As explained above, the plaintiffs in this case have not.

CONCLUSION

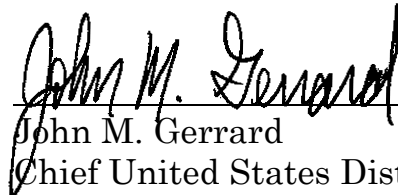
For the reasons explained above, the Court finds that the plaintiffs lack both Art. III and prudential standing. Accordingly,

IT IS ORDERED:

1. Noah's Ark's motion to dismiss ([filing 50](#)) is granted.
2. The plaintiffs' complaint is dismissed.
3. All other pending motions are denied as moot, and all pending objections are overruled as moot.
4. A separate judgment will be entered.

Dated this 1st day of March, 2021.

BY THE COURT:



John M. Gerrard
Chief United States District Judge

Concerns and perceptions of COVID-19 among meatpacking plant workers in Nebraska

Background: A survey was conducted between May 7-May 25, 2020 of 443 meatpacking workers across Nebraska to assess their concerns and perceptions related to COVID-19. We sought to understand how the work environment had responded to the public health crisis and what information or material barriers existed among workers.

Participants: Participants were mainly from Mexico and Central America (67.4%). They had an average age of 41 years old, and 57% of participants were female. On average, participants had been working in the meatpacking industry for 7 years.

Perceived risk

72.1% believed that they were at “high risk” for contracting COVID-19.

Almost **30%** of workers reported that they had not received any information from their employer related to COVID-19.

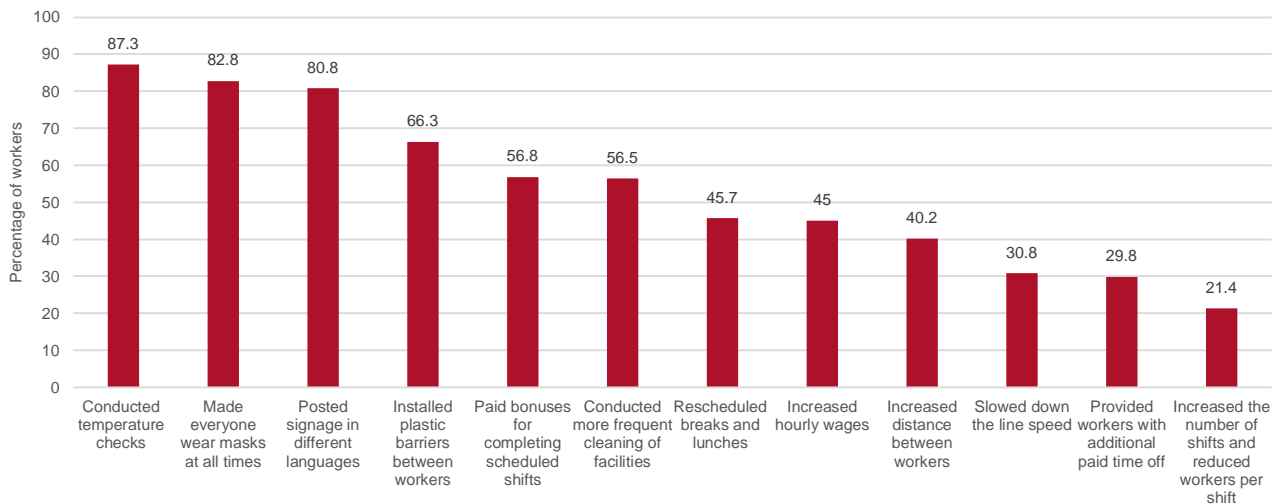
Testing & barriers to testing

42.2% had been tested at the time of the survey.

They noted barriers to getting tested including:

- Not sick so no need to be tested (44.4%)
- Unsure where testing locations were in their community (9.2%)
- Cost of testing (9.2%)
- Not sure what to do if they tested positive (8.6%)
- No testing available in their community (6.1%)

Employer responses to COVID-19



Recommendations

1. Provide culturally and linguistically appropriate information on COVID-19 transmission, health risks, and preventive strategies in the plant.
2. Provide paid sick leave benefits for COVID-19 related concerns.
3. Communicate COVID-19-related updates, policies, & procedures clearly and consistently to all levels of organization.
4. Ensure supervisors promote the health and well-being of team members.
5. Provide workers with a mask at the start of each shift and make additional masks available throughout the shift.
6. Enhance training opportunities for workers (e.g., proper mask use/care; sanitation guidelines; return to work procedures).
7. Inform workers about the contact tracing process within the plant and improve transparency on the number of positive cases in the workplace.
8. Ensure appropriate social distancing strategies within the plant (e.g., locker rooms, cafeterias, hallways, and restrooms) and stagger breaks.
9. Adhere to the Meatpacking Industry Workers Bill of Rights.
10. Partner with public health departments and community organizations to foster culturally and linguistically appropriate COVID-19 outreach and education.
11. Establish a consortium of community resources to assist workers and their families in case there are temporary closures or reductions in force.

Preocupaciones y percepciones sobre COVID-19 entre los trabajadores de las plantas empacadoras de carne en Nebraska



Antecedentes: Se realizó una encuesta entre el 7 de mayo y el 25 de mayo de 2020 a 443 trabajadores de empacadoras de carne en Nebraska para evaluar sus preocupaciones y percepciones relacionadas con COVID-19. Buscamos comprender cómo había respondido el entorno laboral a la crisis de salud pública y qué información o barreras materiales existían entre los trabajadores.

