

Judge blocks lawsuit against OSHA over refusal to inspect Pennsylvania Maid-Rite food processing plant during pandemic

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US District Judge Malachy Mannion of Scranton, Pennsylvania dismissed a lawsuit March 30 that was brought by three anonymous employees of the Maid-Rite Specialty Foods meatpacking plant in Dunmore. The lawsuit was against the Occupational Safety and Health Administration (OSHA) for failing to adequately inspect the plant where more than half of the workforce contracted COVID-19. Mannion asserted that he lacked the legal authority to order the agency to enforce safety protocols at the facility.

The dismissal of the lawsuit serves as an illustration of how all levels of government have colluded to keep workers on the job during a deadly pandemic without regard to the dangers posed to their health under conditions where basic safety measures are not enforced. The ruling by the judge provides another green light to employers to disregard workers' health and safety, knowing they will be protected from any serious consequences.

Mannion claimed to lack jurisdiction because OSHA, despite receiving myriad complaints about the Maid-Rite facility, failed to receive any report or recommendation from one of its safety and health inspectors of "imminent danger;" despite its own definition, which dictates "... any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately..."

Moreover, OSHA has prerequisites that must be met for a threat to be classified as "imminent danger," one of those being: "For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency. The harm caused by the health hazard does not have to happen immediately."

However, "If an OSHA inspector *believes* that an imminent danger exists, the inspector must inform affected employees and the employer that he is recommending that OSHA take steps to stop the imminent danger." (Emphasis

added.)

Mannion sympathized with the plaintiffs' concerns "about whether OSHA is in fact fulfilling its duty to ensure workers' rights to safe and healthful working conditions." Mannion continued, "Ultimately, however, Plaintiffs' remedy lies with the legislature and not the courts if there is to be a mechanism by which employees can challenge an OSHA investigator's finding of no imminent danger."

To date, more than 50,000 meatpacking workers have contracted COVID-19, leaving at least 250 dead, according to ProPublica. Notwithstanding tens of thousands infected and hundreds dead, OSHA issues at most slap-on-the-wrist fines to corporations in the meat industry. Only months ago, Democratic President Joe Biden, continuing former Republican President Donald Trump's invocation of the Cold War-era Defense Production Act, requested OSHA develop *new* COVID-19 safety standards and guidelines. In an effort to mask the murderous policy of "herd immunity," OSHA's new standards do not call for the shutdown of non-essential production despite the blatant violation of their rules for what constitutes an "imminent danger."

A complaint filed by the plaintiffs last July recounts OSHA's decision not to inspect Maid-Rite's Dunmore, Pennsylvania specialty foods plant despite a complaint three months prior detailing a lack of social distancing measures and personal protective equipment (PPE). The plaintiffs, prophetically, called the plant "a powder keg that could go off at any moment."

According to the lawsuit, OSHA had declined to conduct an inspection of the facility, despite the complaint. Instead, OSHA had requested that Maid-Rite investigate the workers' claims itself and "make any necessary corrections or modifications," effectively giving the corporation the opportunity to sniff out the employees who filed the lawsuit and the freedom to virtually absolve itself of any illegality and violations. However, Maid-Rite responded with "patently incomplete and inadequate explanations,"

according to the plaintiffs, recalling violation of Centers for Disease Control and Prevention guidelines on social distancing when operating the production line.

The anonymous workers who filed the suit were seeking an order that would require OSHA to conduct immediate, on-site inspections of the plant and to “engage in all other actions and proceedings necessary to resolving all the imminent dangers identified in this complaint.”

However, OSHA, in a motion to dismiss filed last July, stated that the court did not have jurisdiction over the case, citing the Occupational Safety and Health Act. According to OSHA, a court review may only be sound if they themselves fail to act after an inspector alerts the agency to an “imminent danger.”

On the 2nd of December last year, in a letter to the court, OSHA stated it inspected the Maid-Rite facility and would not be issuing any citations, claiming the company followed PPE protocol, requiring workers wear gloves, masks, and face shields, and spending approximately \$30,000 in facility-wide sanitation. OSHA would “not be instituting an enforcement proceeding” against Maid-Rite, further stating the company “to use best practices with regard to social distancing on its meat processing lines.”

In July of last year, a lawsuit was filed against the Department of Labor (DOL) when half of the Maid-Rite workforce contracted COVID-19 stating, “Instead of recognizing the clear imminent danger posed by COVID-19 and Maid-Rite’s practices that exacerbate its spread, OSHA appears poised to ignore the facts in the imminent danger complaint and treat it as implicating only garden-variety workplace hazards that can be addressed by OSHA over the course of months.”

Additionally, the DOL’s letter to the court submitted on December 2 of last year stated that it sent personnel who filed a complaint in June outlining the inspection results on Maid-Rite. The complaint alleged the company had provided employees with only two face masks, forcing workers to work shoulder to shoulder in violation of social distancing guidelines on production lines.

Further, workers had said management offered incentives for workers to come in sick and refused to report when someone tested positive.

The agency admitted in its summary letter that it found that despite an initial shortage in face masks, the plant now provides them on a biweekly basis. As for the production lines allegation, the agency sought to justify blatant violations and hostile working conditions in its letter by saying, “they do wear face coverings and shields.” In a “hazard alert” letter sent by the DOL to Maid-Rite in 2020, the plant had already engaged in sanitation of surfaces, screening employees for COVID-19 symptoms, and hand

sanitation stations, and were accompanied by a surplus in face masks and face shields.

Included in the letter, the DOL told Maid-Rite it would not issue a citation, but “improvements could be made to bolster your approach to protecting employees from SARS-CoV-2.” Earlier in the case, the DOL accused the employees in a July motion of trying to “hijack” its inspection process, claiming, “no imminent danger exists at the plant.” Lerae Kroon of Justice at Work, who represents the Maid-Rite workers, told Law360 in an email that OSHA was lackluster in its ostensible role of protecting workers. “As COVID-19 case numbers in the area rise, Maid-Rite workers have continued to work shoulder to shoulder without the opportunity to protect themselves by distancing themselves from other workers and other adequate safety precautions.” Kroon continues, “That OSHA made Maid-Rite’s mitigation of these risks optional is dangerous and falls far short of ensuring worker safety.”

The plaintiffs, in response, claim OSHA has not sufficiently addressed the deleterious working conditions at the plant, ignoring its own guidelines and prerequisites, urging employers and management to require physical distancing and face masks. Moreover, upon OSHA’s directive that Maid-Rite essentially screen their employees in an attempt to find those anonymous workers that filed the lawsuit, Mannion noted that federal whistleblower law bars retribution against employees who refuse to work “where they genuinely and reasonably believe an imminent danger exists.”

The court ruling is a further demonstration that workers cannot look to any arm of the government to protect them from COVID-19. It underscores the necessity for meatpacking workers and all workers to take the fight against COVID-19 into their own hands through the building of rank-and-file safety committees at their workplaces.



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