

May 11, 2020

Commissioner John H. Albin  
Nebraska Department of Labor  
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Nebraska

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***RE: Essential Protections for Our Essential Meatpacking Plant Workers***

Commissioner Albin:

First, we would like to extend our gratitude for your hard work in response to the COVID-19 pandemic. This is undoubtedly a challenging time for your office, and we appreciate the Department of Labor's commitment to our state and its residents.

In 1911, owners of New York City's Triangle Shirtwaist Factory in Greenwich Village packed workers, mostly immigrants, into a crowded and dangerous work environment. When a fire erupted, more than one hundred women and children perished, many leaping from the building to their death.

Today, more than one-hundred years later, profit-driven owners of Nebraska meatpacking plants are crowding workers, mostly immigrants, on assembly lines, processing meat, chicken, and poultry. In the face of health standards unanimously counseling against this practice, meatpacking employers are inviting a fire of COVID-19 to spread through plants -- as has already happened in Dakota City and Grand Island<sup>1</sup> and threatens to do in our capital city.<sup>2</sup>

Indeed, we learned over the weekend that public health officials in Grand Island sounded an alarm, calling for closure of the JBS plant, only to have

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<sup>1</sup> Dakota County now has more COVID-19 cases than any county in the state. Erin Duffy and Nancy Gaarder, *Dakota County now leads Nebraska in coronavirus cases*, OMAHA.COM, May 8, 2020, [https://www.omaha.com/news/state\\_and\\_regional/dakota-county-now-leads-nebraska-in-coronavirus-cases/article\\_c05e83e9-b83d-5ed2-a4be-d8615837043e.html](https://www.omaha.com/news/state_and_regional/dakota-county-now-leads-nebraska-in-coronavirus-cases/article_c05e83e9-b83d-5ed2-a4be-d8615837043e.html).

<sup>2</sup> The Lancaster County Health Department reports that nearly one-third of Lancaster County cases are related to the Smithfield plant in nearby Crete. Joanne Young, *Crete Smithfield plant contributing to rise in Lincoln COVID-19 cases*, LINCOLN JOURNAL STAR, May 4, 2020 Updated May 5, 2020, [https://journalstar.com/lifestyles/health-med-fit/health/crete-smithfield-plant-contributing-to-rise-in-lincoln-covid-19-cases/article\\_f0c0277a-15e7-5e51-9fa9-5a6e6b575cf9.html](https://journalstar.com/lifestyles/health-med-fit/health/crete-smithfield-plant-contributing-to-rise-in-lincoln-covid-19-cases/article_f0c0277a-15e7-5e51-9fa9-5a6e6b575cf9.html).



their public safety efforts thwarted by Governor Ricketts.<sup>3</sup> After local physicians called for closure of the plant, and Governor Ricketts interceded to ensure it remain open to prevent “civil unrest,” COVID-19 cases skyrocketed from a few dozen to more than 1,200, overwhelming the local hospital and demonstrating how quickly the virus can spread when politics, coupled with the employer’s desire for higher profit, are put before the safety of those on the front-lines at these plants.<sup>4</sup>

Same story, again and again. Why? The tragedy at the New York shirt factory was an impetus for laws protecting the safety of workers as well as the creation of state and federal agencies to enforce them. Now, at this critical moment in Nebraska’s history, we respectfully call upon the Nebraska Department of Labor to enforce these laws by inspecting plants, requiring that they be operated safely, and reporting employers to OSHA in the event they refuse.

President Trump’s executive order regarding the operation of these plants provides no basis to do otherwise. First, the Defense Production Act does not authorize such an order. Further, by its terms, the executive order provides that meat and poultry processors “continue operations consistent with the guidance for their operations jointly issued by” the CDC and OSHA.<sup>5</sup> In other words, the order does not place our need for hamburger and chicken above guidelines for worker safety.

Most importantly, the order’s recognition of meat processing as essential infrastructure means meatpacking employees should be recognized as essential workers, along with front-line healthcare workers and first-responders. For their service, plant workers should be honored and protected from COVID-19, not blamed by our leaders for being infected because of their “community,” or their culture, or their living arrangements.<sup>6</sup>

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<sup>3</sup>Michael Grabell, *What Happened When Health Officials Wanted to Close a Meatpacking Plant, but the Governor Said No*, PROPUBLICA, May 7, 2020, <https://www.propublica.org/article/what-happened-when-health-officials-wanted-to-close-a-meatpacking-plant-but-the-governor-said-no>.

<sup>4</sup> *Id.*

<sup>5</sup>Executive Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19, WHITEHOUSE.GOV (April 28, 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/>.

