

U.S. Department of Labor

Office of the Regional Solicitor
1835 Market Street, Mailstop SOL/22
Philadelphia, PA 19103-2968
(215) 861-5120



December 2, 2020

VIA ECF

The Honorable Malachy E. Mannion
U.S. District Court for the Middle
District of Pennsylvania
William J. Nealon Federal Building & U.S. Courthouse
235 N. Washington Avenue
Scranton, PA 18503

Re: *Jane Does v. Scalia*, Civil Action No. 3:20-1260

Dear Judge Mannion:

I write in regard to the above-captioned case on behalf of the government Defendants. This letter is to inform you that the Occupational Safety and Health Administration (OSHA) has concluded its investigation of Maid-Rite Specialty Foods, LLC (Maid-Rite), and will not be issuing a citation, meaning, that in its sound discretion, OSHA will not be instituting an enforcement proceeding pursuant to the Occupational Safety and Health Act against Maid-Rite as a result of its investigation.

OSHA has informed the complainants of its findings and their right to request informal review by letter dated December 2, 2020, a copy of which is attached hereto. OSHA has also sent Maid-Rite a hazard alert letter, encouraging the company to use best practices with regard to social distancing on its meat processing lines. A copy of that letter is attached as well.

Should the Court desire briefing on any impact of these developments on the pending motion to dismiss, Defendants would welcome the opportunity to submit a proposed briefing schedule.

Sincerely,

/s/ Oscar L. Hampton III
Regional Solicitor

Enclosures

cc: David H. Seligman, Esq. (with enclosures)

U.S. Department of Labor

Occupational Safety and Health Administration
Wilkes-Barre Area Office
The Stegmaier Building, Suite 410
7 North Wilkes-Barre Boulevard
Wilkes-Barre, PA 18702-5241
Phone: (570) 826-6538
Fax: (570) 821-4170



December 2, 2020

Alia Al-Khatib
990 Spring Garden St., Suite 300
Philadelphia, PA 19123

RE: OSHA Complaint No. 1592950

Dear Ms. Al-Khatib:

In response to your complaint concerning safety and/or health hazards at:

Maid-Rite Specialty Foods, LLC
105 Keystone Industrial Park
Dunmore, PA 18512

The Occupational Safety and Health Administration conducted an inspection there. The results of our investigation of your complaint items are as follows:

COMPLAINT NUMBER: 1592950

Item #1. The employer does not provide adequate PPE including facemasks. Employees were only provided two facemasks since March. They were required to supply their own.

Findings: The employer provides face coverings, disposable or cloth, to employees on a biweekly basis. At the start of the pandemic, the employer had a difficult time obtaining face coverings from suppliers. Thus, the employer provided two cloth face coverings to employees that could be washed and reused. And the employer allowed employees to use their own face coverings throughout the pandemic if they preferred. The employer also provides and requires employees to wear face shields to protect against COVID-19.

Item #2. The face shields fog and cause difficulty breathing on the line. It is difficult to see while trying to keep up with production.

Findings: The employer stated they had some problems with the face shields fogging. Employees agreed during employee interviews that the face shields tend to fog. The employer provided anti fog cleaner and allowed employees to slightly tilt out their face shields to allow for more airflow and to decrease fogging. No evidence was found that the face shields caused difficulty in breathing.

Item #3. The employer has not implemented adequate social distancing practices. Employees working on the production lines are in near proximity to each other (side by side and across from each other).

Employees utilizing restrooms during breaks and at the time clock cause congestion and lack of proper social distancing.

Findings: While employees working on the production lines are fewer than 6 feet from each other, they do wear face coverings and shields as described above. The employer installed partitions in the break room to allow for social distancing on lunches and breaks. The employer staggered shifts and breaks to allow for distancing at the time clocks. There are no visual cues for distancing near the time clocks. Please reference the December 2, 2020, hazard alert letter.

Item #4. There are a limited number of handwashing stations to disinfect employees' hands during the workday.

Findings: Prior to COVID-19, the employer had handwashing sinks in each department of the establishment. Every employee, when he or she enters his or her work area, is required to wash his or her hands thoroughly, walk to the glove area, use hand sanitizer, and then don gloves. This was a measure implemented for food safety prior to the pandemic and is standard procedure. During the pandemic, the employer installed additional hand sanitizer stations throughout the facility and in the break room so employees were able to sanitize in addition to their normal handwashing procedures.

Item #5. The employer refuses to slow the production line speed. The high line speed coupled with the face masks and face shields has caused employees to struggle breathing and a few to faint.

Findings: The production line speed varied throughout the pandemic based on supply of product. The product on the line also dictates the speed at which the line runs. When newer employees worked production lines, lines had to be slowed to allow the employee to get used to the new job function. As confirmed through employee interviews, there is no evidence to support that employees fainted due to face shields.

Item #6. The employer has not effectively separated ill employees from others in the work place. The employer has not notified workers of possible contact with co-workers who have tested positive with COVID-19.

Findings: The employer kept documentation to track employees impacted by COVID-19 as well as contact tracing with employees prior to testing positive, in accordance with CDC guidelines. The employer conducted tracing via video cameras to identify if and when employees came into contact with other employees. Employees who were affected were notified of exposure.

