

Hearing on
“Examining Liability During the COVID-19 Pandemic”

Questions for the Record for Mr. Marc Perrone
Submitted May 19, 2020

QUESTIONS FROM SENATOR FEINSTEIN

1. What measures need to be taken to protect essential workers in the supermarket and food processing industries?

America’s food and grocery workers are on the frontlines of this coronavirus pandemic. These workers are putting their lives on the line to help feed this nation. Elected leaders have referred to our members as “essential,” yet they are not being provided the essential protections they need to do their jobs safely. For the sake of these essential workers’ lives, and the safety of our food supply, this must change immediately, and we must prioritize the safety of all grocery workers and workers in meatpacking and food processing plants.

We recommend the following measures be put in place in grocery stores, pharmacies, food processing, and meatpacking facilities.

Grocery Stores and Pharmacies

1. In-Store Social Distancing:
 - a. Limit the number of consumers in a store at any given time to 20 to 30 percent of the store’s capacity.
 - b. Implement procedures to ensure that both employees and customers always remain at least six feet apart.
 - c. Procedures should include a marked “social distancing line” which begins six feet away from all checkout counters.
2. Improve Disinfecting, Sanitizing and Hygiene Practices:
 - a. Employees must be provided with sufficient break times to wash their hands as necessary or, at a minimum, every 30 minutes.
 - b. Sanitize frequent touchpoints, including point of sale terminals at registers throughout the day.
 - c. Provide disinfecting wipes for customers to disinfect carts, as well as at cash registers.
 - d. Designate employee(s) to ensure cleaning guidelines set by the CDC are followed.
 - e. Provide set time to allow for stores to be properly sanitized and re-stocked.
3. Mandate Wearing of Personal Protective Equipment:
 - a. Mandate that all workers wear masks, gloves, and any other personal protective equipment (PPE) available at the workplace.
 - b. Mandate all employers to provide N95 respirators, face masks, gloves, and other PPE when it becomes available, at no cost to workers, and on an as needed basis, for example when PPE becomes damaged, and needs to be replaced.
4. Urge Americans to Help Save Lives by Shopping Smart
 - a. Call on all Americans to practice the following each time they visit a grocery store or pharmacy:

- i. Always wear a cloth face cover, ideally a mask, when inside the store.
 - ii. Limit number of shoppers to one per family
 - iii. Practice social distancing throughout the store – not just at check-out stands.
 - iv. Properly discard their own PPE in trash cans.
 - v. Respect special shopping times for seniors.
- 5. Provide the support necessary for customers to #ShopSmart.
 - a. Mandate that employers put up signs, implement strategies, such as one-way aisles, and manage customer safe practices when they enter stores, and while shopping, and when exiting stores.

To address the growing safety and food supply threat in meat packing and processing, we recommend five immediate actions:

1. **Prioritize Food Workers for Testing:** Meatpacking and food processing workers must be prioritized for testing if we are going to protect the food supply and limit these plant closings.
2. **Immediate Access to Personal Protective Equipment (PPE):** Too many meatpacking members lack the critical personal protection equipment, and these workers must have PPE to do their jobs.
3. **Slow Down the Lines and Halt Line Speed Waivers:** As the pandemic raged, the USDA continued to approve regulatory waivers for meat processing plants to increase their maximum line speed. These waivers guarantee more workers are put at risk of either catching or spreading the virus. The USDA must cease granting any new waivers and suspend all existing waivers that allow plants to operate at faster speeds.
4. **Mandate Social Distancing:** Companies must reconfigure the workplace, to the greatest extent possible, to allow workers to practice six-foot social and physical distancing. This should be on the production floor, even if this means production slows down, and in common areas where workers congregate such as break rooms and locker rooms.
5. **Isolate Workers Who Show Symptoms or Test Positive for COVID-19:** It is critical to identify and isolate workers who have tested positive or who exhibit symptoms of COVID-19. These workers should be allowed to quarantine at home, with pay, per the recommendations set by the Centers for Disease Control and Prevention.
6. **Protect Workers From Retaliation:** The UFCW believes that strong, anti-retaliation protections must be in place in order to ensure that workers who feel ill, or who are suffering from COVID-19, can remain at home, in quarantine for the full period of time recommended by the CDC, until it is safe to return to work. Workers must be encouraged to report any symptoms of illness, or of COVID-19, while at work, as well as any other safety and health hazards, and not suffer any negative consequences for doing so.
7. **Analyze sick leave policies and consider modifying them to make sure that ill workers are not in the workplace.**

In addition, UFCW calls on electeds to

1. Ensure presumption of COVID-19 illness as an occupational illness for food workers;
2. Direct OSHA to issue a workplace safety standard to protect front-line workers from infectious diseases;
3. Provide “essential worker” premium pay for food workers;

4. Pass comprehensive multi-employer pension reform that helps troubled funds without harming healthy funds;
 5. Expand access to SNAP with safeguards to support grocery store employees;
 6. Expand paid sick days and paid leave to ALL workers; and
 7. Pass a stimulus package for non-food retail.
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2. The Centers for Disease Control and Prevention (CDC) has issued interim guidance for businesses and employers regarding measures to prevent and reduce transmission of COVID-19 among employees. [CDC Interim Guidance, May 6, 2020]. The guidance recommends conducting a hazard assessment to adapt infection control strategies, implementing engineering controls with ventilation, conducting daily health checks, routinely cleaning all touched surfaces, providing personal protective equipment for necessary job categories, adjusting the work locations of workers particularly susceptible to COVID-19 infections or complications, establishing policies for social distancing, and training employees on the sources of exposure to the virus, among other measures.
 - a. Approximately how many workers represented by the UFCW work in workplaces that have not yet conducted a hazard assessment regarding COVID-19? What percentage of overall UFCW members does this amount represent?