<sup>6</sup> Paul Hammel, Erin Duffy, and Martha Stoddard, *Ricketts defends meatpacking plants, says they need to stay open despite coronavirus cases*, OMAHA.COM, Apr. 23, 2020, [https://www.omaha.com/news/state\\_and\\_regional/ricketts-defends-meatpacking-plants-](https://www.omaha.com/news/state_and_regional/ricketts-defends-meatpacking-plants-)



Though some meatpacking employers deserve credit for utilizing physical barriers, distributing masks, utilizing employee health screenings, and taking other measures, such efforts are obviously insufficient. Information from public officials makes undeniably clear that testing, transparency, and distancing are critical to fighting the disease in every community and in every workplace. Yet, there have been no reports of a single Nebraska plant implementing a testing program or spacing workers six feet apart. Further, Governor Ricketts has publicly opposed transparent reporting of the number of cases that can be traced to specific plants.

We have reviewed the Department of Labor’s Infection Control Plan, *Coronavirus Disease 2019* (published April 1, 2020); the “Meat Processing Facility COVID-19 Playbook” published by the Global Center for Health Security at UNMC (“Playbook”)(published April 20, 2020); and Interim Guidance from CDC and the Occupational Safety and Health Administration (OSHA).<sup>7</sup> We are also aware of the assistance UNMC has provided by visiting plants and consulting with management. However, unenforceable suggestions and recommendations from these experts are not enough. This is not a public relations or political issue. We ask the Department of Labor to act independently of Governor Ricketts to protect the health and safety of essential Nebraska workers.

We reject the false choice, presented by other officials, of either closing the plants altogether or risking the health and safety of workers. Plants can continue to operate, and workers can simultaneously be protected, but only if industry executives and plant leadership are required to follow all health officials’ recommendations.

As Commissioner of Labor, you are in a position to enforce the law, and protect the safety of these hard-working, essential workers, by requiring plant owners to implement each of the measures suggested by the aforementioned public health guidelines, including:

- Requiring a minimum of six feet distance between workers on the line to avoid contact or inhaling airborne droplets containing infectious agents;

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says-they-need-to-stay-open-despite-coronavirus-cases/article\_300eda3a-a3bd-5276-884f-c4e5fb90db5b.html.

<sup>7</sup>Meat and Poultry Processing Workers and Employers, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>.



- Requiring notification to local, state and federal health officials and to co-workers of positive COVID-19 employees; and
- Expanding diagnostic testing to all workers who are symptomatic and those with whom they have had contact.

Each of these measures are consistent with guidance from the CDC, OSHA and UNMC’s Playbook and can be implemented without closing plants or disrupting the food supply. The plants can accomplish distancing by slowing lines and staggering shifts. While that may come at some economic cost, it would seem the generous federal aid provided to the Nebraska meatpacking industry could help offset that.

The law requires action. Provisions of the Nebraska Meatpacking Industry Workers Bill of Rights<sup>8</sup> support implementation of the foregoing measures. In relevant part, the Workers Bill of Rights requires the industry to, *inter alia*:

- Provide the “safest possible working conditions;”<sup>9</sup>
- Allow discussion of “safety issues arising out of line speed” at meetings of a Safety Committee with worker representatives;
- Allow workers to make complaints without “fear of reprisal;” and
- Provide “complete information” and notice of “occupational hazards” related to a worker’s duties.

More directly, the Workplace Safety Consultation Program, passed into law to “provide employees in Nebraska with safe and healthful workplaces,”<sup>10</sup> authorizes your Department to conduct inspections, identify workplace hazards and require they be eliminated. Any employer who refuses, or who operates a business “in violation of recommendations to correct serious or imminent hazards” identified through inspection, “shall be referred” to the federal Occupational Safety and Health Administration (OSHA). Additionally, the Nebraska Attorney General and local County Attorneys are authorized to pursue judicial enforcement.

Please advise whether your Department has conducted any inspections of meatpacking plants under the program, whether it has required elimination of any COVID-19 related hazards, or whether it has referred any meatpacking plants to OSHA. If not, is it your intention to conduct

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<sup>8</sup> Neb. Rev. Stat. §48-2213.

<sup>9</sup> Meatpacking Bill of Rights, NEBRASKA DEPARTMENT OF LABOR, <https://dol.nebraska.gov/LaborStandards/WorkerRights/MeatpackersBOR>.

<sup>10</sup> Neb. Rev. Stat. §48-446.

inspections and to require adherence to all aspects of the foregoing health guidelines?

In the end, Commissioner Albin, the public needs to know if state authorities will take any action beyond the suggestions and recommendation made by UNMC experts to protect the safety of the workers. The workers, their families, and the communities in which they live, deserve your candid response at your earliest convenience.



Very truly yours,

A handwritten signature in blue ink, which appears to read "Adam J. Sipple".

Adam J. Sipple  
Legal Director