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Can Franchisor (Corporate Entity) and Franchisee be Considered Joint Employers

Issue Presented for OSHA:

Whether for purposes of the OSH Act, a joint employment relationship can be found between the franchisor (corporate entity) and the franchisee so that both entities are liable as employers under the OSH Act.

Ultimate determination will be reached based on factual information about the relationship between the franchisor and franchisee over the terms and conditions of employment. While the franchisor and the franchisee may appear to be separate and independent employers, a joint employer standard may apply where the corporate entity exercises direct or indirect control over working conditions, has the unexercised potential to control working conditions or based on the economic realities. As a general matter, two entities will be determined to be joint employers when they share or codetermine those matters governing the essential terms and conditions of employment and the putative joint employer meaningfully affects the matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction.

To help OSHA reach a determination as to whether the corporate entity (franchisor) and the franchisee can be considered joint employers, the following information should be obtained. The questions are grouped with broad topics with suggested questions to help determine whether Corporate (franchisor) and franchisee are in a joint employment relationship.

I. Overall Relationship Between Corporate and Franchise:

Obtain copy of any franchise agreement and written document that addresses relationship;
How does the franchisee obtain the franchise;
What does the franchise submit to corporate;
What fee does franchisee pay to corporate (obtain fee agreement);
Does franchise pay a royalty or other compensation, for the use of corporate's trademarks and marketing system;
Does franchise have to agree to certain corporate conditions;
Does the franchise have to submit plans to corporate;
What is the interaction with corporate;
With whom does the franchise interact from corporate;
Does corporate have any ownership interest in the franchise;
Does corporate have any investment in equipment;
Does corporate select/approve location of the franchise;
Does corporate approve advertising the franchise uses;

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What rules/policies does corporate have on brand standards;
After franchise is established does corporate do any kind of review;
What kind of ongoing communications take place between the franchise and corporate;
Does franchise contact corporate for any type of assistance after the franchise is up and running;
Is the franchise separately incorporated (obtain copy of documents related to incorporation);
Does anyone from corporate visit the franchise; if so, what does corporate do during its visit;
Does corporate provide manuals detailing how a franchisee should operate its franchise, including the best way to staff a franchise or define job responsibilities;
Does corporate provide common set of operating procedures;
Does corporate create menus and/or products for franchisee to sell;
Does corporate approve signage for the franchisee to use;
Does corporate require franchise to use any specific computer system.

II. Written Documentation of Corporate Direction and Control of Franchise

a) Operation of franchise

Obtain a complete list of any and all manuals and written policies/procedures the Corporate provides to franchise;
Does corporate provide franchisee handbook;
Does corporate provide instructions/policies on purchase of materials or food, preparation of materials or food;
Is corporate involved in purchase of equipment;
Does corporate provide list of suppliers of equipment;
Does corporate recommend use of suppliers;
Is corporate involved in decisions regarding store layout, store hours, staffing requirements, number of employees per shift; positions of employees; number of managers; responsibilities of managers; job descriptions.

b) Conditions of employment

Obtain a complete list of any and all manuals and written policies/procedures the Corporate provides to franchise;
Does the corporate provide instructions/policies regarding employee orientation;
Does corporate provide an employee handbook;
Is corporate involved in setting of work hours; pay scales; determining overtime; leave policies – vacation days- sick leave; workers compensation;
Does corporate provide information to franchise about FMLA or any other worker benefits;
Does corporate provide information/policies about training employees;

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Does corporate provide information/policies about clothing, uniforms, shoes, hair covering, jewelry, etc.

III. Corporate control over the essential terms and conditions of employment of the workers at the franchise:

Does corporate provide any oversight or have any involvement in:

a) Hiring:

Does Corporate have any involvement in hiring decisions at franchise;
Are any hiring decisions reviewed by Corporate in any way review;
Does corporate provide hiring manual and policies;
Does corporate provide personnel manual handbook for any worker's, management and non-management;
Is corporate involved in any way in screening applicants for employment; selecting applicants;
Does corporate require franchisee to conduct background check of applicants.

b) Pay and Benefits

Does corporate set pay rates; have any involvement in payroll and payment of wages; does corporate have involvement in workers compensation.

c) Disciplinary Policies:

Does corporate provide franchise with disciplinary rules or policies.

d) Training

Does corporate provide franchise with training manuals or information of any sort.

e) Termination of Employees:

Does Corporate have any involvement in decisions to terminate employees at franchise;

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Does corporate in any way review decisions to terminate employees at the franchise;
Does corporate provide manuals or policies on termination of employees;
Corporate involvement in safety and health policies and practices of the franchisee
Does corporate provide any type of safety program;
If franchise has a safety program what name is on the program;
Does corporate provide any instruction/information about protective equipment the franchise should have;
Does corporate set any standards for safety training;
Does corporate have safety training for the managers.