Participantes: Los participantes eran principalmente de México y Centroamérica (67.4%). Tenían una edad promedio de 41 años, y el 57% de los participantes eran mujeres. En promedio, los participantes habían estado trabajando en la industria del envasado de carne por 7 años.

Riesgo percibido

El **72.1%** creía que estaban en "alto riesgo" de contraer COVID-19.

Casi el **30%** de los trabajadores informaron que no habían recibido ninguna información de su empleador relacionada con COVID-19.

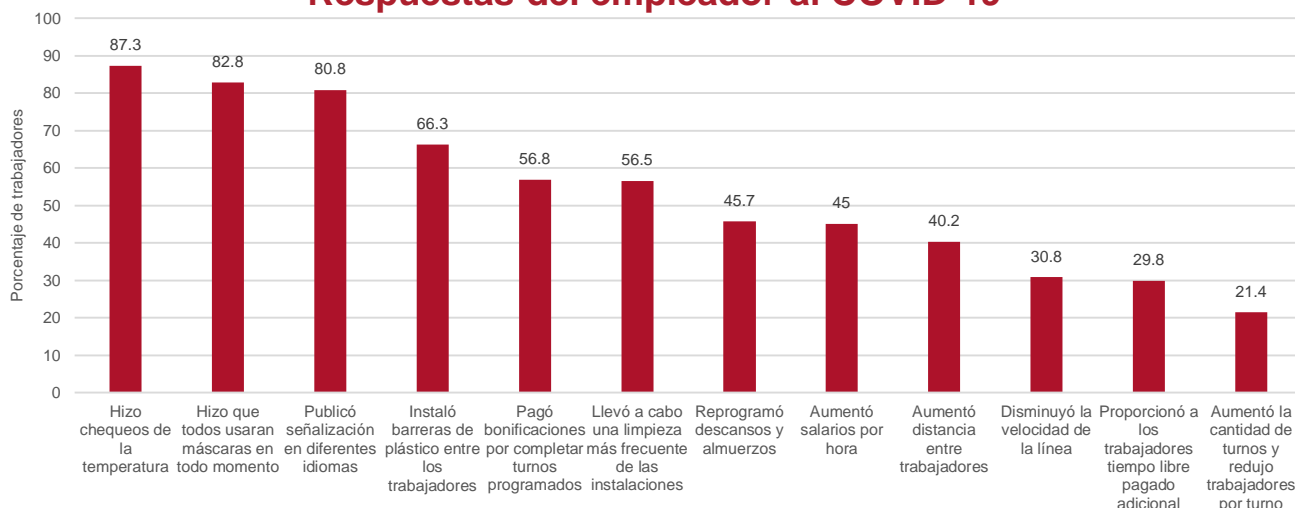
Pruebas & barreras para realizarse las pruebas

El **42.2%** se había realizado la prueba al momento de la encuesta.

Indicaron barreras para hacerse la prueba, que incluyen:

- No estaban enfermos, así que no era necesario hacerse la prueba (44.4%)
- No estaban seguros de dónde encontrar los lugares de prueba en su comunidad (9.2%)
- El costo de la prueba (9.2%)
- Inseguros de qué hacer en caso de que la prueba resultara positiva (8.6%)
- No habían pruebas disponibles en su comunidad (6.1%)

Respuestas del empleador al COVID-19



Recomendaciones

1. Proporcionar información cultural y lingüísticamente apropiada sobre la transmisión del COVID-19, los riesgos para la salud y las estrategias preventivas en la planta.
2. Proporcionar beneficios de licencia por enfermedad pagados en caso de preocupaciones relacionadas con el COVID-19.
3. Comunicar actualizaciones, políticas y procedimientos relacionados con el COVID-19 de manera clara y consistente a todos los niveles de la organización.
4. Asegurar que los supervisores promuevan la salud y el bienestar de los miembros del equipo.
5. Proporcionar a los trabajadores una máscara al comienzo de cada turno y poner máscaras adicionales disponibles durante todo el turno.
6. Mejorar las oportunidades de capacitación para los trabajadores (por ejemplo, uso/cuidado adecuado de la máscara, pautas de saneamiento, procedimientos para regresar al trabajo).
7. Informar a los trabajadores sobre el proceso de ubicación de contactos dentro de la planta y mejorar la transparencia sobre el número de casos positivos en el lugar de trabajo.
8. Asegurar estrategias apropiadas de distanciamiento social dentro de la planta (por ejemplo, vestuarios, cafeterías, pasillos y baños) y alterne turnos para descansos.
9. Adherirse a la Declaración de Derechos de los Trabajadores de la Industria Empacadora de Carne.
10. Asociarse con los departamentos de salud pública y las organizaciones comunitarias para fomentar la sensibilización y la educación sobre COVID-19 de manera cultural y lingüísticamente apropiados.
11. Establecer un consorcio de recursos comunitarios para ayudar a los trabajadores y sus familias en caso de que haya cierres temporales o reducciones del personal.

Appendix M

Concerns and perceptions of COVID-19 among meatpacking plant workers in Nebraska

Athena Ramos, PhD, MBA, MS, CPM



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Background

Approximately, half a million people in the U.S. work in animal slaughtering and processing, and over half of the meatpacking plants in the U.S. are located in the Midwest. Nearly, 28,000 people were employed in meat processing facilities in Nebraska in 2018 (U.S. Bureau of Labor Statistics, 2018).

Meatpacking workers are considered “essential workers” during the current COVID-19 pandemic (U.S. Department of Homeland Security, 2020), and recently the U.S. government mandated that meatpacking plants remain open to ensure an adequate food supply (Restuccia, & Bunge, 2020). Meatpacking plants across the country have experienced large COVID-19 outbreaks (Soucheray, 2020). Both plants and workers are worried about the spread of COVID-19 throughout the industry.

