

Congress of the United States
Washington, DC 20510

January 31, 2018

Hon. R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Dear Secretary Acosta:

We write to bring to your attention a recent Government Accountability Office (“GAO”) report (“the Report”) on safety and health issues facing workers at meat and poultry plants and the Occupational Safety and Health Administration’s (OSHA) troubling response to its recommendations.¹ By rejecting GAO recommendations that could prevent bad actors from placing workers’ health and safety at risk, we fear that OSHA is abandoning its core mission to “assure so far as possible every working man and woman in the Nation safe and healthful working conditions.”²

Among its findings, GAO reported that workers at many plants have trouble accessing the bathroom when they need it, going so far as to shun eating or drinking during their shifts to avoid reprimand from their supervisors for stepping off the production line.³ GAO conducted interviews with workers in “five states who said their requests to use the bathroom are often delayed or denied” and with workers “in three states [who] said they had suffered negative health effects, such as kidney problems, from delayed or denied bathroom breaks.”⁴

Despite this, OSHA officials told GAO that “they [do] not believe lack of bathroom access [is] a widespread problem in the meat and poultry industry.”⁵ Although the report recommends that OSHA inspectors ask workers specifically about bathroom access and increase their use of off-site interviews to alleviate worker fears of retribution for talking to OSHA inspectors at the worksite, OSHA declined these recommendations in its response to the report.⁶

¹ See U.S. Gov’t Accountability Off., GAO-18-12, Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed to Help Protect Workers at Meat and Poultry Plants (2017), available at <http://www.gao.gov/assets/690/688294.pdf>.

² 29 U.S.C. § 651(b).

³ See GAO-18-12, supra note 1, at 27; see also Rebecca A. Schleifer, Book Review: Void Where Prohibited: Rest Breaks and the Right to Urinate on Company Time, 2:3 U. PA. J. LAB. & EMP. L. 603, 604 (2000) (“Many workers, such as assembly line workers . . . have thus resorted to relieving themselves into adult diapers [or] the shop floor . . . Others refrain from drinking and from voiding during the workday, inviting a host of physiological problems . . .”).

⁴ GAO-18-12, supra note 1, at 27.

⁵ Id. at 28.

⁶ See id. at 61.

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Specifically, on October 5, 2017, OSHA responded:

“GAO’s recommendation to conduct additional offsite interviews . . . is challenging in terms of witness cooperation, resources, and Compliance Safety and Health Officers (CSHO) safety. Moreover, each inspection requires a flexible approach to address unique workplace hazards. OSHA cannot commit to routinely asking about bathroom access during each inspection at a meat or poultry processing facility.”⁷

It has been a longstanding OSHA practice, in both Republican and Democratic administrations, to conduct offsite interviews when workers fear retaliation for cooperating with OSHA inspectors at the worksite. Indeed, OSHA’s Field Operations Manual provides, “[a] free and open exchange of information between CSHOs and employees is essential to an effective inspection. Interviews provide an opportunity for employees to supply valuable factual information concerning hazardous conditions . . .” and “interviews may be conducted at locations other than the workplace.”⁸

For over twenty years, OSHA has known that bathroom access is an occupational health hazard in meat and poultry plants: the first citations for lack of bathroom access were issued to a poultry plant in the late 1990s.⁹ Further, OSHA has a regional emphasis program for the poultry processing industry in Regions IV and VI, which includes “assess[ing] the adequacy of toilet and sanitary facilities, and worker access to them” as part of the program.¹⁰ Logic dictates that the only effective method to ascertain whether that particular hazard exists is to ask workers. The GAO report confirms that in the 21st century, workers in meat and poultry plants continue to suffer from kidney issues and other health hazards as a result of being denied their legal right to use the bathroom.¹¹ This can include “a host of physiological problems such as urinary tract infections, perinatal complications, and, in extreme cases, renal damage.”¹²

Given OSHA’s statutory mandate to assure safe workplaces so far as possible, it is imperative that OSHA adopt these two commonsense measures: asking workers about bathroom access and conducting offsite interviews. This could help prevent injury and illness among particularly vulnerable workers.

Further, we urge OSHA to review a recent *Bloomberg Businessweek* investigation confirming what GAO has reported and OSHA has recognized: sanitation workers at meat and poultry

⁷ *Id.*

⁸ Field Operations Manual at 3-17, Occupational Safety and Health Administration (Aug. 2, 2016) available at https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-160.pdf (emphasis added).

⁹ See Rebecca A. Schleifer, supra note 6, at 604 n.7.; Maggie Jackson, Relief on the way for workers who need to use the bathroom, THE GETTYSBURG TIMES, March 13, 1998, at 6.