IV. Corporate control over safety and health policies and practices at the franchisee

Does corporate provide franchisee with any type of safety program;
If so, obtain copy.
If franchise has a safety program (obtain copy) what name is on the program;
Does corporate provide any instruction/information about protective equipment the franchise should have;
Does corporate provide to the franchisee any personal protective equipment;
Does corporate set any standards for safety training;
Does corporate provide safety training for franchisee managers;
Does corporate ask for any injury or illness information from the franchisee;
If corporate visits franchisee, does corporate look at OSHA 300 logs;
Does corporate conduct any type of safety evaluation of the franchisee;
Does corporate provide any instruction to franchisee about keeping injury and illness data;
Does corporate provide any forms to the franchisee to use for investigation of accidents;
Does franchisee report any information to corporate about safety issues, including complaints from employees;
Can franchisee independently implement safety and health policies without any involvement of corporate.

DRAFT

U.S. Department of Labor
Occupational Safety and Health Administration
9100 Bluebonnet Centre Blvd.
Suite 201
Baton Rouge, LA 70809
Phone: 225-298-5458 Fax: 225-298-5457



Citation and Notification of Penalty

To:
Masker Management, dba McDonalds
683 Old Spanish Trail
Slidell, LA 70458

Inspection Number: 1045372
Inspection Date(s): 03/10/2015 - 03/10/2015
Issuance Date: 06/02/2015

Inspection Site:
3096 Gause Blvd
Slidell, LA 70461

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>.

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide ***abatement certification*** to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that ***abatement documentation*** is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an

employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 06/02/2015. The conference will be held by telephone or at the OSHA office located at 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge, LA 70809 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1045372

Company Name: Masker Management, dba McDonalds
Inspection Site: 3096 Gause Blvd, Slidell, LA 70461
Issuance Date: 06/02/2015

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge, LA 70809**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review



Citation and Notification of Penalty

Company Name: Masker Management, dba McDonalds
Inspection Site: 3096 Gause Blvd, Slidell, LA 70461

Citation 1 Item 1 Type of Violation: **Other-than-Serious**

29 CFR 1910.36(d)(1): Employee(s) were not able to open an exit route door from the inside at all times without keys, tools, or special knowledge:

On or about March 10, 2015 the employer did not ensure an exit route door located in the back of the facility was operable at all times without special knowledge nor did the exit route door meet specifications outlined in NFPA Life Safety Code 2009 Edition. This endangered employees attempting to use the exit route door in the event of emergency situations such as but not limited to fire, active shooter, and or strong arm robbery.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: 06/20/2015
Proposed Penalty: \$0.00

Dorinda J. Folse
Area Director

SUMMARY OF PROPOSED PENALTIES

Summary of Penalties for Inspection Number -	1045372
Citation 1, Other-than-Serious	\$0.00
TOTAL PROPOSED PENALTIES	\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

	# of campaign McDonald complaints	# of McDonald complaints (not campaign related)
Region 1	0	
Region 2	2	4
Region 3	2	2
Region 4	2	1
Region 5*	6	
Region 6	0	
Region 7	3	
Region 8	1	
Region 9**	3	
Region 10	0	
TOTAL	19	7

*Two of Region 5's may not be a part of the campaign - it is unclear

** Region 9 is reporting CAL-OSHA's complaints

Timeline for McDonald's Nationwide Complaints

Initial DOL Contact

3/2/2015: The Fast Food Workers Campaign contacted DOL and indicated that they would be hand-delivering to OSHA approximately 30 safety and health complaints with specific allegations of hazards in the workplace at McDonalds establishments from 8 cities across the nation.