In the last two months, a UNMC team has been conducting site visits to improve infection control practices in these facilities (UNMC Global Center for Health Security, 2020). This study is the result of recent engagements with community partners about these site visits and the concern that site visits only provide a limited perspective of what has been occurring in the work environment.



Study purpose and methods

A survey was conducted between May 7-May 25, 2020 of 443 meatpacking workers across Nebraska to assess their concerns and perceptions related to COVID-19.

We sought to understand:

1. how the work environment had responded
2. what informational or material barriers existed
3. what preventive strategies had been used outside of work

The survey was available online through RedCap, an electronic data capture tool, in English, Spanish, and French. It was promoted through media outlets (e.g., Telemundo Nebraska, Mundo Latino, Radio Lobo, El Perico newspaper), social media (e.g., Facebook), and community organizations.

The study was approved by the UNMC Institutional Review Board.



Demographic characteristics of participants

Variable	N (%)	M (SD)
Gender (n = 339)		
Male	145 (42.8)	
Female	192 (56.6)	
Non-binary	2 (0.6)	
Nativity (n = 340)		
United States	35 (10.3)	
Mexico	162 (47.7)	
Central America	67 (19.7)	
Other*	76 (22.4)	
Education (n = 301)		
Completed less than high school	142 (47.2)	
Completed at least high school	159 (52.8)	
English proficiency (n = 340)		
Limited English proficient	183 (53.8)	
English proficient	157 (46.2)	
Age (n = 338)		40.7 (10.3)
Number of people in household (n = 331)		4.2 (1.8)
Number of children in household (n = 320)		1.8 (1.5)
Plant tenure (n = 334)		7.7 (7.6)

* Other included Burma, Burundi, Colombia, Congo, Cuba, Dominican Republic, Ecuador, Ethiopia, Honduras, Nicaragua, Peru, Puerto Rico, Rwanda, Sudan



Health status of participants

Variable	N (%)
Self-rated health (n = 346)	
Excellent, very good, good	259 (74.9)
Fair or poor	87 (25.1)
Have health insurance (n = 345)	309 (89.6)
Have regular healthcare provider (n = 346)	227 (65.6)
Non-smoker/Non-vaper (n = 346)	319 (92.2)
Chronic conditions	
Asthma	38 (8.6)
Bronchitis	24 (5.4)
Cancer	5 (1.1)
Cardiovascular diseases	12 (2.7)
Diabetes	34 (7.7)
Kidney disease	5 (1.1)
Other	19 (4.3)



Perceived risk and experience with COVID-19

318 workers (72.1%) believed that they were at “high risk” for contracting COVID-19.

Only 42.2% had been tested at the time of the survey.

Some of the barriers they mentioned to testing included:

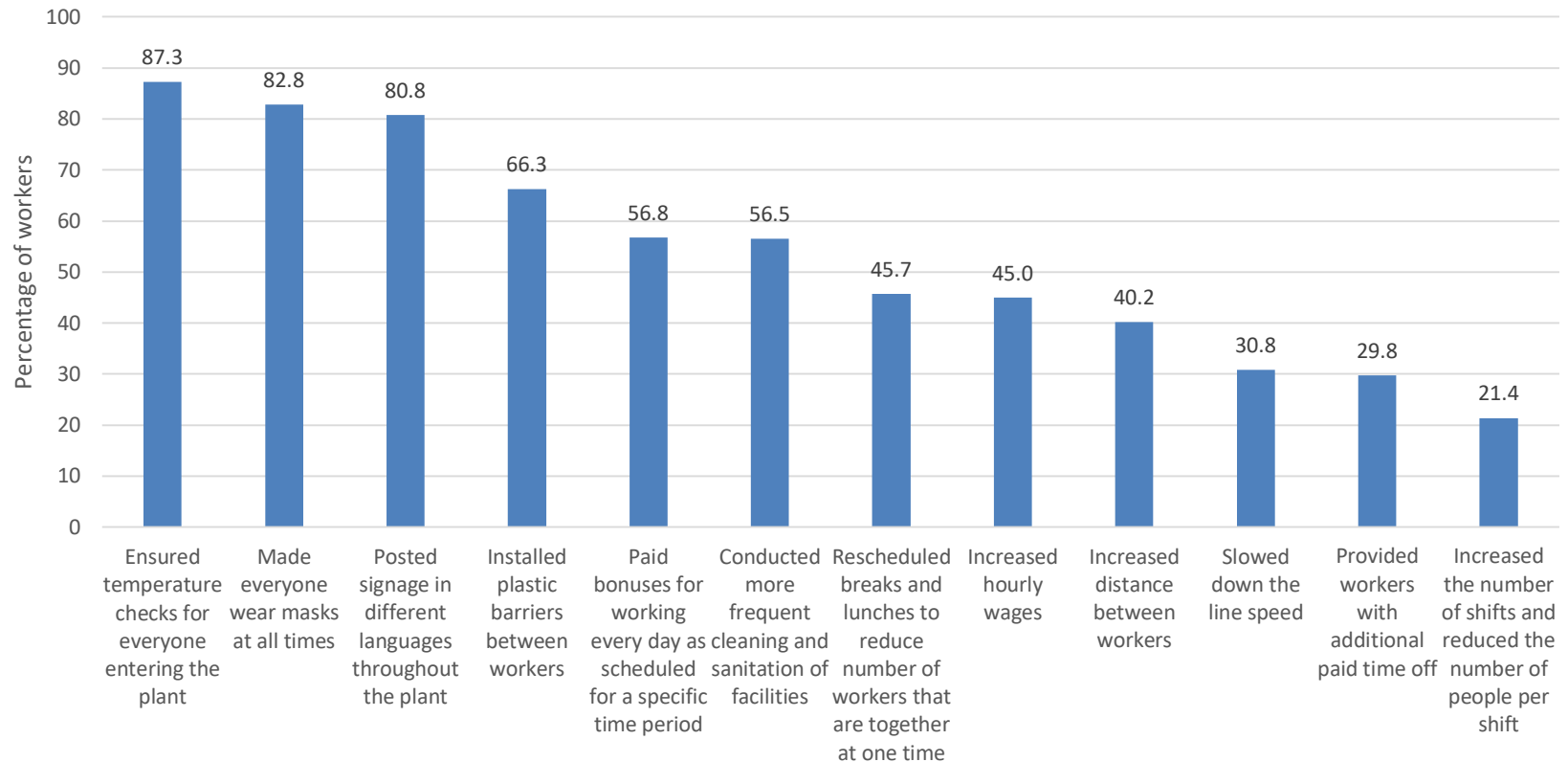
- Not sick so no need to be tested (44.4%)
- Unsure where testing locations were in their community (9.2%)
- Cost of testing (9.2%)
- Not sure what to do if they tested positive (8.6%)
- No testing available in their community (6.1%)
- Need to work so it would not matter (3.6%)
- Concerns about immigration status and testing (1.1%)