Item #7. The ill employees do not stay home because the employer incentivizes not missing work by paying a bonus.

Findings: The employer's incentive bonus required employees to work their regular work week, plus an additional full shift on Saturday to receive the incentive pay. Sick employees were instructed and encouraged to stay home or sent home due to onsite screening.

If you do not agree with our inspection results, you may contact me for a clarification of the matter. You

also have the right to an informal review by the OSHA Regional Administrator who may be contacted at the following location:

Michael J. Rivera, Regional Administrator
U.S. Department of Labor – OSHA
1835 Market Street
Mailstop OSHA-RO/19
Philadelphia, PA 19103-2968
(215) 861-4900

This review may be obtained by submitting a written statement of your position to the Regional Administrator. The Regional Administrator will then respond directly to you with their findings.

Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity. If you believe you are being treated differently or action is being taken against you because of your safety or health activity, you may file a complaint with OSHA. You should file this complaint as soon as possible, since OSHA normally can accept only those complaints filed within 30 days of the alleged discriminatory action.

Thank you for your concern for a safe and healthful workplace.

Respectfully,



SG
Susan Giguere
Acting Area Director

U.S. Department of Labor

Occupational Safety and Health Administration
Wilkes-Barre Area Office
The Stegmaier Building, Suite 410
7 North Wilkes-Barre Boulevard
Wilkes-Barre, PA 18702-5241
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Fax: (570) 821-4170



December 2, 2020

Mr. David Hollander
Director of Human Resources
Maid Rite Specialty Foods, LLC.
105 Keystone Industrial Park
Dunmore, PA 18512

RE: OSHA Inspection #1477025

Dear Mr. Hollander:

The Occupational Safety and Health Administration (OSHA) Wilkes-Barre Area Office conducted an inspection of your workplace, Maid Rite Specialty Foods, LLC, in Dunmore, Pennsylvania, on June 2, 2020 following a complaint. The workplace conditions raised concerns about the potential for employee illness related to SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), which is the virus causing coronavirus disease 2019 (COVID-19). The Occupational Safety and Health Administration (OSHA), regards COVID-19 as a serious health hazard. The purpose of this hazard alert letter is to bring your attention to this hazard and some methods that have been used to address it.

Employees were not social distancing in production areas, putting workers at risk for exposure to SARS-CoV-2.

We recognize that you have taken steps to reduce the spread of COVID-19 in your workplace. Based on information provided by you and others, these steps have included:

- Increasing sanitation to include high touch surfaces.
- Screening of employees and visitors for potential COVID-19 symptoms before they enter the workplace and encouraging sick employees to stay home.
- Providing handwashing and hand sanitizing stations within the facility and promoting their use.
- Providing facemasks and face shields and requiring their use.
- Training of employees on how to reduce the spread of COVID-19.
- Using physical barriers in the break room to separate employees from each other.
- Hiring a consultant to evaluate the facility for COVID-19 controls.
- Hiring a third party cleaning contractor to sanitize the establishment.
- Cohorting employees as much as possible on the same lines.
- Implementing a Pandemic Influenza Continuity of Operations Plan.

After reviewing relevant facts pertaining to this case, OSHA will not issue a citation to Maid Rite

Specialty Foods, LLC, Dunmore facility at this time, for failing to protect employees from exposure to SARS-CoV-2. However, improvements could be made to bolster your approach to protecting employees from SARS-CoV-2. OSHA recommends that you take the following precautions to materially reduce your employees' exposure to the conditions listed above:


Engineering and administrative controls should be the primary method for controlling exposure to COVID-19. This is consistent with good industrial hygiene practice and with OSHA's traditional adherence to a "hierarchy of controls." Under this hierarchy, engineering and administrative controls are preferred to personal protective equipment (PPE). Therefore, employers should always reassess their engineering controls (e.g., ventilation) and administrative controls (e.g., hand hygiene, social distancing, cleaning/disinfection of surfaces) to identify any changes to be made before relying on respirators and other PPE.

Some specific methods that may be used at your facility include:

- Installation of physical barriers in the production areas. During and after installation, effective communication to employees is necessary for employees to understand their purpose. This may include how the barriers work, how to set up and operate the barriers, and how to sanitize the barriers. Barriers that may be feasible in these areas include, but are not limited to, flexible plastic, strip curtains, plexiglass or similar materials, or other impermeable dividers or partitions, placed between employees via stanchions or hung, to separate employees adjacent and across from one another on production lines.
- Installation and enforcement of social distancing visual indicators on the floors and walls of the facility to emphasize that employees must remain at least 6 feet away from one another at all times. Enforcement and education of social distancing is imperative to reducing the spread and/or exposure to COVID-19.
- Reconfiguring the workstations to allow for social distancing in production areas by making the production lines of adequate length to distance the employees from each other.

Your interest in and support of the occupational safety and health of your employees is greatly appreciated. If you have any questions regarding these recommendations, please call the Wilkes-Barre Area Office at the above number.

Sincerely,


Susan Giguere
Acting Area Director

Resources:

- Website: www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers
- Website: www.osha.gov/coronavirus