Date Received	Corporate or Franchise?	Establishment Location	Complaint items	Violations/Citations
3/2/2015	Corporate	265 East Route 59 Nanuet, NY 10954	(1) No PPE to protect against burn/chemicals; (2) Inadequate first aid kit for burns; (3) Not recording injuries (300 Log); (4) No hazard communication training; (5) Slip/fall hazards.	Issued on 7/21/2015: Serious: Failure to provide/ensure PPE and HAZCOM Violations.
3/2/2015	Franchise	3137 North Broad Street, Philadelphia, PA 19132	(1) Lack of PPE/not maintained; (2) Slip/fall hazards; (3) No hazard communication training.	E5 Deliberative process [Redacted]
3/3/2015	Franchise - Lunda Dunhan dba McDonald's and McDonald's Corp	1651 Broadway, New York, NY	(1) No PPE for the hands, arms, face & torso from hot oil, grease or chemicals; (2) PPE not maintained; (3) No training in the proper use of PPE; (4) Slip hazards from water & hot oil; (5) Inadequate First Aid Kit; (6) No hazard communication training or MSDS	E5 Deliberative process [Redacted]
3/3/2015	Corporate	3306 S University Blvd, Miramar, FL	(1) No PPE to handle hot oil and grease; (2) Inadequate first aid kit for burns; (3) Slips/falls hazards.	Issued on June 10, 2015: Housekeeping violation .
3/6/2015	Franchise	3051 Van Brunt Blvd, Kansas City, Missouri 64128	(1) No PPE to handle hot oil and grease; (2) Inadequate first aid kit for burns; (3) Slips/falls hazards; (4) No hazard communication training.	E5 Deliberative process [Redacted]
3/6/2015	Franchise	6201 East Colfax Avenue Denver, CO 80220	(1) Exposed to burn hazards and sharp objects; (2) No hazard communication training; (3) Exposed to Struck-by hazards; (4) Slip hazards; (5)No PPE; (6) Inadequate First Aid Kit.	E5 Deliberative process [Redacted]
3/6/2015	Corporate	1905 South Federal Blvd. Denver, CO 80219	(1)No PPE/exposed to burn hazards; (2) No hazard communication training; (3) Slip hazards; (4) No PPE training.	Issued 7/16/2015: Serious: Blocked Electrical Panel and for a lack of PPE/Eye/Face/Hand Protection.
3/8/2015	Corporate	3867 S. Archer, Ave, Chicago, IL.	(1) Exposure to burn hazards, i.e. grills/fryers; (2) No PPE for the hands, arms, face & torso from hot oil, grease or chemical; (3) No PPE training; (4) PPE not properly maintained; (5) Slip hazards from water & hot oil; (6) Inadequate First Aid Kit; (7) No hazard communication training - exposed to chemical hazards.	Closed - In compliance.

Timeline for McDonald's Nationwide Complaints

Date Received	Corporate or Franchise?	Establishment Location	Complaint items	Violations/Citations
3/9/2015	Franchise (independently owned)	8312 S. Ashland, Ave. Chicago, IL.	(1) No PPE for the hands, arms, face & torso from hot oil, grease or chemicals; (2) Not trained to use PPE; (3) PPE not maintained; (4) Slip hazards from water & hot oil; (5) Inadequate First Aid Kit; (6) No hazard communication training - exposed to chemical hazards.	E5 Deliberative process [Redacted]
3/9/2015	Franchise/The Bardell Company	1918 Broad St. La Place, LA	(1) Lack of PPE - Exposure to Burns; (3) No hazard communication training; (4) No PPE training.	Issued 6/26/2015: Serious citation for lack of PPE.
3/10/2015	Franchise/Rice Enterprises, LLC./ McDonald's	101 Hoffman Boulevard, Duquesne, PA 15110	(1) Lack of PPE - Exposure to Burns; (2) No PPE for the hands, arms, face & torso from hot oil, grease or chemical; (3) Floors, aisles and walkways are not maintained free of water and hot oil, creating a slip and fall hazard(s); (4) Inadequate first aid to treat burns and other injuries; (5) No hazard communication training.	E5 Deliberative process [Redacted]
3/10/2015	Franchise - owned by Debbie Allen; Nevada Corporation/ Mc Donalds	420 E. Capitol Ave., Milwaukee, WI	(1) No PPE/exposed to burn hazards; (2) No PPE for the hands, arms, face & torso from hot oil, grease or chemical; (3) Floors, aisles and walkways are not maintained free of water and hot oil, creating a slip and fall hazard(s); (4) Inadequate first aid to treat burns and other injuries; (5) No hazard communication training.	(b) (5) [Redacted]
3/18/2015	Corporate	9131 West Florissant, Ferguson, Missouri	(1) No PPE for contact with hot oil and/or equipment; (2) Hazardous walking surfaces due to water and oil on floors and aisles; (3) First aid kit not stocked; (4) No hazard communication training.	(b) (5) [Redacted]
3/24/2015	Franchise	5890 S. Orange Blossom Trail, Orlando, FL 32839	(1) No PPE for contact with hot oil and/or equipment; (2) Hazardous walking surfaces due to water and oil on floors and aisles; (3) First aid kit not stocked; (4) No hazard communication training.	Closed - In compliance.
4/1/2015	Franchise	1119 N Tucker St. Louis, Missouri 63101	(1) No PPE for contact with hot oil and/or equipment; (2) Hazardous walking surfaces due to water and oil on floors and aisles; (3) First aid kit not stocked; (4) No hazard communication training.	E5 Deliberative process [Redacted]
5/4/2015	Franchise Mac-Clark Restaurants Inc. DBA McDonald's	3918 Oneida Street, Washington Mills, NY 13479	(1) Suffered burns when smothering a grease fire.	E5 Deliberative process [Redacted]
6/18/2015	Draft Joint Employer (Franchisor/Franchisee) Exploratory Questions sent to the field	In response to the need to follow up on determining the responsibility of franchisor (McDonald's), DEP and SOL jointly developed the exploratory questions and sent to the field on June 18th. A week later, DEP convened a conference call with the field to clarify the guidance.		