Some workers (33.4%) reported testing positive, having someone in their home who had tested positive, or reported that both they and others in their home had tested positive.

Over 90% of workers knew of coworkers who had tested positive for COVID-19.



Employer responses to COVID-19



NOTE: Percentages reported represent workers who responded 'yes' that their workplace had reacted in such a manner

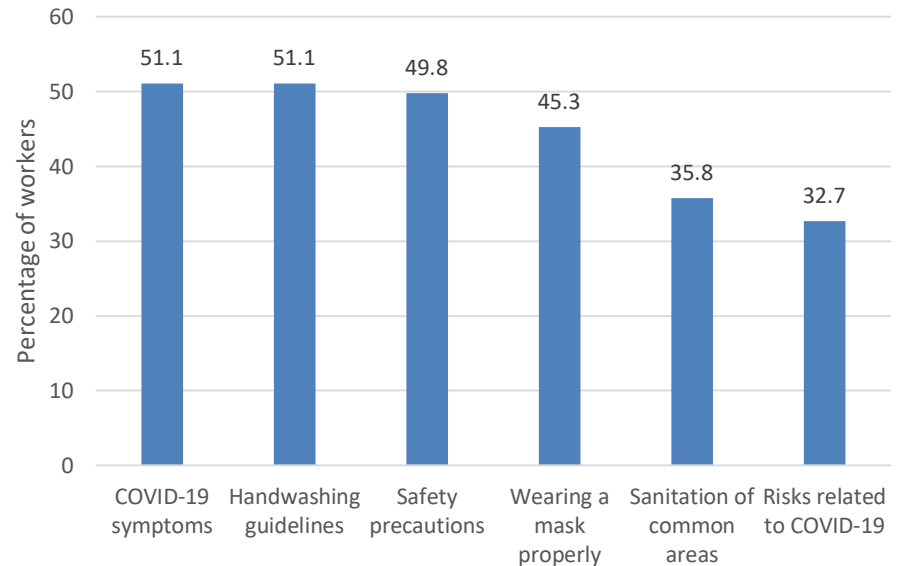


Perceived risk and experience with COVID-19

Nearly 70% of workers reported that their employer had provided some type of information related to COVID-19.

Other types of information requested by workers included:

- Prevalence of COVID-19 in the plant
- Contact tracing within the plant
- What to do if worker/coworker tests positive
- Importance of staying home if sick and employer policies to support quarantine/isolation
- Testing locations
- Return to work process
- Financial assistance if unable to work
- Safe carpooling



Information that is health literacy appropriate and in workers' primary language is needed.



Perceived supervisor support

45% of workers believed that supervisors were only interested in getting the job done fast and cheaply.

Workers mentioned that managers/supervisors pressure workers to make sure they aren't sent home by screeners, to come to work even if sick, and to return to work before 2-week quarantine/isolation period is over.

Worker comments on what they would like employer or supervisor to do:

"[I want the employer or supervisor] to slow down the speed of the line. There aren't people so we are doing the job of 5 people at the same speed. We work every day really hard with our masks really dirty from chicken shit and blood, and they don't want to give us a new mask... Supervisors are only worried about production and regardless they can't get it because the people are too tired."

"[I want the employer or supervisor] to pay our time out of work related to COVID-19, not just tell the media that they provide it to people who are infected."



Mask access and use

96% of workers had access to a mask to wear to work.

- Most workers (86.4%) were given a new mask every day by their employer.
- A few workers noted that they had to provide their own mask to wear at work or that the employer did not provide masks regularly.
- A few workers mentioned that they were being charged for masks by their employer.
- Some workers believed that they needed to change their face mask more often than just once a day (e.g., at break, every few hours, when they were dirty or wet) but that the employer only provided one mask per day.



Instruction is needed on how to properly use a face mask.



Workers' testimonials

“There needs to be better oversight of staff health and working conditions and fear.”

“Others are fearful due to their immigration status and the majority are scared that they won't be able to pay their bills or lose their job. There are people in the plant who do not know how to read or write, older people, and that makes it more difficult to apply for help because they don't know how to write and much less speak English, but the common denominator is they are scared to be without a job and pay their bills so they go to work sick.”

