

October 30, 2020

James Martineck, Area Director
OSHA, US Department of Labor
Chicago South Area Office
8505 W. 183rd Street, Suite C
Tinley Park, IL 60487
Phone: 708-342-2840

RE: Restaurant Health Complaint about COVID-19
McDonald's, 5733 S Kedzie Ave, Chicago, IL 60629
Ignacio, Manager; Tel: [REDACTED]

Dear Director Martineck,

As an employee of McDonald's located at 5733 South Kedzie Avenue, I am filing this Complaint about serious and imminent health hazards and violations of OSHA rules. I request that OSHA conduct an immediate on-site inspection of this restaurant at the address listed above, as required by Section 8 of the OSH Act. I believe the conditions in my store pose an imminent danger to my health and that of my coworkers, because we believe that the company is not protecting us from the dangers of COVID-19, and that the conditions in our store have worsened since the start of the pandemic shutdowns in Chicago.

At my store, there are six employees who currently have COVID-19. Some of these sick employees are forced to come into work while still sick and contagious, or are forced to continue working despite alerting managers that they are not feeling well. Not only have managers refused to inform my coworkers of whether or not we have come into "close contact" with these sick employees, but they have also not even informed us of the process they use to determine which other employees were in "close contact" with the employees who were infected. This means that all of the employees who were in "close contact" with the sick employees potentially spread the infection to their families and friends without knowing about it. I am one such employee who started showing undeniable symptoms of COVID-19 just over two weeks ago and immediately notified my coworkers myself, because I knew from previous 5 confirmed COVID-19 cases at my store that managers would not notify any of my coworkers of my positive case. Furthermore, the store was never closed for a deep cleaning after these employees reported their positive test results. This practice is unacceptable and certainly contributed to the sudden surge in COVID-19 cases at my store, a location which until now had zero confirmed or even suspected COVID-19 cases. This poses a danger to the health of my coworkers.

FAILURE TO KEEP THE WORKPLACE FREE OF A HAZARD TO WHICH EMPLOYEES ARE EXPOSED

My coworkers and I are not provided with proper PPE. My employer refuses to provide employees with the proper facemasks that we need to safely perform our work. Any employee who asks their manager for another mask if, for example, during the course of a shift their mask becomes soiled or wet and therefore rendered ineffective is informed that there are "no more masks for you at the store." A small supply of masks is made available to unmasked customers in the store, but these masks are not made available to us, the employees of the store itself. Because of this, for every shift, we are forced to use what we can make or purchase ourselves—currently, this means most of us must wear reusable cloth

masks in order to comply with Governor Pritzker's executive orders. Research shows that the SARS-CoV-2 virus spreads through fine aerosols that remain in the air for many hours; thus, food safety protocols require that single-use paper masks be provided to workers. The FDA's April 24, 2020 Guidance on Use of Respirators, Facemasks, and Cloth Face Coverings in the Food and Agriculture Sector During COVID-19 Pandemic clearly states that "cloth face coverings . . . do not protect the worker wearing them from exposures." In a foodservice setting, the FDA recommends that "a clean face covering (or disposable facemask option) should be used and changed out as needed." However, this is impossible in our case because our employer refuses to supply more disposable masks at no cost to employees, much less any masks at all.

This hazard is a violation of OSHA's PPE rule 1910.132, which requires employers to make sure that workers are provided with the right PPE – and wear it – "wherever it is necessary by reason of hazards of processes or environment." The same rules also require employers to: "(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment."

Furthermore, social distancing is still impossible to enforce at my store. The close quarters of our work areas and the movement required to perform our duties require us to regularly be within six feet of our co-workers during our shifts. For example, at times in the drive-thru windows, there will be up to 4 workers in that single small area. When the drive-thru is particularly busy, the multiple workers who are required to work the drive-thru cash register and food hand-offs are then joined by a manager who crowds the employees and adds to the growing group in that confined area. The kitchen is a similar story—the workers at the prep tables who assemble orders are directly behind the workers who operate the fryers. This means that workers in the kitchen are often bumping into each other simply because management forces us to fill orders as quickly as possible. This violation of the social-distancing requirement could be avoided if the managers would simply slow down the orders we have to fill so that only one or two of us could work there in a safe and socially distant manner. This clearly violates the social distancing requirements for all businesses as set forth in OSHA's Guidance on Preparing Workplaces for COVID-19 as well as the CDC Interim Guidance for Businesses and Employers. Businesses are required to ensure social distancing and, where distancing is not possible, ensure the proper use of face coverings that cover the nose, mouth, and chin. My managers fail to ensure both. This is completely unacceptable and violates both the OSHA and CDC guidance for reopening businesses, in addition to violating Governor Pritzker's Executive Order 2020-43 issued June 26, 2020 for all businesses during Phase IV Reopening. Paragraph 3(a) of this executive order requires that all businesses ensure that employees practice social distancing and wear face coverings when social distancing is not always possible. Paragraph 5(a) further specifies that these social distancing measures include ensuring employees appropriately wear face coverings in work environments in which maintaining a six-foot distance is not possible at all times. Your rules require that managers take these precautions to ensure employees do not get sick while on the job, and that they take this responsibility very seriously, for the safety of employees and customers alike.