Nation-wide McDonald's Complaints *If in red, either is not or may not be part of the campaign

Region/Complaint Receiving Office	Date Received	Formal or Non-Formal?	Corporate or Franchise?	Establishment Location	Complaint items	Date Opened Inspection	Walkaround rep? If Y, from where?	Other information
Region 2 - Tarrytown, NY Area Office	3/2/2015	Formal	Corporate	265 East Route 59 Nanuet, NY 10954	No ppe against burns, chemicals 2) No adequate first aid kit for burns 3) no recording of injuries such as burns 4) no hazard communication training, 5) wet walking/working surfaces creating slip/fall hazards	3/6/2015	None	
Region 2 - Albany, NY AO	4/21/2015	Non-Formal	Franchise	TR MAC, LLC / McDonalds, Queensbury, NY	Employees do not have MSDS: Response indicated that employees have access to MSDS . 2. Employees are not trained for the chemicals being use for their work: Response indicated that employees have hazard communication training. 3. Employer did not report a hospitalization due to (b) (7)(C) : Response indicated that the incident happened on (b) (7) and employer evacuated the site until FD cleared to come back to work after a certified specialist fixed the machine (source). No employees were hospitalized - and the incident predates the reporting of hospitalization requirement.	n/a	n/a	Handled as a phone/fax
Region 2 - Hasbrouck Heights, NJ Area Office	3/12/2015	Non-formal (complainant didn't identify)	Franchise	343 River St, Hackensack, NJ 07601, (201) 487-1347	The french fry deep fryer hood is broken. There is no ventilation for the smoke.	3/16/2015	No rep	Employer discriminates against certain employees because they are immigrants. Tells them that if they don't like how they are treated, that they can go home. Employer keeps hanging up the phone on the CSHO. CSHO tried to call approximately 15 times from different phones. During inspection, the hood was working. No violations found during the walkaround. *** DOES NOT SEEM CAMPAIGN-RELATED
Region 2 - Manhattan, NY Area Office	3/3/2015	Formal	Franchise - Lunda Dunhan dba McDonald's and McDonald's Corp	1651 Broadway, New York, NY	No PPE for the hands, arms, face & torso from hot oil, grease or chemicals, When PPE provide - not maintained. No training in the proper use of PPE, Floors, Aisles and walkways not maintained free of water & hot oil, No First Aid Kit stocked with appropriate supplies and accessible.HAZCOM - no Program, Training, MSDS	3/10/2015	N - Employer refused FFFW access to site property	Complaint was hand delivered and contained a cover letter from "Fast Food Forward" with 3 signed employee statements; complainant requested that 2 reps from Fast Food Forward be present in opening and closing conference (Ben Master and Quincine Evans); requested that a designated rep accompany the CSHO on inspection but did not name person; two reps from Fast Food Forward accompanied the one employee that came to the Area Office (Ben Master and Corey Taylor). Held opening with FFFW rep on phone. Held briefing of walkaround with FFFW rep on phone.
Region 2 - Albany Area Office	5/20/15???	Non-formal	Franchise	579 Troy-Schenectady Road, Latham, NY 12110	(b) (7)(C) (b) (7)(C)	5/20/2015	???	Injured: Youth worker, 17 year old
Region 2 - Manhattan, NY Area Office	5/20/15???	non-formal	Franchise	946 8th Ave, NY, NY	(b) (7)(C)	???	???	Awaiting more information
Region 3 - Pittsburgh Area Office	3/10/2015	Formal (3 letters received)	Franchise	101 Hoffman Boulevard, Duquesne, PA 15110	1. Employees are required to clean and conduct routine maintenance on grills and fryers while they are hot, exposing employees to burn hazards. 2. Employees are not provided with appropriate personal protective equipment to protect their hands, arms, face, and torsos from contact with hot oil and/or equipment, or contact with chemicals.3. Floors, aisles and walkways are not maintained free of water and hot oil, creating a slip and fall hazards for employees.4. The employer does not maintain the first aid kit with the appropriate supplies to treat burns and other first aid type injuries.5. Employees are not provided hazard communication training and/or information about the chemicals they are exposed to.	3/16/2015	The walkaround rep did not wish to participate in the walkaround	In her cover letter, Ms. Jones-Casey identifies herself as the designated employee representative for each worker. She requests that she be included in the opening and closing conferences. Also, she identifies one of the current employees as the employee representative for the walk around. She specifically requests that OSHA conduct off site interviews of affected workers as workers have expressed concern that once OSHA begins its inspection, workers might be intimidated or subject to retaliation. During inspection, the company was cooperative and aware that the Fight for 15 PA was on site

