

# United States Senate

WASHINGTON, DC

September 29, 2020

The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, D.C. 20210

Dear Secretary Scalia:

We write to express our ongoing dismay that the Trump Administration, and the Department of Labor (DOL) under your leadership, continues to minimize the importance of worker safety during the COVID-19 pandemic. The fines DOL recently imposed on employers for failing to protect their workers from COVID-19 were inadequate and suggest your Department does not fully appreciate the life or death impact of strong enforcement of worker safety standards. The Occupational Safety and Health Administration's (OSHA) mission is "to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual process improvement in safety and health." We urge you to follow your mission to assure worker safety and health and take immediate, strong action to protect workers from COVID-19 exposure, illness, and death on the job.

As we have noted in previous correspondence with you, OSHA should issue an Emergency Temporary Standard (ETS) requiring employers to develop and implement a comprehensive plan to protect workers during the COVID-19 pandemic. An ETS would establish an explicit, uniform, enforceable standard for COVID-19 worker safety. Instead of taking this common sense step in response to a public health crisis that has claimed over 200,000 American lives, DOL has relied instead on voluntary compliance with voluntary guidance. Your refusal to issue an ETS has undoubtedly exposed more workers to the coronavirus and continues to put their health and safety at risk.

The number of complaints DOL receives from individuals who are concerned about their workplace safety is a good indicator of workers' ongoing COVID-19 risks on the job. As of September 27<sup>th</sup>, OSHA headquarters had received 9,076 complaints from workers about unsafe workplaces.<sup>1</sup> State-level OSHA offices had received 27,925 complaints. According to your Department's data, federal OSHA opened an inspection in response to only 11.7 percent of the complaints received; however, it is unclear how many of these so-called "inspections" involved an on-site facility inspection, which is critically important to enforcing the law. The vast

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<sup>1</sup> Occupational Safety and Health Administration, "COVID-19 Response Summary," Updated September 22, 2020. Retrieved from: <https://www.osha.gov/enforcement/covid-19-data>

majority of complaints never received an inspection, and more than 90 percent of all of the complaints have already been closed.<sup>2</sup>

OSHA's procedures require an on-site inspection to be conducted in response to a formal complaint that includes a report of a violation of the law that exposes employees to physical harm or that an imminent danger of death or serious injury exists.<sup>3</sup> It is clear, however, that these procedures are not being followed based on your disclosure that many formal complaints resulted in just a letter to the employer and some inspections are done remotely. Further, OSHA is failing to follow its procedures because the agency is not responding with an onsite inspection following reports of COVID-19-related fatalities. A remote inspection cannot effectively identify imminent danger or physical harm that workers face on the job. Despite our requests, you have refused to provide details on the number of inspections that have included on-site inspections, which is the best way to uncover all the workplace risks workers face. We worry that number is very small given DOL's record to date of minimizing worker safety during the COVID-19 pandemic.

After months of delayed safety guidance and taking no enforcement action, OSHA's website indicates that citations and fines have been issued against only seven employers that did not protect their workers from COVID-19, and five of them were issued just in the last three weeks. The citations and fines were wholly inadequate and may even create incentives for employers to "make these workers work faster and harder in the most unsafe working conditions imaginable."<sup>4</sup> For example, Smithfield Package Meat Corp., a \$15 billion company, received a \$13,494 fine after OSHA found that 1,300 workers contracted and four died from COVID-19 at the Sioux Falls, South Dakota, facility.<sup>5</sup> The fine amounted to approximately \$10 for each worker who contracted the virus. JBS Foods, Inc., another multi-billion dollar company, was fined \$15,615 after hundreds of workers were infected with and seven died from COVID-19 at the Greeley, Colorado plant.<sup>6</sup> As an affected relative told reporters, the fine for JBS was less than it will cost a family to hold a funeral for one of the deceased workers.<sup>7</sup> The Greeley JBS plant and the Sioux Falls Smithfield facility were not the companies' only facilities to experience COVID-19 outbreaks. Five other plants owned by JBS have experienced COVID-19 outbreaks among their workers,<sup>8</sup> and at least three other Smithfield facilities experienced high COVID-19 infection

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<sup>2</sup> Ibid.

