

Why You Need to Pay Attention to How the Feds Are Approaching the Meat and Poultry Processing Industry

Labor & Employment Law Update

By Beverly Alfon on April 28, 2020

While most employers do not take issue with CDC and OSHA recommendations related to hand washing, sanitizing, personal protective equipment (PPE), or even employee screening – the social distancing aspect of these guidelines often provoke the greatest resistance from manufacturing employers: “We’re just not set up to operate that way.”

Over the last few weeks, we have all seen the headlines regarding Smithfield, JBS, and Tyson. The meat processing plants have become alleged hot beds for COVID-19, leading to plant closures. Last week, Smithfield workers sued the company alleging that the company “in direct contravention of CDC guidelines,” provides insufficient personal protective equipment, forces workers to work shoulder to shoulder, and schedules their working time and breaks in a manner that forces workers to be crowded into cramped hallways and restrooms. Last week, Tyson Foods also closed its Waterloo plant in the face of a significant COVID-19 outbreak among its workers and an OSHA complaint filed by Iowa lawmakers. According to a USA Today article published a week ago, the outbreaks have caused the closure of 17 U.S. facilities, including a Smithfield pork plant in South Dakota that handles 5% of U.S pork production.

In response, the CDC and OSHA issued joint agency guidance for Meat and Poultry Processing Workers and Employers on April 26. The agencies identified “distinctive” factors that increase workers’ risk for exposure to COVID-19 in these workplaces:

- Distance between workers – workers often work close to one another on processing lines. Workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker/changing rooms.
- Duration of contact – workers often have prolonged closeness to coworkers (e.g., for 10-12 hours per shift). Continued contact with potentially infectious individuals increases the risk of SARS-CoV-2 transmission.

- Type of contact –workers may be exposed to the infectious virus through respiratory droplets in the air – for example, when workers in the plant who have the virus cough or sneeze. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances/exits to the facility may contribute to their risk.
- A common practice at some workplaces of sharing transportation such as ride-share vans or shuttle vehicles, car-pools, and public transportation
- Frequent contact with fellow workers in community settings in areas where there is ongoing community transmission.

However, these factors do *not* appear to be so distinct to the meat and poultry processing industry. Some or many of these conditions likely exist in any number of manufacturing operations. Notably, these factors are all focused on a lack of physical distance between workers.

The events occurring within the meat and poultry processing industry should be a cautionary tale to all manufacturing employers who recognize any of the above factors within their operations and workforce. While some of these recommendations may require herculean efforts during this time of overstretched resources, some consideration should be given to the potential costs of a COVID-19 outbreak among employees, OSHA investigation, production shutdown, and litigation aimed at enforcing these non-mandatory guidelines.

Breaking news: Just hours ago, President Trump indicated that he intends to use the Defense Production Act issue to order meat and poultry (and likely other types of food) processing plants to remain open as the country is starting to see food-supply disruptions from the COVID-19 outbreak. This comes on the heels of the declaration from Tyson Foods Chairman John Tyson that the U.S food supply chain “is breaking.” President Trump has indicated that the executive order will “solve any liability problems,” so as to shield meat plants from legal liability if they are sued by employees who contract COVID-19 while on the job. Media reports also indicate that the executive order will include provisions for additional protective gear for employees, guidance, and virus testing capacity. This is a developing matter and we will continue to monitor it.

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