



Governor Ralph Northam
Governor of Virginia
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M. Norman Oliver, MD, MA
State Health Commissioner
Virginia Department of Health
109 Governor Street
Richmond, VA 23219

Mark R. Herring
Office of the Attorney General
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C. Ray Davenport
Commissioner
DOLI
600 E. Main St, Suite 207
Richmond, Virginia 23219

Ronald L. Graham
VOSH Health Director
DOLI
600 E. Main St., Suite 207
Richmond, Virginia 23219

RE: Protecting Poultry Workers During the COVID-19 Pandemic

Dear Governor Northam, Commissioner Oliver, Attorney General Herring, Commissioner Davenport, and Director Graham:

We write you with urgency to request immediate protection for the Commonwealth of Virginia’s poultry plant worker community during this dire health care crisis.

As workers in the food supply chain, poultry plant workers are considered essential workers, both in normal times and especially now. As this global crisis deepens, these workers are as invaluable as they are at risk. Many poultry plant workers in Virginia are highly vulnerable to COVID-19 illness because they are low-income individuals, lack access to medical care, are sometimes not fluent in English (which limits their ability to relay health concerns to employers), and work in very tight spaces in factories with hundreds of other workers.

Meat processing plants typically employ hundreds of workers who work in tight quarters with others. Meat processing is one of the most dangerous jobs in the country, with injury rates at 2.4 times the national average and occupational illness rates at 17 times the national average. These statistics illustrate the heavy burden we already place on these workers and the duty we owe to them now.

Further, these plants are located in semi-rural areas such as Harrisonburg or extremely rural areas such as Accomack, where resources are spread thin. As a result, poultry workers are much more likely to not have access to COVID-19 testing and will instead suffer in silence, or go to work even though they are symptomatic, out of both fear of losing their jobs and the necessity to keep food on their own tables.

Inaction could lead to rapid outbreaks in the processing plants, overwhelming rural health centers and quickly turning into a catastrophe. These workers’ health and financial stability—and that of their families—must be unequivocally prioritized in recognition of their human rights and dignity, as well as their essential role in keeping our food system running during this emergency.

We stress that the above concerns are not merely hypothetical. Processing plants around the country are already experiencing outbreaks and are being forced to reckon with the fallout, including worker deaths.

Just this month, COVID-19 has killed four Tyson Foods poultry workers in Georgia and two in Iowa. In South Dakota, a massive Smithfield Foods swine plant was shut down after nearly 600 workers contracted the virus. **Most notably, workers indicate that most (if not all) poultry plants in the Commonwealth already have multiple workers who have tested positive for COVID-19, and that number is growing daily. Workers are dying from COVID-19 in the Commonwealth. In sum, the potential for an outbreak is ripe, and the time to act is now.**

States have broad power to protect public health and to protect workers. At present, however, there are few (if any) enforceable state or federal regulations in place to protect Virginia poultry workers. Fortunately, **federal OSHA law does not preempt or limit states from acting to protect workers from the threats of COVID-19 transmission in the workplace.** Indeed, as an OSHA “State Plan” state, **Virginia is free to promulgate its own standards regarding worker health and safety**, as long as they are at least as protective as the standards promulgated by the federal Occupational Safety and Health Administration (OSHA). And since OSHA has not adopted a federal standard that deals specifically with the workplace health and safety risks associated with COVID-19, the Virginia Occupational Safety and Health Program (VOSH) has free rein to create its own. Moreover, neither OSHA nor any other federal law would preempt state or local laws that protect whistleblowers who speak up about COVID-19 in the workplace.

Unfortunately, neither VOSH nor OSHA have issued any enforceable standards to protect workers during pandemics. Rather, only recommendations and suggested guidance have been issued, providing no oversight over employers and no protection to employees. As a State Plan state, however, **VOSH does not have to wait for OSHA to act** – it can issue enforceable emergency standards immediately in conjunction with the Governor’s office and the Attorney General’s office. *See* Va. Code § 2.2-4011; *see also* Va. Code § 32.1-13 (granting emergency rulemaking power to the State Board of Health); Va. Code § 44.146-17 (granting emergency rulemaking power to the Governor, including in cases of a communicable disease of public health threat).