<sup>3</sup> Occupational Safety and Health Administration, "Field Operations Manual," CPL-02-00-164, April 14, 2020. Retrieved from: <https://www.osha.gov/enforcement/directives/cpl-02-00-164>

<sup>4</sup> The Washington Post, "More than 200 meat plant workers in the U.S. have died of covid-19. Federal regulators just issued two modest fines." Kimberly Kindy, September 13, 2020. Retrieved from: [https://www.washingtonpost.com/national/osha-covid-meat-plant-fines/2020/09/13/1dca3e14-f395-11ea-bc45-e5d48ab44b9f\\_story.html](https://www.washingtonpost.com/national/osha-covid-meat-plant-fines/2020/09/13/1dca3e14-f395-11ea-bc45-e5d48ab44b9f_story.html)

<sup>5</sup> Occupational Safety and Health Administration, "U.S. Department of Labor Cites Smithfield Packaged Meats Corp. For Failing To Protect Employees From Coronavirus," Press Release, September 10, 2020. Retrieved from: <https://www.dol.gov/newsroom/releases/osha/osha20200910>

<sup>6</sup> Occupational Safety and Health Administration, "U.S. Department of Labor Cites JBS Foods Inc. For Failing To Protect Employees From Exposure To The Coronavirus," Press Release September 11, 2020. Retrieved from: <https://www.dol.gov/newsroom/releases/osha/osha20200911-1>

<sup>7</sup> The Associated Press "Workers protest \$15,000 COVID-19 fine issued to JBS meat plant in Greeley," Patty Nieberg, September 16, 2020. Retrieved from: <https://apnews.com/f46d59db7b8d45898e975510cdd0ae0a>

<sup>8</sup> Mother Jones, "'The Workers Are Being Sacrificed,' As Cases Mounted, Meatpacker JBS Kept People on Crowded Factory Floors," May 1, 2020. Retrieved from: <https://www.motherjones.com/food/2020/05/meatpacking-coronavirus-workers-factory-jbs-tyson-smithfield-covid-crisis-sacrifice-outbreaks-beef/>

rates, including some that were forced to temporarily close earlier this year.<sup>9</sup> OSHA's enforcement actions did not reflect the companies' repeated failures to protect their workers.

OSHA's press releases announcing these COVID-19 citations claim that the fines imposed were the maximum allowable under the law, but that appears to be simply untrue. OSHA had the option to issue multiple citations for each area of the facilities where proper precautions were not implemented, which would have multiplied the total fine amount per company. In addition, OSHA elected to treat each citation as serious, instead of willful or egregious, which would have allowed for fines up to \$134,937 to be levied.<sup>10</sup> In fact, your Department chose not to impose the maximum penalty allowable under the law. Instead, by issuing unconscionably small fines in response to worker fatalities, the Trump Administration made clear it will continue to put the priorities of businesses before the safety and health of workers and allow companies to endanger their workers' lives with impunity.

American workers deserve to know the extent to which DOL is making worker safety a priority. To ensure the American public has a full understanding of DOL's approach to worker safety during the COVID-19 pandemic, we ask you to provide the information requested below by October 16.

- 1) Please indicate how many phone/fax investigations OSHA has conducted in response to COVID-19 complaints from workers. Was the complainant's permission obtained in each instance in which a fax/phone investigation was conducted?
- 2) Please indicate how many meatpacking and poultry workplaces where phone/fax investigations were conducted faced COVID-19 outbreaks following the failure of OSHA to conduct an on-site inspection.
- 3) Please provide the total number of on-site inspections that OSHA has completed in response to receiving a formal complaint regarding COVID-19 workplace safety. Please provide the number of complaints referred by a whistle blower investigator that have received on-site inspections. In addition, please provide the total number of formal complaints that have not received on-site inspections.
- 4) Please provide a justification for OSHA's decision to allow remote inspections in response to formal complaints in contravention of OSHA's guidance. Please include any copies of decision memos related to this decision and the date on which it was made.
- 5) Please provide the total number of remote inspections that OSHA has completed related to COVID-19 safety complaints. Please also provide the complete list of facilities for which OSHA has conducted a remote inspection.
- 6) Please provide a detailed accounting for the procedures followed during a remote inspection, including but not limited to how they are conducted and what evidence is collected by OSHA inspectors.
- 7) Please indicate whether OSHA has given any employer, including those named in the citations issued September 10<sup>th</sup> and 11<sup>th</sup>, advance notice about an on-site or remote