“At work they are only concerned with production, not the people. Not even the President or the Governor care since we are mainly Hispanic. They want us to continue to work and don't care if we die.”

“Where I work, they hide the cases and managers force the supervisors to stay quiet.”

“We need to work, but we also need them [employers] to take care of us.”

“Aren't we essential workers? They should take better care of us and respect our lives more than money.”



Workers' testimonials

"I had COVID-19 and it is a horrible experience. The most worrisome part was that I received such little attention from the clinic where I go...maybe due to the enormous quantity of cases. When I called the health department, they didn't have my data, maybe it's a lack of communication. The government needs to pay more attention to the health department because how it looks is if in the plant where I work we aren't that important because we are 90% foreigners."

"I was afraid to work during COVID-19 outbreak...because I was high risk. I have diabetes. Then, I asked to take some time off from work. I was denied and told I will lose my job if I won't work."

"I'm scared to go to work without knowing the exact number of cases there are. The \$30 [daily] bonus was useful in getting sick people to return to work. That puts us all in more danger."

"They gave us a conditional bonus if we didn't miss any day between March 22 and May 22, but many people continued to work with symptoms so that they didn't lose the bonus."



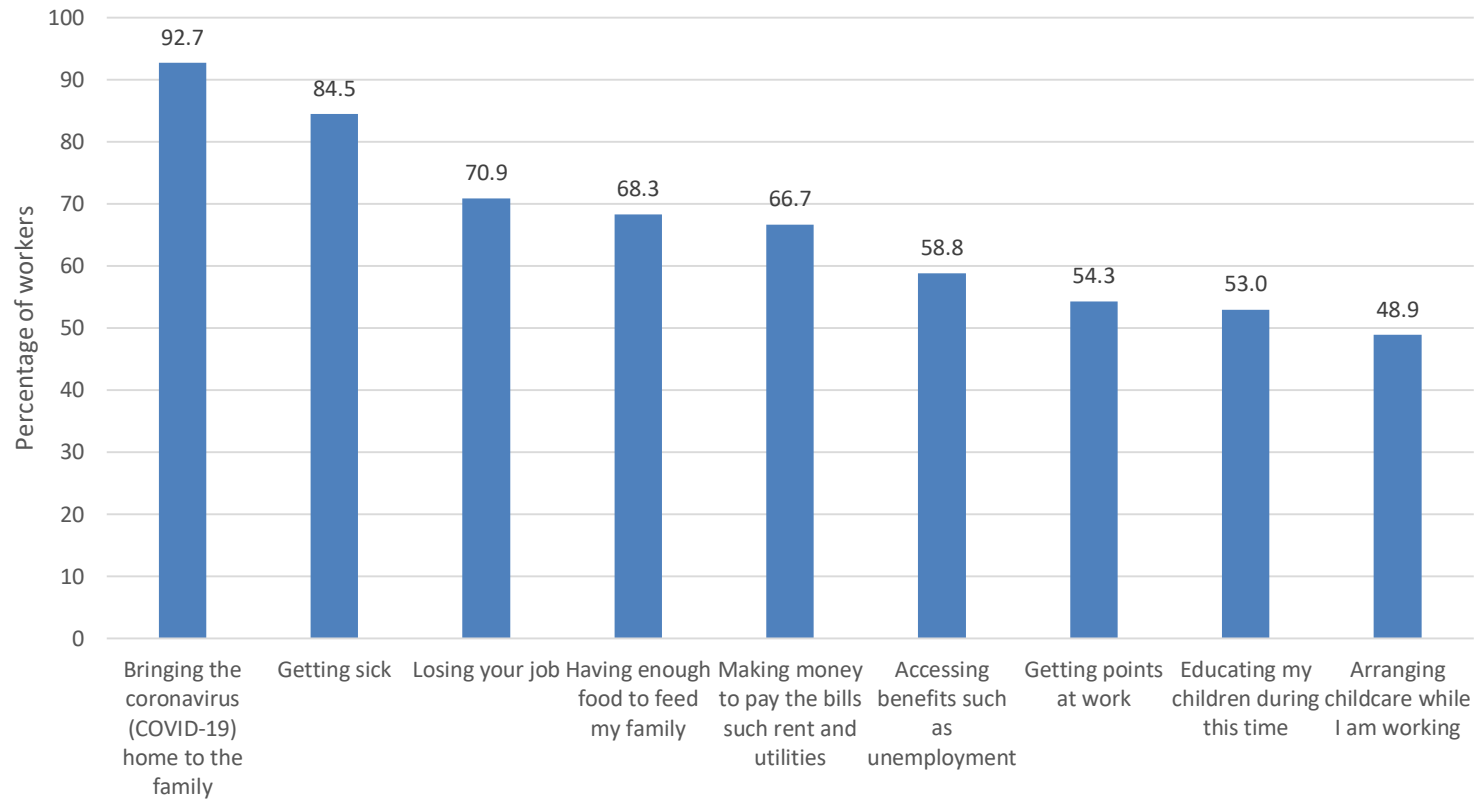
Worker recommendations to improve work environment

- Enforce social distancing rules and traffic patterns in locker rooms, cafeterias, hallways, and restrooms.
- Stagger breaks so that there are fewer people congregating in common areas.
- Provide longer breaks so that people have time to clean/disinfect their areas and take appropriate sanitary measures (e.g., hand washing, PPE).
- Ensure everyone wears a mask at all times (e.g., don't take it off to talk).
- Provide masks at the start of the shift but then make additional masks available throughout the shift as needed.
- Provide more soap and hand sanitizer throughout the facility.
- Space workers out on the line – increase the distance between workers.
- Provide bottled water to drink if water fountains are not a functional option.
- Slow down the line speed, particularly if operating with fewer workers.
- Remind workers that if they are sick they should stay home and that there are no negative consequences for doing so.
- Require a negative test to return to work after confirmed illness.
- Provide more culturally and linguistically appropriate education to workers (i.e., more than just posters on the wall; need someone who can connect with workers).





