

Southern Poverty Law Center

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April 24, 2011

Teresa Harrison, Deputy Regional Administrator
U.S. Department of Labor
Occupational Safety and Health Administration

[Redacted]

[Redacted]

Atlanta Federal Center
615 Peachtree Street, SW
Atlanta, GA 30303

Atlanta, GA 30303

Via email to: [Redacted]

Hazards at Wayne Farms, LLC, poultry

RE: Complaint of Health and Safety
plant in Enterprise, Alabama

Dear Deputy Regional Administrator Harrison:

I am writing on behalf of several workers who are reporting health and safety hazards at Wayne Farms, 1020 County Road 114, Jack, AL, 36346, which employs approximately 750 workers. The majority of our complainant workers are primary employees of [Redacted] and Frank [Redacted] Staffing Company, which provides meat choppers as well as Solutions, as Labor Solutions of Alabama, LLC, and as Lane Transportation), which recruited the workers from Puerto Rico, deducts money from their paychecks, and assumes status as the workers' nominal employer, though their working conditions are unsafe. [Redacted]

5. [REDACTED]
6. [REDACTED]
7. [REDACTED]⁴
8. [REDACTED]⁵
9. [REDACTED] and
10. their co-workers who are jointly employed by Wayne Farms and Employer Solutions Staffing Group II and either continue working at Wayne Farms or were

exercise their rights to a safe

terminated in retaliation for attempting to exercise their rights at their workplace.⁶

are concurrently filing Notices of

The Wayne Farms Workers, with the exception of those who

are concurrently filing Notices of

Whistleblower Complaints as stated above, request that OSHA

are concurrently filing Notices of

fundamental principles of OSHA 1910.1020 and 1910.1025

are concurrently filing Notices of

Health Hazards, Health Issues of employees

are concurrently filing Notices of

to enter the employers' properties or for any

are concurrently filing Notices of

representatives of complainant employees

are concurrently filing Notices of

Wayne Farms, LLC employees who

are concurrently filing Notices of

processing plants

are concurrently filing Notices of

employs approximately 4,500 workers in its enterprise, Jack plant in Employer Solutions

are concurrently filing Notices of

of approximately 1,000 employees in poultry plants, 20,000 of Wayne Farms

are concurrently filing Notices of

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employees within the definition of 29 U.S.C. § 652(6).

The Southern Poverty Law Center's Immigrant Justice Project is the authorized legal representative of the above-listed workers for purposes of this Complaint. The workers may be contacted through the SPLC, and they request to be interviewed outside of the work site, either in person or by telephone. All of the above workers speak Spanish as their primary language, as do many other employees of Wayne Farms and Employer Solutions Staffing Group I. Therefore, complainant employees request to be interviewed in Spanish and request that other employees interviewed by OSHA during its investigation be conducted in those employees' primary languages.

Description of Known Hazards and Violations

The Wayne Farms Workers have brought all of the below hazards to the attention of their

supervisors with Wayne Farms and Employer Solutions Staffing Group I. This description of hazards and violations is provided for informational purposes only and does not constitute an offer of legal advice. OSHA will conduct an investigation and provide copies of documents explaining many of the medical diagnoses upon request.

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⁴ Works only for

⁵ Works only for

⁶ The Wayne Farms

business entities)

referenced below, and one Complainant is able to provide, upon request, photographs of her badly swollen hand and wrist. The workers allege violations of the Occupational Safety and

general industry standards including, but not limited to,

Health Act ("OSHA Act") and of OSHA the following:

Excessively Fast Work Speeds in Violation of 29 U.S.C. § 654(a)

A. Failure to Protect from Danger
654(a) ("General Duty Clause")

ergonomic hazards through repetitive motions required at the processing plant, violating Section 5(a)(1) of the OSHA Act, 29 U.S.C. 654(a)(1). Pursuant to the GDC, the employer is required to furnish to each of their employees employment and a place of

Workers are exposed to serious hazards by the job, as well as the line speed of the machinery, in violation of the OSHA Act, at 29 U.S.C. 654(a), referred to as the "General Duty Clause" or "GDC".