Region 3 - Wilkes Barre AO	3/26/2015	Non-Formal	Franchise	2584 N. Susquehanna Trail Shamokin Dam, PA	(b) (7)(C)	N/A	N/A	This is not a Fight for \$15 complaint.
Region 3 - Philadelphia, PA Area Office	3/2/2015	Formal-(filed by Mindy Isser of Fight for 15-PA_	Franchise	3137 North Broad Street, Philadelphia, PA 19132	1) (b) (7)(C) 2) lack of PPE/notmaintained 3)slip/fall working surfaces 4)Hazzcom/training	3/2/2015	NO	Ms. Isser states she is the designated employee rep for each worker. She requests she be included in opening and closing conferences. She identifies one of the current employees as the employee rep for the walk around. She requests OSHA conduct off site interviews as workers have expressed concern that once OSHA begins inspecting, workers might be intimidated or subject to retaliation.. CSHO contacted rep requesting additional ee complainant interviews.
Region 3 - Baltimore AO	3/13/2015	Formal	Corporate	The Wright Place food Court Smithsonian National Air & Space	1) (b) (7)(C) (b) (7)(C)	03/18/15	No	CSHO Contacted Rep and we are attempting to schedule additional interviews offsite. Estimated date week of 5/18/15. On initial review, region did not think it was campaign related, but sounds like it could be??? This is a "Change to Win" representative.
Region 4 - Savannah Area Office	3/12/2015	Formal	Franchise (owner unknown)	1215 S. Lewis Street, Metter, GA 30439	1) ER does not provide adequate PPE to clean bathrooms 2) The bloodborne pathogens program is not adequate/complete 1) Clean around grills that are too hot; 2) Lack of PPE; 3) Floors, aisles and walkways are not maintained free of water and hot oil; 4) First aid kit is not stocked; 5) No HAZCOM training received			*Does not seem to be a part of the national coordinated effort - employee just phone called in and then sent in a formal complaint the next day.
Region 4 - Tampa AO	3/24/2015	Formal	Franchise	5890 S. Orange Blossom Trail, Orlando, FL 32839	handling hot oil and grease - 1) lack of PPE, 2) lack of first aid kits to address burns, and slips/falls.	3/27/2015	N	Complainants (b) (7)(C), Paul Sylvain and (b) (7) designate Pablo Terraza and complainant Paul Sylvain as their representative from Fight for 15 Florida Workers Organizing Committee.
Region 4 - Ft. Lauderdale, FL Area Office	3/3/2015	Formal, hand delivered	Franchise, owned by Connie Sheer	3306 S University Blvd, Miramar, FL				
Region 5 - MNOSHA	3/16/2015	Formal	Franchise -McDonald's Restaurants of Minnesota, Inc.	Minneapolis, MN	1) (b) (7)(C) 2) Oil and grease coats the floor making it very slippery 3) First aid kit missing antiseptic cream and bandages to cover burns	3/30/2015	No	Employees were interviewed. The investigation is still open.
Region 5 - Cincinnati Area Office	3/31/2015	Nonformal	Corporate	2210 South Limestone Springfield, OH	(b) (7)(C)	4/7/2015	N	May not be part of campaign?
Region 5 - Toledo, OH Area Office	2/24/2015	Non-Formal	Corporate	535 Marion Street, Mt. Gilead, Ohio	(b) (7)(C)	n/a	n/a	Anonymous phone call to the AO on 2/24/15, They provided a satisfactory complaint response, and we closed it out on 3/2/15. May not be part of campaign???

