Labor & Employment Law Daily Wrap Up

Democratic committee leaders seek info on DOL’s role in ‘watered-down’ Smithfield Foods COVID-19 recommendations, (Oct. 7, 2020)

By Pamela Wolf, J.D.

Correcting earlier testimony, CDC Director Robert Redfield said his office was in contact with both the USDA and the DOL about the Smithfield outbreak during the time that the CDC was working on the safety recommendations.

Democratic committee leaders are pressing Labor Secretary Eugene Scalia for information on the DOL’s involvement in "the watering down of Centers for Disease Control recommendations to a South Dakota meatpacking plant that experienced a major COVID-19 outbreak," as they put it in a press release. Lawmakers have "expressed deep concern" about the "CDC's irregular process of responding to COVID-19 exposure at the Smithfield Foods Sioux Falls Pork Plant, one of the nation’s largest meatpacking centers," the committee leaders said.

Watered-down recommendations. After visiting the plant in April 2020, the CDC issued an "Epi Aid" report with recommendations outlining how the plant could reduce disease transmission among workers. That document, however, was immediately withdrawn and then "watered down" in a final version posted on CDC’s website, according to the Democratic lawmakers. In the final version, the CDC framed its science-based recommendations as entirely optional by inserting phrases in directives such as "if feasible," "consider," and "if possible."

Conflicting testimony and practices. On September 23, CDC Director Robert Redfield testified before the Senate Committee on Health, Education, Labor, and Pensions that he had no contact with the Department of Agriculture (USDA), the White House, or Smithfield about this matter. This contradicted his own CDC officials, who have confirmed an April 22 phone call between the CDC Director and the USDA Secretary. Redfield also claimed the changes were made simply to clarify that the recommendations were advisory and not regulatory requirements. Previous CDC Epi Aids, however, do not include similar weakening phrases, the lawmakers pointed out.

After the hearing, the committee members sent a letter to Trump administration officials at the Department of Health and Human Services, the CDC, and the National Institute for Occupational Safety and Health (NIOSH), hoping to better understand why the changes were made from the first and second versions of the CDC recommendations, and who had influenced this process. In a separate letter to USDA Secretary Sonny Perdue, the committee members requested documents outlining any communication between the USDA and the CDC or Smithfield concerning the development of guidance for Smithfield.

Last week, Dr. Redfield informed Senator Tammy Baldwin (D-Wis.) that, contrary to his previous testimony (in response to her questioning), his office was in contact with both the USDA and the DOL about the Smithfield outbreak during the time that the CDC was working on the safety recommendations.

Time to talk to the DOL Secretary. Given this chain of events, the Democratic lawmakers are now requesting that Labor Secretary Scalia provide information about the DOL’s involvement with the CDC recommendations to the Smithfield plant in April 2020.

The lawmaker’s noted that the DOL’s OSHA is the agency charged with issuing enforceable workplace safety standards to protect U.S. workers, but it has yet to issue an Emergency Temporary Standard (ETS) to keep workers safe and prevent the spread of the virus during the COVID-19 pandemic.
The Democratic committee leaders are asking Secretary Scalia to provide the following by October 19, 2020:

- Copies of all emails, attachments, and other communications between the DOL and the CDC or the USDA regarding any version of the site visit memorandum, including but not limited to emails, memos, or phone conversations concerning the April 20 summary or pre-clearance draft of the site visit memorandum.
- Copies of all emails, attachments, and other communications between Smithfield, its representatives, or any other entity acting on behalf of Smithfield and the DOL regarding this site visit memorandum, including but not limited to emails, memos, or phone conversations concerning the April 20 summary or pre-clearance draft of the site visit memorandum.
- Copies of any reports, notes, summaries, or other descriptions of the in-person visits received or reviewed by the DOL concerning the visit that the CDC and NIOSH conducted at Smithfield on April 16 and 17.
- A list of all the versions of this site visit memorandum or any summaries that were received or reviewed by the DOL, including but not limited to the pre-clearance draft that was sent to the South Dakota Department of Health on April 20, the first version, the second version, and any other drafts.
- Copies of all emails, attachments, and other verbal and written communications between the DOL and any other federal agency or the South Dakota Department of Health regarding any version of this site visit memorandum.