2. [redacted] now working as a rehanger, has to hang between 38 to 40 birds per

He is suffering serious hand and wrist pain as a result of this pace and the force required to perform his job tasks.

to keep up with danger [redacted] wrists. He has worked on deboning lines as well as in

3. [redacted]'s fingernails were harmed by his efforts work speeds. His blood vessels serious pain in his hands and rehangings.

4. [redacted] ed in debone on lines 1,2,6,7, and 8. Line-1 went 20 birds per minute. Line-2 went about 30 birds per minute. Lines 6, 7, and 8 went 40 birds per minute, but sometimes the plant sped up the lines to 50 birds per minute. Working at

caused him serious hand, wrist, back, and leg pain.

[redacted] was required to process [redacted] birds per minute on the debone line and suffers

as a result, the plant often runs the line even faster, up to 45 birds per

ne was stationed cutting chicken wings, she had to cut the wings off of

minutes when stationed performing other

breast meat, she had to process pieces at

chicken breast meat, she had to

action [redacted] on her hands, her back was always [redacted] and are one

January, 2014 when

and sent her

rist synovitis. He

up chicken and other objects on the floor. That position

people while bump into [redacted] ne pain continued. She went

the processing line where she currently works labeling boxes, putting tops on boxes, and

doing other work. A plant manager, [redacted], to [redacted] that she could no longer wear her

wrist splint/brace. He ordered her to remove it and threatened to [redacted] if she

displeased. She has not worn the brace since April 9th even though her hand has

On or around April 15th, she was labeling boxes on the processing line. I

fast speed of the line, her hand got pinched between heavy boxes. She sw

Her hand swelled up and she went to the nurse who gave her a Motrin and

back to the line. Her hand has at times turned

she does not have the strength to close her fist.

husband has to help her dress herself.

Because of the [redacted] reamed in pain.

I told her to go [redacted] purple and has been severely swollen, and

She is sometimes in so much pain that her

Res. in Violation of 29 [redacted] Wayne Farms is failing to adequately remedy and address injuries reported by its

workers; workers are discouraged from reporting injuries, as they know that such complaints

will not be redressed; they will not receive adequate medical treatment, and they will face

information received by Wayne Farms is not being used to determine if there are any other workers who may be at risk of similar injuries. Furthermore, Wayne Farms is not providing adequate medical treatment and attention to its employees when they report such injuries. Workers reporting injuries and illnesses are often denied the opportunity to receive adequate medical care, and are not given the opportunity to return to work under conditions that originally contributed to their injury or illness.

This complaint provides the following limited information about the work-related injuries of several Wayne Farms workers who suffer from this hazard:

1. [redacted] reported injury on several occasions and was not treated. Most [redacted] her with a wrist splint to reduce her pain and prevent [redacted] her from working. [redacted] decided that she remove it even though it helped her. [redacted] for the plant for her medical [redacted] needs since February and he has not given them to her. [redacted] was not given workers' compensation information when she was struck by a table that opened up a hernia in her stomach. She was also denied such information when her hernia was subsequently aggravated from overwork, such as from lifting heavy boxes in the plant. She has been issued medical bills in excess of \$10,000 for treatment for these work-related injuries, yet Wayne Farms and Employer Solutions Staffing Group [redacted] her even the opportunity to purchase medical insurance.
2. [redacted] was told by the plant nurse that Wayne Farms was not keeping records of her visits to the nurse's station when she reported hand and wrist pain.

B. Denial of Access to Adequate Medical Personnel in Violation of 29 C.F.R. § 1910.151 and 29 U.S.C. § 654(a)

A serious hazard of medical under-diagnosis by Wayne Farms employees is posed by the company nurses, who routinely fail to adequately examine and diagnose injuries presented by complaining workers. Wayne Farms' consistent failure to properly evaluate injuries reported by workers suggests that under-diagnosis may be resulting in inaccuracies in the OSHA 300 logs for work-related, recordable injuries and illnesses.

In order to effectively investigate this hazard, OSHA inspectors should interview the plant's medical personnel; review resumes and other training of the plant's medical personnel; request information from Wayne Farms on all workers' compensation claims filed by employees; investigate whether discrepancies exist between the OSHA 300 logs and the number of medical incidents actually occurring; and take other measures available to investigate under-diagnoses.