Region 5 - Milwaukee Area Office	3/10/2015	Formal	Franchise - owned by Debbie Allen	420 E. Capitol Ave., Milwaukee, WI	<p>1)employees are required to clean and conduct routine maintenance on grills and fryers that are too hot and that present a recognized hazard of causing serious burns. The equipment should be shut off and the hot oil and surfaces allowed to cool before cleaning and/or maintenance by employees is permitted. 2) employees are not provided with appropriate personal protective equipment to protect their hands, arms, face and torso from contact with hot oil and/or equipment, or contact with chemicals. Employees are not trained in the proper use of personal protective equipment. When PPE is provided, it is not properly maintained so that employees are required to perform cooking, food preparation, equipment cleaning and/or maintenance and other tasks with PPE that is worn out, has holes, and/or is not capable of protecting employees from the hazards of coming into contact with hot equipment and/or cooking oil. 3) Floors, aisles and walkways used by employees are not maintained free of water and hot oil, creating hazardous walking and working surfaces. 4) The employer does not have a first aid kit stocked with appropriate supplies to treat the type of routine burns and other injuries workers encounter when working near hot grills and frvers. 5) Emolovees Employees are required to clean and conduct routine maintenance on grills and fryers that are too hot and that present a recognized hazard of causing serious burns. The equipment should be shut off and the hot oil allowed to, cool before cleaning and/or maintenance by employees is permitted.</p>	Signed formal complaint through Workers Organizing Committee of Chicago
Region 5 - Calumet City Area Office	3/8/2015	Formal	Corporate	3867 S. Archer, Ave, Chicago, IL	<p>Employees are not provided with appropriate personal protective equipment to protect their hands, arms, face and torso from contact with hot oil and/or equipment, or contact with chemicals. Employees are not trained in the proper use of personal protective equipment. When PPE is provided, it is not properly maintained so that employees required to perform cooking, food preparation; equipment cleaning and/or maintenance are not capable of protecting themselves from the hazard of coming into contact with hot equipment and/or cooking oil. Floors, aisles and walkways used by employees are not maintained free of water and hot oil, creating hazardous walking and working surfaces. The employer does not have a first aid kit stocked with appropriate supplies to treat the type of routine burns and other injuries workers encounter when working near hot grills and frvers.</p>	Signed formal complaint through Workers Organizing Committee of Chicago

Region 5 - Calumet City Area Office	3/9/2015	Formal	Franchise (independently owned)	8312 S. Ashland, Ave. Chicago, IL.	<p>Employees are not provided with appropriate personal protective equipment to protect their hands, arms, face and torso from contact with hot oil and/or equipment, or contact with chemicals. Employees are not trained in the proper use of personal protective equipment. When PPE is provided, it is not properly maintained so that employees required to perform cooking, food preparation; equipment cleaning and/or maintenance are not capable of protecting themselves from the hazard of coming into contact with hot equipment and/or cooking oil. Floors, aisles and walkways used by employees are not maintained free of water and hot oil, creating hazardous walking and working surfaces. The employer does not have a first aid kit stocked with appropriate supplies to treat the type of routine burns and other injuries workers encounter when working near hot grills and fryers. Employees are exposed to chemical hazards and do not receive hazard communication training and/or information about the chemicals to which they are exposed.</p>	Signed formal complaint through Workers Organizing Committee of Chicago		
Region 7 - Kansas City Area Office	3/6/2015	Formal - hand delivered	Franchise	3051 Van Brunt Blvd, Kansas City, Missouri 64128	<p>1) (b) (7)(C) 2) No PPE for contact with hot oil and/or equipment 3) Hazardous walking surfaces due to water and oil on floors and aisles 4) First aid kit not stocked 5) No hazard communication training</p>	3/13/2015	<p>The EE rep that participated in the walkaround was Mr. (b) (7)(C), a current employee. Mr. Jeremy Al-Hay from the Worker's Organizing Committee of Kansas City was present but not allowed behind the counter by the McDonald's owner. A separate Opening was held with Mr. Al-Hay.</p>	<p>The complaint was filed by the Worker's Organizing Committee of Kansas City and signed by Michael Enriquez (as an employee representative) Also, signed Worker Statements requesting an inspection of the worksite was received by two current employees (b) (7)(C) (See attachment)</p>
Region 7 - St. Louis Area Office	4/1/2015	Formal	Franchise	1119 N Tucker St. Louis, Missouri 63101	<p>1) (b) (7)(C) 2) No PPE for contact with hot oil and/or equipment 3) Hazardous walking surfaces due to water and oil on floors and aisles 4) First aid kit not stocked 5) No hazard communication training</p>	4/2/2015	<p>No-Complainants specifically asked if they wanted representation and both refused.</p>	<p>One complainants stated the Show Me 15 representative had been at his house several times and waited for him in the parking lot to talk to him. The employee stated he signed the complaint to get rid him.</p>
Region 7 - St. Louis Area Office	3/18/2015	Formal	Corporate	9131 West Florissant, Ferguson, Missouri	<p>1) (b) (7)(C) 2) No PPE for contact with hot oil and/or equipment 3) Hazardous walking surfaces due to water and oil on floors and aisles 4) First aid kit not stocked 5) No hazard communication training</p>	3/23/2015	<p>N -Designated EE rep was not on site at time of walkaround</p>	Show Me 15
								<p>4/10/15 Eric Fruman of Change to Win labor union called RO to let RO of a "chilly" response from a supervisor in the KCAO. He did not want the RO to contact the AO but wanted RO to know. Stated was going to call and try to meet with AD discuss any concern that SHOW ME 15 had as representative for complainant's.</p>
								<p>4/10/15 AO was called by Eric Fruman later in the day. Concern was that complainant's had not been interviewed by the CSHO. He wanted to set up meeting for the complainant's with the CSHO. AO agreed as long as the complainants wanted to talk to us would like to talk to them. Eric Fruman will work on getting the complainants contact information so CSHO can talk to them.</p>
								<p>4/10/15 RO labor liaison called and talked to Eric Fruman to see if he could offer any assistance in his position as LL.</p>