In light of the above, we ask that VOSH and other state agencies immediately work with the Governor’s and Attorney General’s offices to promulgate enforceable emergency standards, as well as implement a procedure for inspections and enforcement of those standards.

For your review and consideration, we attached to this letter as Exhibit A recommended regulatory language, along with commentary. This model language is broad, and encompasses sectors beyond meat processing plants.

In addition to the requests delineated in Exhibit A, we further request that you strongly urge the General Assembly to enact emergency state legislation that applies the paid leave provisions in the federal Families First Coronavirus Response Act to employers with over 500 employees. As noted above, states have the ability to protect workers beyond what is required under federal law.

Finally, the following requested regulations are specific to the poultry and meatpacking industry:

1. To the maximum extent allowable under the law and in conformity with applicable privacy regulations, facilities must notify the local health department and facility workers immediately when an employee tests positive for COVID-19. The companies shall provide:
 - a. The department(s) and shift(s) worked by the employees testing positive for COVID-19. This is a continuing request for information if other employees test positive for the COVID-19 virus.
 - b. The names of all employees who worked in those department(s) and shift(s) on days when the COVID-19 positive employees last worked.
 - c. The date or dates last worked by the employees testing positive for the COVID-19 virus.

2. Workers who failed the temperature check shall be sent home, and be paid at their regular rate of pay.
3. Poultry and meatpacking facilities must take the following actions in order to protect the health and safety of workers at all poultry and meatpacking facilities:
 - a. Immediately shut down for a minimum of 72 hours the department(s) in which the COVID-19 positive employees worked and clean and sanitize the department in accordance with CDC recommended guidelines. Workers in these departments should be paid at their regular rate of pay during the duration of the cleaning.
 - b. Pursuant to CDC guidelines, require that any employee who worked in the same department(s) and shift(s) with the COVID-19 positive employees quarantine for 14 consecutive days. Employees shall be paid during this period of quarantine at their regular rate of pay.
 - c. Proper PPE shall be provided for all employees, including but not limited to gloves, masks, face shields, smocks and other appropriate PPE in order to prevent any transmission of the COVID-19 virus.
 - d. Install Plexiglass shielding between workstations, especially on the deboning lines where some poultry companies are currently forcing employees to work shoulder to shoulder without proper PPE.
 - e. Employers should set a schedule to ensure that all frequently touched surfaces are sanitized on a regular basis during the work day.
4. In addition to mandated daily temperature checks, as of the date of adoption of the regulations, facilities shall require mandatory COVID-19 testing of each employee. The employer shall bear the burden of the costs of such testing.

CONCLUSION

As Virginia addresses these concerns, we strive to ensure that the administration has the information and community trust needed to help implement the above requests. As such, we request a telephonic or videoconference meeting on or before Wednesday, April 29, 2020 to address the above concerns to ensure protection of all workers in Virginia (including but not limited to poultry plant workers), their families and communities, and the residents of the Commonwealth of Virginia. Finally, we acknowledge that you are exceedingly busy during this extraordinarily tasking time. As such, to the extent you would not be able to participate in such a call, we request the telephone or videoconference meeting be with the policy directors at your respective offices that are charged with oversight of the requested protections.

Sincerely,

Legal Aid Justice Center

Virginia Organizing

Community Solidarity with the Poultry Workers

Cc:

Rita Davis, Counselor to the Governor

Jessica Killeen, Deputy Counsel to the Governor

Senator Mark Warner, United States Senate

Senator Tim Kaine, United States Senate

Representative Elaine Luria, United States House of Representatives

Representative Ben Cline, United States House of Representatives

W. Lynwood Lewis, Jr., Senate of Virginia

Mark Obenshain, Senate of Virginia

Robert S. Bloxom, Jr., Virginia House of Delegates

Tony Wilt, Virginia House of Delegates

C. Reneta Major, Chair, Accomack County Board of Supervisors

Sally Wolf Garrison, Rockingham County Board of Supervisors

William B. Kyger, Chairman, Rockingham County Supervisor

Salvador Romero, Vice-Mayor, Harrisonburg