C. Denial of Adequate Medical Treatment and Attention in Violation of 29 C.F.R. § 1910.151 and 29 U.S.C. § 654(a)

Wayne Farms employees are exposed to the serious hazard of medical under-diagnosis by the company nurses, who routinely fail to adequately examine and diagnose injuries presented by complaining workers. Wayne Farms' consistent failure to properly evaluate injuries reported by workers suggests that under-diagnosis may be resulting in inaccuracies in the OSHA 300 logs for work-related, recordable injuries and illnesses.

1. At one time when [REDACTED] was in pain and was suffering symptoms of a possible cumulative trauma disorder, she went to the nurse's station. She was sent back to work [REDACTED] from the nurse's station and told she needed written permission from her supervisor to [REDACTED] for the seek medical treatment and her supervisor refused to authorize her to visit the nurse's [REDACTED]

This hazard has been exacerbated because Wayne Farms and Employers Solutions

Staffing Group II have denied employees health insurance. Employees Staffing Group II sometimes tells workers that they will be able to buy health insurance privately after 90 days of employment. In 2014, at least one employee attempted to purchase health insurance through the exchanges established under the Affordable Care Act, but she was not able to because her employers would not provide documentation confirming that they did not offer health insurance.

Workers are prevented from accessing appropriate medical treatment and from obtaining and consultation to diagnose or prevent serious injuries and illnesses.

This prevents workers from receiving reasonable medical advice.

Workers are prevented from seeing doctors because they do not have health insurance. Wayne Farms tells workers that they will be able to provide health insurance because they were denied through Employers Solutions Staffing Group II.

For example, workers are prevented from receiving medication prescribed by their health care providers. Employers Solutions Staffing Group II

Requirement that Employees Pay Their Employer for Personal Protective Equipment in Violation of 29 C.F.R. 8.1910.132(b)(1), (b)(5), and 29 U.S.C. 8.654(c)
OSHA standards require that workers be provided with necessary personal protective equipment (PPE) free of charge. This includes PPE provided to replace broken, torn, or damaged PPE as well as PPE provided at the beginning of employment.

Wayne Farms charges employees for some of their PPE by deducting money from their paychecks, sometimes labelled as "Supplies." For example:

1. Workers are charged about \$35 for boots with strong tread, and about \$14 for boots with weak tread.
2. Workers are charged for replacing torn or damaged aprons/smocks.
3. Workers are provided with gloves and earplugs each week at the plant. If this equipment breaks, tears, or needs replacement during the week, money is deducted from their pay for replacement PPE. These charges are individually small but accumulate quickly into substantial pay deductions.

Workers are frequently injured by knives, scissors, and other hand tools.

o developed ear infections from

led by Wayne Farms

has a

Wayne Farms has [redacted] boots that do not prevent the hazard of slipping and

o Provide Reasonable Access to Toilet Facilities in Violation of 29 C.F.R. § (c) and 29 U.S.C. § 654(a)

F. Failure 1910.14

Wayne Farms exposes workers to the serious hazard of a lack of timely access to toilet facilities. This problem is particularly acute for line workers, who are often required to wait 30 minutes or longer, even in cases of emergency, after requesting a break to use the restroom. Workers are usually not permitted to go to the bathroom in between the scheduled breaks, which means that they often go 2.5 hours or longer without an opportunity to use the restroom. Even

For example, meal periods last about 25 minutes, during which time employees must remove their food and put their gear back on. For example, meal periods last about 25 minutes, during which time employees must remove their food and put their gear back on. For example, meal periods last about 25 minutes, during which time employees must remove their food and put their gear back on.

Line leaders and supervisors are supposed to relieve employees to allow them breaks to use the restroom. However, line leaders and supervisors with this responsibility often leave the floor during their scheduled breaks, leaving employees without opportunities to go to the restroom. Without access to bathrooms in scheduled intervals, workers are exposed to health risks. [redacted] has been denied bathroom breaks. On one occasion, [redacted] was denied bathroom breaks. On one occasion, [redacted] was denied bathroom breaks. On one occasion, [redacted] was denied bathroom breaks.