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<sup>9</sup> KABC, "Outbreak of COVID-19 cases reported at Farmer John meat processing facility in Vernon," May 24, 2020. Retrieved from: <https://abc7.com/farmer-john-plant-vernon-coronavirus-outbreak-smithfield-foods/6207742/> See also: WRAL, "Nearly 1,000 meat plant workers test positive for COVID-19," Joe Fisher, May 6, 2020. Retrieved from: <https://www.wral.com/coronavirus/nearly-1-000-meat-plant-workers-test-positive-for-covid-19/19087777/> See also: Channel 3000, "Smithfield Foods closing Cudahy plant after employees test positive for COVID-19," Maija Inveiss, April 16, 2020. Retrieved from: <https://www.channel3000.com/smithfield-foods-closing-cudahy-plant-after-employees-test-positive-for-covid-19/>

<sup>10</sup> Occupational Safety and Health Administration, "2020 Annual Adjustments to OSHA Civil Penalties," Patrick J. Kapust, Acting Director, Directorate of Enforcement Programs, January 10, 2020. Retrieved from: <https://www.osha.gov/sites/default/files/2020-01/20200110124448588.pdf>

inspection related to a COVID-19 complaint. In addition, please confirm that the Secretary of Labor is the only DOL official that can legally approve providing employers advanced notice of an OSHA inspection.

- 8) OSHA's press releases about the citations issued on September 10<sup>th</sup> and 11<sup>th</sup> indicate that the fines issued were the maximum allowable under the law. Please point to the citation in U.S. statute or provide a legal explanation why issuing a willful violation, which carries a higher fine maximum, was not allowable under the law.
- 9) Please explain why OSHA decided not to issue multiple citations against Smithfield Packaged Meat Corp. and JBS Foods Inc. for each area in the facilities in which the employers failed to protect their employees from COVID-19.
- 10) Please indicate whether DOL will post a copy of each OSHA citation related to COVID-19 on DOL's website in a manner that is easily accessible to the public. In addition, please indicate whether OSHA will commit to linking to the citation in any press release issued about the citation.

Worker safety during this pandemic is also family and community safety. By putting corporate profits before the safety and health of workers and the general public, the Trump Administration is endangering the lives of workers and contributing to the spread of COVID-19. We urge you to immediately issue an Emergency Temporary Standard for COVID-19 and fully enforce existing worker safety protections. The health of workers, their families, and their communities depend on it.

Sincerely,

[/s/Sherrod Brown](#)

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Sherrod Brown  
United States Senator

[/s/Tammy Baldwin](#)

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Tammy Baldwin  
United States Senator

[/s/Patty Murray](#)

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Patty Murray  
United States Senator

[/s/Tammy Duckworth](#)

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Tammy Duckworth  
United States Senator

[/s/Richard Blumenthal](#)

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Richard Blumenthal  
United States Senator

[/s/Kirsten Gillibrand](#)

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Kirsten Gillibrand  
United States Senator

[/s/Cory A. Booker](#)

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Cory A. Booker  
United States Senator

[/s/Richard J. Durbin](#)

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Richard J. Durbin  
United States Senator

[/s/Margaret Wood Hassan](#)

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Margaret Wood Hassan  
United States Senator

[/s/Elizabeth Warren](#)

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Elizabeth Warren  
United States Senator

[/s/Bernard Sanders](#)

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Bernard Sanders  
United States Senator

[/s/Benjamin L. Cardin](#)

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Benjamin L. Cardin  
United States Senator

[/s/Robert P. Casey, Jr.](#)

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Robert P. Casey, Jr.  
United States Senator

[/s/Robert Menendez](#)

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Robert Menendez  
United States Senator

[/s/Mazie K. Hirono](#)

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Mazie K. Hirono  
United States Senator

[/s/Jeffrey A. Merkley](#)

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Jeffrey A. Merkley  
United States Senator

[/s/Dianne Feinstein](#)

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Dianne Feinstein  
United States Senator

[/s/Sheldon Whitehouse](#)

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Sheldon Whitehouse  
United States Senator

[/s/Tim Kaine](#)

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Tim Kaine  
United States Senator

[/s/Chris Van Hollen](#)

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Chris Van Hollen  
United States Senator

[/s/Debbie Stabenow](#)

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Debbie Stabenow  
United States Senator

[/s/Jeanne Shaheen](#)

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Jeanne Shaheen  
United States Senator