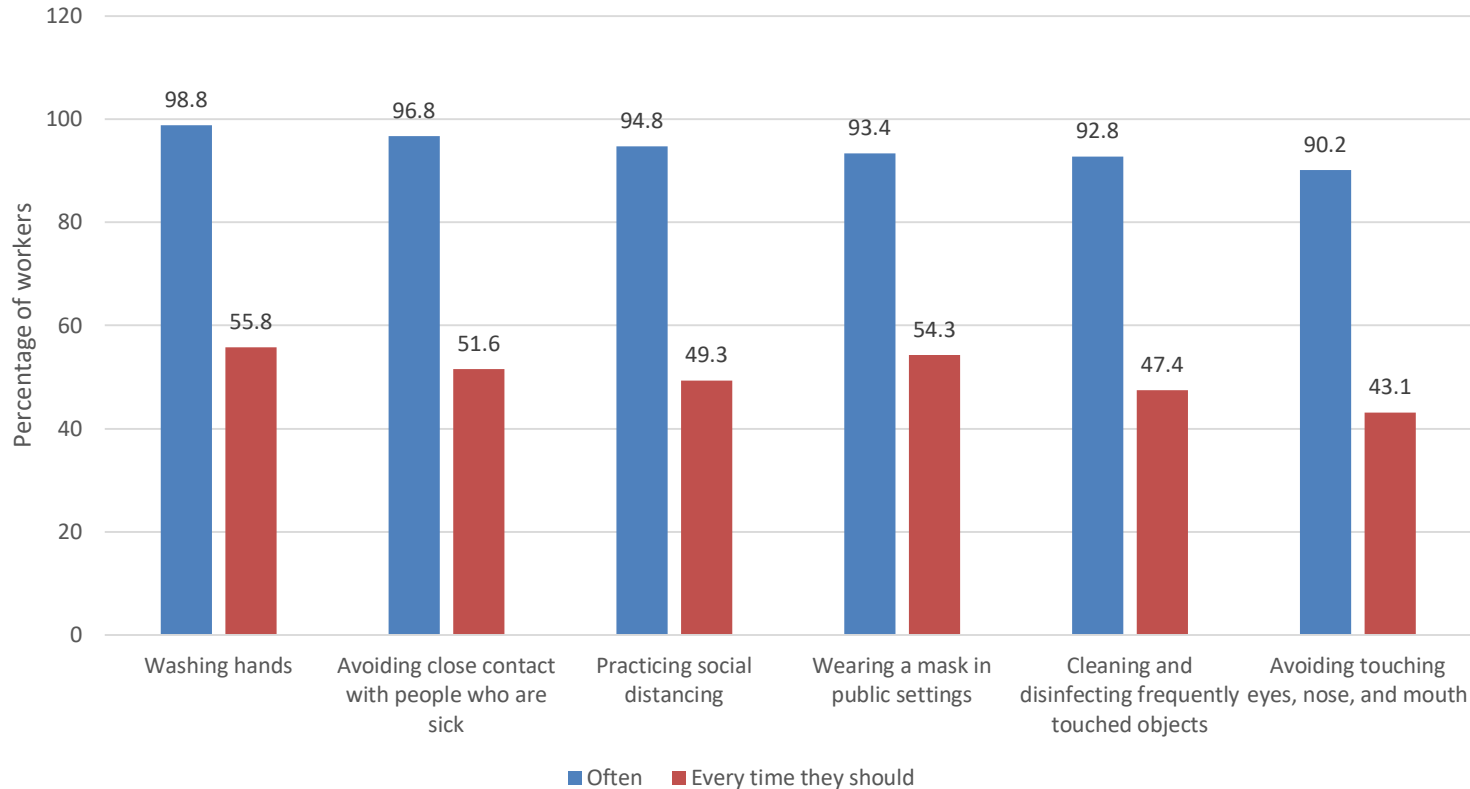
Workers concerns related to COVID-19's effect on their life



NOTE: Percentages reported represent workers who responded 'worried' or 'extremely worried' to each concern



Preventive strategies used by workers outside of work



NOTE: "Often" includes the responses "most of the time" and "every time that I should"

Only about half of workers were engaging in preventative strategies outside of work every time they should.



Protecting yourself from COVID-19 at work and outside of work (Educational flyer for workers)

Available in English, Spanish, Arabic, French, and Vietnamese

<https://www.unmc.edu/healthsecurity/education/programs/covid-19-training.html>

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Protecting yourself from COVID-19 at work





Use a face mask at all times

- Avoid touching the front of the mask and don't push the mask down under your chin and let it hang around your neck
- Take off the mask carefully during lunch to eat. Remove by the ear loops and place on a paper towel with the outside of mask facing down
- Change your mask everyday and it may need to be changed more frequently if it gets dirty or wet



Wash or disinfect your hands

- Wash your hands for 20-30 seconds
- Before putting on your mask and after taking it off
- Before you eat
- After you take off your gloves or use the restroom



Avoid touching your face

- Avoid touching your eyes, nose, and mouth
- Use the inside of your elbow or a tissue when you cough or sneeze



Follow social distancing rules

- Follow the flow of traffic through the plant like in the hallways and in the cafeteria
- Avoid getting together in large groups (e.g., during the screening process when entering the plant or in the locker rooms)




Know your employer's policies

- Will I be informed if a coworker near me tests positive for COVID-19?
- Will I be paid if I get sick or need to be quarantined at home?
- If I am sick, when can I return to work?