Additionally, my store often runs out of soap for days at a time, so that employees are unable to properly wash our hands as often or as thoroughly as is recommended by OSHA and CDC guidance. This is a clear violation of OSHA's sanitation rule 1910.141, which requires employers to provide appropriate washing facilities for employees to use as is needed. Section (d)(2)(iii) of this rule clearly states that "Hand soap or similar cleansing agents shall be provided." During the COVID-19 pandemic

in particular, the CDC's Interim Guidance for Businesses and Employers Responding to COVID-19 instructs employers to ensure that employees "Wash their hands often with soap and water for at least 20 seconds . . . inform employees that if their hands are visibly dirty, they should use soap and water over hand sanitizer" and that, furthermore, "Key times for employees to clean their hands include: before and after work breaks [and] before eating and preparing food." According to these health agencies, soap should not be allowed to completely run out for extended periods of time; yet, my employer fails to ensure that my store has adequate soap.

Lastly, my coworkers and I are being deterred from exercising our right to use paid sick leave in order to self-quarantine if we test positive for COVID-19, report experiencing COVID-19 symptoms, or must take care of a family member who tests positive for COVID-19. My employer has deliberately misinformed employees about our right to use our paid sick time, per the Chicago Paid Sick Leave Ordinance, to self-quarantine or take care of a family member who tests positive for COVID-19. Workers at my store are completely unaware of our rights under the Chicago Paid Sick Leave Ordinance and the Emergency Federal Paid Sick Leave Act. Even though I have COVID-19 and have quarantined since October 11 to protect the health of my coworkers and the customers we serve, my manager has constantly reminded me that he will not honor my two weeks' worth of paid sick leave. In fact, my manager has recently pressured me to return to work as soon as possible, instead of at the time I am able to produce two negative COVID-19 tests more than 24 hours apart, as is recommended by the Illinois DCEO. I am still sick and am afraid that if I refuse to go back to work while I am contagious, my manager will retaliate against me. I have learned that other coworkers were forced to return to work before testing negative for COVID-19 and, given the pressure and financial threat I am currently experiencing from my manager, would not be surprised if they report experiencing the same pressure from managers.

This forces hourly employees such as myself to choose between earning a much-needed paycheck to cover my living expenses or self-isolating at home, with no pay, to possibly prevent the spread of a highly contagious disease. According to the minimum guidelines set forth by the Illinois DCEO on June 17, 2020 regarding employee health and screening, any employee who has had close contact with a coworker or any other person who is diagnosed with COVID-19 should quarantine for 14 days after the last/most recent contact with the infectious individual. However, in the absence of accurate information on paid sick leave rights as mandated by the Chicago Paid Sick Leave law, hourly employees who must choose between self-isolating for nearly two weeks with no pay or reporting to work with possible COVID-19 symptoms will certainly be financially pressured to choose the latter. This creates a health issue for both employees and the customers we serve at our store. The sick leave policy is inconsistent with guidance of the CDC and of OSHA, both of which encourage employers to adopt liberal sick leave policies in response to the COVID-19 pandemic.

As your office is aware, the COVID-19 pandemic has resurged in the City and the Director of the Chicago Department of Public Health estimates that as many as 1 in 50 Chicagoans have been infected. This startling recent information means that any one of us who works the counter or the drive-thru is virtually certain to encounter several infected customers during our shifts, which puts us in great danger at our workplace. In fact, the CDC has just recently published a study showing that employees exposed to several different positive individuals during the course of a shift got sick despite the exposures lasting only a few minutes across different positive individuals. I have seen this exact situation happen at my own store, in the case of employees who were forced to work while clearly

displaying COVID-19 symptoms as well as employees who were pressured by their managers to return to work before they completely recovered and definitively tested negative for COVID-19. Clearly, without proper PPE or the strict enforcement of workplace controls that protect employees during what is being dubbed Chicago's "second COVID-19 wave," minimum wage workers like my coworkers are endangered every day.

The OSHA Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) from May 19, 2020 recommends that the most current CDC guidance "be consulted in assessing potential workplace hazards and to evaluate the adequacy of an employer's protective measures for workers." As shown above, our employer has neglected to follow the CDC guidance and other official health departments' guidance regarding necessary changes to the workplace that protect workers.