Without access to bathrooms in scheduled intervals, workers are exposed to health risks. [redacted] along with other workers needed them. [redacted] similarly had occasion, when she was not permitted to use the restroom. Without access to bathrooms in scheduled intervals, workers are exposed to health risks.

Workers have been written up for taking an emergency break after requesting permission 30 minutes without being permitted to use the restroom. [redacted] from a supervisor and waiting more than 30 minutes without being permitted to use the restroom. [redacted] from a supervisor and waiting more than 30 minutes without being permitted to use the restroom.

Workers have been written up for taking an emergency break after requesting permission 30 minutes without being permitted to use the restroom. [redacted] from a supervisor and waiting more than 30 minutes without being permitted to use the restroom.

Many employees have had to wait for 30 minutes or longer to use the restroom. [redacted]

a. Employees receive one-half point for
Employees who miss work because of an
al treatment for an injury or disability,
medical excuse note from a physician. Many
o absences based in significant part on a
d on their need for medical treatment of
their disability or injury. Being disciplined for reporting an injury by seeking disciplinary

point for missing a day of work, no matter the reason
arriving late or leaving early, no matter the reason. 1
injury or disability, including in order to seek medical
receive points for this time, even if they present a me
employees receive ten points under this policy due to
work-related injury or disability and its symptoms an

also received

injury and seeks medical

he will be fired.

plaint for leaving work to drive his injured wife a fare home.

reports of injuries. For example, when his

Wayne Farms also administers drug tests upon

given a drug test before receiving

finger was cut by a saw.

was given a drug test prior to medical

medical treatment for his injury.

truck by a table. She was also drug tested, and

treatment when her arm was purple from being s

cut her finger on a lock in the Wayne Farms

not provided with medical treatment, when she c

at risk of unnecessary delays from treatment

reporting. Not only does this practice, but also

reporting injuries and illnesses.

it also may unlawfully deter workers from rep

workers who report injuries and ask to work under

Wayne Farms also retaliates against w

accompany any Compliance Safety and Health Officer during the physical inspection of the

OSHA representatives must interview workers to complete an accurate assessment of

be released to Wayne Farms or Employer Solutions Staffing Group II, except as necessary to

Recognizing that fear of retaliation may limit responses of any other workers interviewed
other workers in a manner that protects them from retaliation by their employer. To obtain

facilitate interviews with workers in Spanish, if necessary

B. Investigation of the employers' payroll records for the last three years, see 29 C.F.R. § 1903.3(a);

C. Investigation of any employer policies pertaining to payroll deductions and/or employer requirements related to protective or safety equipment, or medical examinations, *Id.*;

D. Accounting of any amounts that employees were illegally required to pay for protective or safety equipment or for medical examinations;

E. Citation or other order finding that Wayne Farms and Employer Solutions Staffing Group II violated applicable OSHA regulations, and requiring that the offending practices cease immediately;

F. A copy of the citation or order, if any, issued to the employer, and a copy of the citation or order, if any, issued to the employer, and a copy of the citation or order, if any, issued to the employer;

employees of all companies whose workers are direct contractors and (2) the membership
history of previous alleged violations, see 29 C.F.R. § 1903.15(b).

penalties and fines for each violation

and proper PPE or medical treatment

29 C.F.R. §1910.132(h)

H. Restitution to all employees for all amounts the joint employers illegally required the workers to pay and for all amounts employees have had to pay for their own medical

expenses due to the joint employers' denial of medical treatment and of opportunities to purchase medical insurance;

I. Notification and disclosure; and

J. Any and all other remedies allowable by law.

that the results of any and all investigations be made available to all employees upon request through their attorneys, including any appeals or citations by Wayne Farms or Employer Solutions Staffing Group. If either joint employer requests informal

mediation, Wayne Farms or Employer Solutions Staffing Group may request to be informed through their representatives so that they may participate.

If you have any questions or to set up an interview with any of the above-listed Wayne Farms workers at [redacted] or [redacted]

Please contact us at [redacted] above-listed Wayne Farms

Respectfully,

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]