Obtain information from reliable sources like the CDC, www.cdc.gov and the WHO www.who.int

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Protecting yourself from COVID-19 outside of work




Avoid carpooling if possible

- Limit the number of people in the vehicle
- Make sure that there is adequate space between people in the vehicle
- Use a mask at all times when there are other people in the vehicle
- Improve air flow in the car by opening the window or placing air conditioning on non-recirculation mode




Follow social distancing rules

- Maintain 6-foot of distance between you and other people in public places
- Avoid visiting family members and friends in their homes
- Limit grocery shopping and other errands to once a week



Wash your hands and disinfect common areas in the house

- Wash your hands using soap and water or an alcohol-based hand sanitizer with at least 60% alcohol
- Clean and disinfect frequently touched objects and surfaces in the house



If someone in your home is sick, practice everyday preventive actions

- Keep the ill person in a separate room away from others in the household
- Follow recommended precautions and monitor your own health
- Keep surfaces disinfected
- Avoid sharing personal items
- Stay informed about what is happening in your community

Know the symptoms

Symptoms may appear 2-14 days after exposure to the virus. If someone has some or all of the following symptoms, they may have COVID-19:

- Cough
- Shortness of breath or difficulty breathing
- Fever or chills
- Repeated shaking with chills
- Muscle pain
- Headache or sore throat
- New loss of taste or smell

What should I do if I have symptoms of COVID-19?

- Stay home and away from others in the house
- Notify your work if your schedule needs to change
- Call your local public health department, your doctor, or a clinic or get in touch with a community health worker
- Find a testing site and get tested

Obtain information from reliable sources like the CDC, www.cdc.gov and the WHO www.who.int



Discussion

The majority of workers in our study believed that they were at high risk for contracting COVID-19 and were looking for the employer to take the lead in protecting and promoting their health; however, there was a pervasive belief that companies put production ahead of workers' well-being.

Workers noted that some changes had been made in their work environment, but there was still ample opportunity to enhance COVID-19 information dissemination and management based on the guidance provided in the *UNMC Meat Processing Facility COVID-19 Playbook* and through CDC/OSHA guidance.

Workers wanted more transparency. They wanted to know how the plants were working to reduce possible transmission and the number of positive cases among workers in the plant.

Workers were worried about bringing the virus home to their families and ensuring their financial sustainability during these difficult times. More community education and support are needed to mitigate these fears, promote preventive strategies, and assist in case there are temporary closures of plants.

Reducing and stopping the spread of COVID-19 is both a work and a community concern.



Recommendations

1. Provide culturally and linguistically appropriate information on COVID-19 transmission (especially asymptomatic spread), health risks, and preventive strategies in the plant
2. Provide paid sick leave benefits to workers for COVID-19 related concerns
3. Communicate COVID-19-related updates, policies, and procedures clearly and consistently to all levels of the organization
4. Ensure that supervisors lead by example and promote the health and well-being of their team members
5. Provide workers with a mask at the start of each shift and make additional masks available to workers as needed throughout the shift
6. Enhance training opportunities for workers (e.g., proper mask use and care; sanitation guidelines; return to work procedures)
7. Inform workers about the contact tracing process within the plant and improve transparency on the number of positive cases in the workplace
8. Ensure appropriate social distancing strategies within the plant (e.g., locker rooms, cafeterias, hallways, and restrooms) and stagger breaks
9. Adhere to the *Meatpacking Industry Workers Bill of Rights*:
<https://dol.nebraska.gov/LaborStandards/WorkerRights/MeatpackersBOR>
10. Partner with public health departments and community organizations to foster culturally and linguistically appropriate COVID-19 outreach and education on preventive strategies outside the workplace
11. Establish a consortium of community resources to assist workers and their families in case there are temporary closures or reductions in force.



Acknowledgements

Special thanks to the workers who participated in this study. We thank them for their time and hope that their perspectives will be used to tailor educational resources to reduce the transmission and disparities associated with COVID-19 as well as to improve health and safety conditions in the meatpacking industry.

We would also like to acknowledge the following organizations for their partnership and assistance in disseminating the survey: Heartland Workers Center, Latino Center of the Midlands, Nebraska Appleseed, Nebraska Migrant Education Program, Rural Community Workers' Alliance, and the Central States Center for Agricultural Safety and Health. We know that there were many others that assisted and shared the survey, and we appreciate their help as well.

Finally, thanks to the UNMC Global Center for Health Security team for their leadership in promoting best practices in infection control in meatpacking plants across Nebraska and for the recommendations in developing this survey and related educational materials.



Questions?



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APPENDIX N

Nebraska Workers, Their Families, and Our Communities Need Safe Meat and Poultry Plants

Kathleen Grant MD, Kelly Tadeo-Orbik, Eric Reeder

Dr. Grant and Ms. Tadeo Orbik are leaders of the Immigration and Refugee Action Team of Omaha Together One Community (OTOC), a faith-based organization of 25 congregations and community groups. Mr. Reeder is the President of the United Food and Commercial Workers International Union (UFCW) Local 293.