THE HAZARD WAS RECOGNIZED

My employer recognizes the workplace hazards that lead to higher rates of transmission of COVID-19. McDonald's knows that masks reduce the spread of COVID-19 infections and that they are required by Illinois executive orders and Chicago health department guidance to ensure proper mask usage. The managers at my store know that OSHA once opened an informal investigation into the hazards that one of my coworkers had identified at our store back in July. They have chosen to follow certain CDC recommendations, such as providing adequate gloves, since we are a food preparation location and therefore were required to have adequate gloves even before the pandemic. However, as demonstrated above, they have shown themselves to be negligent in enforcing other critical workplace safety measures regarding mask usage, paid sick leave, COVID-19 notification, and social distancing.

I have complained to my employer many times over the past seven months about these hazards and the failure to fix them, particularly regarding the mask etiquette and sick leave policy. I am also filing a complaint with the Chicago Department of Public Health about the COVID-19 cluster and COVID dangers in our store, but the managers are still failing to take actions which meet basic CDC, OSHA, and Illinois DCEO Guidance for Reopening.

HAZARD WAS CAUSING OR WAS LIKELY TO CAUSE DEATH OR SERIOUS PHYSICAL HARM

Per the recommendations of many reputable health organizations, such as the CDC and the WHO, properly-worn masks and enforcement of social distancing guidelines are the most effective means of preventing transmission of a deadly respiratory disease such as COVID-19. Failure to ensure effective workplace COVID-19 practices is likely to cause serious harm in the form of a deadly virus, particularly as the City of Chicago's COVID-19 positivity rate has shown a disturbing upward trend in recent weeks. At my store, it has very clearly already caused serious physical harm and is unlikely to end soon. Not only are employees becoming infected at our store, but we are also bringing the highly contagious virus back to our families and communities. After I first caught COVID-19, my husband and our three children—aged 7 years, 3 years, and 5 months—and my brother-in-law have contracted COVID-19. Since I began quarantining on October 11, I have learned of several more coworkers who are also sick with COVID-19, one of whom is an elderly lady whose family depends on the paycheck she earns at McDonald's. In addition, two of the floating workers at my store who used to work at multiple McDonald's locations owned by the same franchisee as mine have already passed because of COVID-19. Their families did not even have the money to pay for a burial.

Clearly, the store's sick leave policy creates a health issue for both employees and the customers we serve at our store. Not only is paid sick leave mandated by the Federal Emergency Paid Sick Leave Act for the reasons outlined above, but also, liberal sick leave policies are encouraged by both CDC and OSHA guidance for employers during the COVID-19 pandemic. When hourly, minimum wage employees must choose between self-isolating for nearly two weeks with no pay and reporting to work with possible COVID-19 symptoms, they will certainly be financially pressured to choose the latter. Many of us must support our entire families on the paycheck we earn from our full-time work at McDonald's. Such workers at my store are being deliberately misinformed by our managers about our rights under the Chicago Paid Sick Leave law and FEPSLA. Our managers are spreading misinformation about our eligibility for PSL under these laws in order to pressure sick employees to come back to work even when still experiencing COVID-19 symptoms. This endangers both employees and customers, a fact that is recognized by your office.

GENERAL DUTY CLAUSE

According to Section 5(a) of the OSH Act, each employer:

“(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.”

As I have described above, my employer has failed time and time again, in spite of my coworkers' and my best efforts in alerting authorities, to provide working conditions which are free from hazards that they are certainly aware are likely to cause death or serious physical harm to their employees.

EMPLOYEE REPRESENTATIVES

Once again, I designate the Fight for \$15 Chicago as the designated employee representative in all contacts with OSHA and the company for this Complaint and with regard to any resulting Citations. I also designate Jeremy Al-Haj from the Fight for \$15 Chicago as my designated employee representative. You can reach Mr. Al-Haj at:



Mr. Al-Haj will be happy to provide you with any information which will assist you in conducting this inspection. In addition, he will be happy to arrange for your inspector to meet privately, at a site away from the workplace, with workers to discuss the hazards at this site. Such a meeting can be held either before or after the physical inspection of the worksite.

Finally, I request that OSHA include Mr. Al-Haj as our designated representative either in the Opening Conference held with the employer, or if the employer insists on separate conferences, that OSHA hold an Opening Conference with him and any available affected employees. We also request that you schedule any Final Closing Conference to allow ourselves and other affected workers to participate or that you schedule a separate meeting with us if the employer objects to our participation in the closing conference.

When OSHA conducts an inspection, we request that you keep confidential the name and contact information of every worker you interview to minimize the chances for employer retaliation against them. Some of the workers are concerned that once our employer learns that an OSHA investigation has been requested, the employer may try to intimidate employees into misrepresenting the situation in the store or retaliate against the workers who filed complaints with OSHA. To minimize the chances of such retaliation, we suggest that OSHA conduct off-site interviews of affected workers. We will be happy to arrange such meetings, either before the inspection begins or while it is in progress.

Thank you for your attention to this serious matter.

Sincerely,

A solid black rectangular redaction box covering the signature area.

Cc: OSHA Regional Administrator, Chicago; FAX: (312) 353-7774