Region 8 - Englewood AO	3/5/2015	Non-formal #96745	Corporate	18181 E. Hampden Ave., Aurora, CO 80013	1) pungent odors and mold 2) slips/falls 3) lack of PPE training 4) (b) (7)(C) 5) lack of hazcom training	n/a	n/a	Initiated a non-formal phone/fax on 3/17/15. Sent OSHA-7's for signature to both complainants which were never signed and returned, rolled into inquiry as per normal protocol. See Lynham email from 3/20/15 for more details about why processed nonformally.
Region 9/Cal OSHA - Los Angeles District Office	3/9/2015	Formal	Franchise	2838 Crenshaw Blvd.; Los Angeles, CA 90016	1. Employees exposed to the hazards of burns from cleaning and maintaining hot grills; 2. Employees not provided with proper PPE for hot equipment, hot oil and chemicals; 3. Slippery surfaces; 4. First Aid kits not properly stocked; 5. Employees not trained on chemicals to which they are exposed.	3/17/2015	N	Region 9 - California, State program State
Region 9/Cal OSHA - Los Angeles District Office	3/9/2015	Formal	Corporate	101 W. Manchester Blvd., Los Angeles, CA 90003	1. Employees exposed to the hazards of burns from cleaning and maintaining hot grills; 2. Employees not provided with proper PPE for hot equipment, hot oil and chemicals; 3. Slippery surfaces; 4. First Aid kits not properly stocked; 5. Employees not trained on chemicals to which they are exposed.	3/17/2015	N	Region 9 - California, State program State
Region 9/Cal OSHA - American Canyon District Office	3/12/2015	Formal	Franchise	2301 MacDonald Ave., Richmond, CA 94804	1. Employees exposed to the hazards of burns from cleaning and maintaining hot grills; 2. Employees not provided with proper PPE for hot equipment, hot oil and chemicals; 3. Slippery surfaces; 4. First Aid kits not properly stocked; 5. Employees not trained on chemicals to which they are exposed.	3/17/2015	N	Region 9 - California, State program State

U.S. Department of Labor
Occupational Safety and Health Administration
9100 Bluebonnet Centre Blvd.
Suite 201
Baton Rouge, LA 70809
Phone: 225-298-5458 Fax: 225-298-5457



Citation and Notification of Penalty

To:
The Bardell Company, dba McDonalds
P.O. Box 2486
La Place, LA 70068

Inspection Number: 1046359
Inspection Date(s): 03/12/2015 - 03/13/2015
Issuance Date: 06/01/2015

Inspection Site:
1918 Broad Street
New Orleans, LA 70119

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>.

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide ***abatement certification*** to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that ***abatement documentation*** is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an

employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 06/01/2015. The conference will be held by telephone or at the OSHA office located at 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge, LA 70809 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1046359

Company Name: The Bardell Company, dba McDonalds
Inspection Site: 1918 Broad Street, New Orleans, LA 70119
Issuance Date: 06/01/2015

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge, LA 70809**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review



Citation and Notification of Penalty

Company Name: The Bardell Company, dba McDonalds
Inspection Site: 1918 Broad Street, New Orleans, LA 70119

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.132(a): Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

On or about March 12, 2015 the employer did not ensure that all required personal protective equipment including but not limited to: face shields, heat resistant gloves, and heat resistant aprons, were readily available at the facility for use by employees exposed to hazards of high heat while cleaning grills and filtering fryer oil with a portable oil filtering machine.