Nebraska is known for our cattle production and steaks. Unfortunately, Nebraska is now also known as a leader in COVID-19, with hotspots in Nebraska closely aligned with communities with enormous meatpacking plants. Recently designated as a part of the critical infrastructure during this pandemic, Nebraska's farmers, ranchers, and meat and poultry workers feed our nation and the world. The *New York Times* reported on 4.26.2020 that Grand Island, Nebraska, had the highest average daily growth rate of COVID-19 deaths in the U.S. (43% with deaths doubling every 1.9 days). It ranked second in the U.S. in the rate of new cases over the past two weeks (7.84/1,000) and sixth in the rate of cumulative confirmed cases (9.48 per 1,000). The *Omaha World-Herald* (4.27.2020) reported that the Central Health District, which includes Grand Island, recorded 931 cases and 25 deaths in its three-county area. Dakota County, with a population of only 20,000, has over 600 cases, with an infection rate 40 times greater than Douglas County (*Omaha World-Herald*, 4.28.2020). What do Grand Island and Dakota County have in common? They are home to enormous meatpacking plants.

Conditions in meatpacking plants are ripe for disease transmission. Plants are considered models of efficiency with workers literally working elbow-to-elbow facing

each other across rapidly moving conveyor belts (“lines”). These working conditions continued at meatpacking plants owned by JBS USA, Tyson Foods, and Smithfield Foods long after federal guidelines on personal protective equipment and social distancing were disseminated on March 9th. (*Washington Post*, 4.26.2020)

A coalition of Nebraska’s faith and labor leaders, legal, Latino, and rural groups and, most importantly, plant workers and their families are alarmed that workers in these meat processing plants are literally risking their lives when they go to work. A *Washington Post* article (4.26.2020) reported on a JBS plant in Greeley, Colorado, in which an employee was told to continue working after becoming ill. He was ultimately hospitalized with coronavirus infection. Prior to his hospitalization, he remained at work exposing hundreds “of fellow workers to the coronavirus because he touched their gear and their hands as he distributed work equipment.” In a recent conference call, a family member told a similar story of a JBS plant in Nebraska. The worker was afraid to identify himself publicly, but his sister said that plant workers had been told that they were expected to report for work when sick, even when sick with COVID-19, because “it wasn’t that bad.”

Omaha Together One Community (OTOC) and the United Food and Commercial Workers International Union are calling on Governor Ricketts and state industry leaders to ensure that packing plant workers, among Nebraska’s essential workers, remain safe by requiring essential protections: 6-foot spacing of workers, personal protective equipment, increased cleaning, and inspections. Workers must also be given the following benefits to ensure healthy communities: paid sick leave to minimize spread and care for affected family members, job protection, shut-down pay, and transparency.

Given the President's recent Executive Order requiring meatpacking plants to stay open, it is imperative that Governor Ricketts ensure plants remain open by protecting workers who make up this critical infrastructure. Plants must protect workers in order to keep our food supply chain open. We know that the virus does not respond to orders; it is only slowed by protections such as social distancing and PPE. Governor Ricketts should continue to listen to workers and families by inviting their voices into his discussions on measures to ensure plant safety.

Governor Ricketts has said, "we need to do everything we can to make sure these food processors stay open" (*Omaha World-Herald* 4.24.2020). While we are aware that a few plants are modifying some procedures to enhance safety, all these protections need to be immediately and uniformly implemented across the state. These measures would increase the likelihood that plants can remain open and a critical part of our nation's food supply chain can remain intact.

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Thank You!

Your Safety and Health Hazard Notice has been forwarded to the OSHA Federal Area Office listed below.

If you identified yourself, you will be contacted by OSHA.

Please call the OSHA Federal Area Office below if you are not contacted.

Complaint Number: 32080722

Nebraska

Omaha Area Office
444 Regency Parkway Drive, Suite 303
Omaha, Nebraska 68114
(402) 553-0171
(402) 551-1288 FAX
(800) 642-8963 Toll Free - Nebraska Only

Establishment Name: Smithfield Foods
Site Street: 2223 Industrial Road
Site City: Crete
Site State: Nebraska
Site Zip: 68333

Management Official: 
Telephone Number: 
Type of Business: Meatpacking plant

Hazard Description:

Imminent Hazards: \hat{z} As of May 6, 2020, there were 139 employees of Smithfield testing positive for COVID-19. \hat{z} Workers report sweating through their face masks onto the meat as it goes down the assembly line. \hat{z} Workers working across from each other only have the conveyor belt separating them, leaving workers less than 6 feet apart from each other. \hat{z} The plastic barriers that have been provided between workers are moveable and the employer is not enforcing that they be fixed or remain in place. \hat{z} The majority of the workers are required to change before entering the floor and are left using crowded locker rooms due to the company's failure in implementing proper spacing. The locker room's current barriers do not allow for proper spacing; they are less than 6 feet. \hat{z} Due to the company's failure to enforce proper distancing and staggering meal times, the only cafeteria in the company for the majority of workers is crowded at meal time. \hat{z} Company is not enforcing proper distancing at shift changes while conducting temperature checks. \hat{z} Workers are not informed that they have been exposed to another worker testing positive for COVID-19.

Hazard Location:

The Smithfield Foods plant at 2223 Industrial Road, Crete, NE 68333.

This condition has previously been brought to the attention of:

* NO ONE

I am Other: Family member of workers

Do NOT reveal my name to my employer.

Complainant Name:

[REDACTED]

[NOT SIGNED]

(Complainant did not check the electronic signature checkbox to indicate this submission shall be considered as having an authorized written signature.)

Complainant Telephone Number:

[REDACTED]

Complainant Mailing Address:

[REDACTED]

Crete

Nebraska

68333

Complainant Email:

[REDACTED]

UNITED STATES
DEPARTMENT OF LABOR

Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210
☎ 800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
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Disaster Recovery Assistance
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