We do not have this information.

- b. How many workers represented by the UFCW work in workplaces that have not yet implemented workplace strategies identified by a hazard assessment?

We do not have this information.

- c. How many workers represented by the UFCW work in workplaces with strategies that are inadequate based on the recommendations in the CDC's interim guidance?

The union is not privy to this information.

3. The Occupational Safety and Health Administration (OSHA) has issued only non-binding guidance for employers during the COVID-19 pandemic. OSHA has not issued an Emergency Temporary Standard (ETS) on infectious disease, or taken other steps to issue clear, science-based, and enforceable requirements for employers to follow during the pandemic.
 - a. What role will an Emergency Temporary Standard for infectious disease issued by the Occupational Safety and Health Administration (OSHA) play in protecting the workers you represent?

The Occupational Safety and Health Administration (OSHA), must issue an emergency temporary standard (ETS) to protect all workers at potential risk of occupational exposure to infectious diseases, including COVID-19. OSHA health and safety standards need to be updated to protect workers throughout the food supply chain from exposure to infectious diseases, including COVID-19, by requiring employers to implement control strategies that

reduce or eliminate, exposure to these hazards. Employers must be required to assess workplace-specific risks, implement controls to reduce risks, develop protocols and training, and develop pandemic plans, with workers engaged in each process. The ETS should cover workers in retail stores, grocery, meat and poultry slaughter, and processing. This standard should provide no less protection for novel pathogens than the standards adopted under state plans.

OSHA regulations for retail workers should include social distancing provisions, and a limit on the number of customers in a worksite; proper personal protective equipment, training, protocols, and controls; and having a protocol for dealing with customers and workers who show COVID-19 symptoms.

b. Why do you believe the steps taken by OSHA to date are insufficient?

Unfortunately, the Occupational Safety and Health Administration (OSHA), the federal government agency in charge of ensuring that employers provide safe conditions, has failed to issue enforceable requirements specific to COVID-19, to protect the safety and health of workers in the face of COVID-19.

Regardless of what party or state you represent, we must all share the same desire of protecting this nation and our people. To that end, our federal government, the USDA, and OSHA must require employers to comply with clear and enforceable safety standards.

If we want to reduce the risk of workers contracting COVID-19, OSHA must issue a standard which ensures social distancing. To achieve social distancing, companies will need to change production standards and reduce line speeds. In addition, the USDA must immediately suspend higher-speed slaughter—a position that is consistent with guidelines for meat and poultry processing workers and employers issued by the CDC and OSHA on April 26, 2020.

QUESTIONS FROM SENATOR SHELDON WHITEHOUSE

Mr. Anthony “Marc” Perrone:

Some Republican governors have indicated that people who refuse to return to work out of concern for their and their family’s health will be denied unemployment. This forces American workers to make a difficult choice: go back to a potentially unsafe workplace or lose access to the financial lifeline that allows you to help make ends meet.

1. In your view, is it fair to force American workers to make this choice?

No. It is unfair and inhumane for companies or governments to force people to work without doing everything in their power to maintain the highest possible standards of health and safety. While we do not want plants to close, we want workers to have the protections they need to be safe on the job. We are asking that the federal and state governments prioritize the safety of these workers, which is how we keep plants open and protect our food supply.

The UFCW believes that strong, anti-retaliation protections must be in place in order to ensure that workers who feel ill, or who are suffering from COVID-19, can remain at home, in quarantine for the full period of time recommended by the CDC, until it is safe to return to

work. Workers must be encouraged to report any symptoms of illness, or of COVID-19, while at work, as well as any other safety and health hazards, and not suffer any negative consequences for doing so.

Again, our state and elected leaders must ensure that these workers have the highest level of personal protective equipment; daily testing available; physical distancing enforced at all plants; full paid sick leave; and federal inspectors monitoring each plant to enforce safety standards. The best way to protect our food supply is to protect our food workers.

2. If Americans are forced to make this choice, should we at least ensure that they have the access to the courts to hold employers accountable for protecting their health and safety?

Yes. Worker safety must come first, and there must be strong and enforceable rules to protect them on the job. If the White House or Congress refuses to hold employers accountable when or if they fail to protect workers during this pandemic, they will put our food supply and countless numbers of workers at risk.

It is imperative that Congress and this body not support any legislation that will increase the risk these workers face while also reducing the responsibility large corporations must face.

Simply put, no company should be shielded from responsibility for adopting irresponsible practices that foster the spread of COVID-19 through their facilities.

While no one can blame any company for the creation of this virus, we must hold those who ignore its deadly effects responsible when they willingly ignore the critical safety protections that any American deserves.

Rather than prioritizing exempting employers from liability, Congress should be prioritizing workers safety.

Now, more than ever, irresponsible companies must be held accountable for their actions and failure to adopt and enforce key CDC guided safety standards.