¹⁰ See OSHA Regional Notice: Regional Emphasis Program (REP) for Poultry Processing Facilities CPL 18/09 (CPL 04) at 14, Occupational Safety and Health Administration (Oct. 30, 2017) available at https://www.osha.gov/dep/leps/RegionIV/reg4_fy2018_CPL-18-09_poultry.pdf; OSHA Regional Notice: Regional Emphasis Programs for Poultry Processing Facilities CPL 02-02-030 at 12, Occupational Safety and Health Administration (Oct. 1, 2016) available at https://www.osha.gov/dep/leps/RegionVI/reg6_fy2018_poultry_CPL-2-02-00-030.pdf.

¹¹ See GAO-18-12, supra note 1, at 27.

¹² See Rebecca A. Schleifer, supra note 3, at 604.

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plants, who are often furnished by labor suppliers and not employed directly by the plants, face egregious safety and health hazards in cleaning and disinfecting meat and poultry plants.¹³

Businessweek's investigation found that from January 2015 through September 2016, one of the sanitation companies - Packers Sanitation Services - had the 14th highest number of severe injuries (defined as an amputation, hospitalization, or the loss of an eye) among the 14,000 companies tracked by OSHA in 29 states.¹⁴ Its amputation rate of 9.4 dismemberments per 10,000 workers was almost five times higher than for U.S. manufacturing workers as a whole in 2015.¹⁵

Accordingly, we respectfully request that you address the following questions, and provide a response by February 9, 2018:

1. Will you commit that, when evidence suggests off-site interviews would be useful to secure witness cooperation or prevent retaliation, CSHOs will be required to offer workers the opportunity to conduct such interviews offsite, subject to interviewees' agreement?
2. Why did OSHA reject GAO's recommendation to specifically ask about bathroom access during inspections, given GAO's findings on meat and poultry workers' limited access to bathrooms and OSHA's inclusion of toilet access as an issue in its Regional Emphasis Programs for poultry plants? In your response, please inform us if the agency has reconsidered its position. If OSHA has not reconsidered its stance, then please explain how the rejection of this recommendation does not undermine the purposes of the Occupational Safety and Health Act?
3. Beyond inspections following a severe injury, what specific actions is OSHA taking to address elevated injury rates experienced by sanitation workers at meat and poultry plants?
4. Many sanitation workers at meat and poultry plants work exclusively on "graveyard" shifts. Will OSHA conduct nighttime programmed inspections (as the Mine Safety and Health Administration routinely does) to assure safe and healthful working conditions for night-shift sanitation workers? Or will OSHA limit its programmed inspections to routine business

¹³ See Peter Waldman and Kartikay Mehrotra, *America's Worst Graveyard Shift is Grinding Up Workers*, BLOOMBERG BUSINESSWEEK (Dec. 29, 2017) available at <https://www.bloomberg.com/news/features/2017-12-29/america-s-worst-graveyard-shift-is-grinding-up-workers>; OSHA Regional Notice: Regional Emphasis Program (REP) for Poultry Processing Facilities CPL 18/09 (CPL 04) at 3, Occupational Safety and Health Administration (Oct. 30, 2017) (emphasis added) available at https://www.osha.gov/dep/leps/RegionIV/reg4_fy2018_CPL-18-09_poultry.pdf ("workers in the sanitation operations in poultry processing facilities (usually during the late shift) are tasked with one of the most hazardous jobs at establishments that manufacture food and are an integral part of poultry processing . . . Sanitation crews are potentially exposed to a variety of hazards including: amputation hazards; cuts and lacerations; struck-by, struck against, and caught in equipment; slips, trips, and falls; electrical shock; and biological and chemical hazards."); U.S. Gov't Accountability Off., GAO-16-337, *Workplace Safety and Health: Additional Data Needed to Address Continued Hazards in the Meat and Poultry Industry* (2016), available at <https://www.gao.gov/assets/680/676796.pdf>.

¹⁴ See Waldman & Mehrotra, *supra* note 13.

¹⁵ See *id.*

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hours? If OSHA will not conduct nighttime programmed inspections, please provide a full explanation for that decision.

If you have any questions about this request, please do not hesitate to contact our staff at [John DElia@help.senate.gov](mailto:John_DElia@help.senate.gov), Christine.Godinez@mail.house.gov, [Larry Smar@help.senate.gov](mailto:Larry_Smar@help.senate.gov), and Elizabeth.Albertine@mail.house.gov. We look forward to hearing from you.

Sincerely,



PATTY MURRAY

Ranking Member

Senate Committee on Health, Education,
Labor & Pensions



ROBERT C. "BOBBY" SCOTT

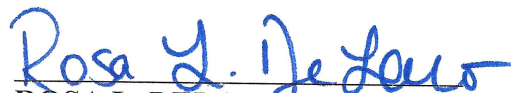
Ranking Member

House Committee on Education and the
Workforce



ROBERT P. CASEY, JR.

U.S. Senator



ROSA L. DELAURO

Ranking Member

Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
House Committee on Appropriations

Cc: Loren Sweatt
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