Date By Which Violation Must be Abated:
Proposed Penalty:

06/14/2015
\$3000.00

Dorinda J. Folsie
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
9100 Bluebonnet Centre Blvd.
Suite 201
Baton Rouge, LA 70809
Phone: 225-298-5458 Fax: 225-298-5457



INVOICE / DEBT COLLECTION NOTICE

Company Name: The Bardell Company, dba McDonalds
Inspection Site: 1918 Broad Street, New Orleans, LA 70119
Issuance Date: 06/01/2015

Summary of Penalties for Inspection Number	1046359
Citation 1, Serious	\$3000.00
TOTAL PROPOSED PENALTIES	\$3000.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.

Dorinda J. Folse
Area Director

Date

Subject	Issue Background	Process & Progress	Offices & Entities
OAS Briefing Items			

E5 Deliberative

Subject	Issue Background	Process & Progress	Offices & Entities
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E5 Deliberative

Subject	Issue Background	Process & Progress	Offices & Entities
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E5 Deliberative

Subject	Issue Background	Process & Progress	Offices & Entities
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E5 Deliberative

Subject	Issue Background	Process & Progress	Offices & Entities
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(b) (5)

Subject	Issue Background	Process & Progress	Offices & Entities
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Subject	Issue Background	Process & Progress	Offices & Entities
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Subject	Issue Background	Process & Progress	Offices & Entities
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(b) (5)

Subject	Issue Background	Process & Progress	Offices & Entities
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(b) (5)



Reply to the attention of:

JUL 15 2014

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: *Dorothy Dougherty*
DOROTHY DOUGHERTY
Deputy Assistant Secretary

FROM: *Thomas Galassi*
THOMAS GALASSI, Director
Directorate of Enforcement Programs

SUBJECT: Policy Background on the Temporary Worker Initiative

On April 29, 2013, OSHA launched the Temporary Worker Initiative (TWI) in order to help prevent work-related injuries and illnesses among temporary workers.¹ The purpose of this initiative is to increase OSHA's focus on temporary workers in order to highlight employers' responsibilities to ensure these workers are protected from workplace hazards.

As detailed in the documents posted on our website (www.osha.gov/temp_workers), temporary workers are at increased risk of work-related injury and illness. In recent months, OSHA has received and investigated many reports of temporary workers suffering serious or fatal injuries, some in their first days on the job. Numerous studies have shown that new workers are at greatly increased risk for work-related injury, and most temporary workers will be "new" workers multiple times a year. Furthermore, as the American economy and workforce are changing, the use of temporary workers is increasing in many sectors of the economy.

OSHA compliance officers regularly encounter worksites with temporary workers. This memorandum is being sent to remind OSHA field staff of the Agency's long standing general enforcement policy regarding temporary workers. Additional enforcement and compliance guidance will be issued in the near future.

For the purposes of the TWI, "temporary workers" are workers hired and paid by a staffing agency and supplied to a host employer to perform work on a temporary basis. In general, OSHA will consider the staffing agency and host employer to be "joint employers" of the worker in this situation. Joint employment is a legal concept recognizing that, in some situations, the key attributes of the traditional employer-employee relationship are shared by two or more employers in such a manner that they each bear responsibility for compliance with statutory and regulatory requirements. For example, the staffing agency often controls a worker's paycheck and selects the host employer location where the worker will be sent. The host employer, in turn, assigns the particular work to be done each day and controls operations in the physical workplace.

¹ See OSHA New Release 13-800-NAT, [OSHA launches initiative to protect temporary workers](#), April 29, 2013.

As joint employers, both the host employer and the staffing agency have responsibilities for protecting the safety and health of the temporary worker under the OSH Act. In assessing compliance in any inspection where temporary workers are encountered, compliance officers must consider whether each employer has met its responsibility.

Identifying Employer Responsibilities. It is a fundamental principle that temporary workers are entitled to the same protections under the OSH Act as all other covered workers. The staffing agency and host employer must work together to ensure that OSH Act requirements are fully met and that the temporary worker is provided a safe workplace. This requires effective initial and follow-up communication and a common understanding of the division of responsibilities for safety and health. OSHA compliance officers should review any written contract(s) between the staffing agency and the host employer and determine if it addresses responsibilities for employee safety and health. It should be understood, however, that the contract's allocation of responsibilities may not discharge either party's obligations under the Act.

The extent of the obligations each employer has will vary depending on workplace conditions and may be clarified by their agreement or contract. Their duties will sometimes overlap. The staffing agency or the host may be particularly well suited to ensure compliance with a particular requirement, and may assume primary responsibility for it. For example, staffing agencies might provide general safety and health training applicable to many different occupational settings, while host employers provide specific training tailored to the particular hazards at their workplaces. If the staffing agency has a long-term, continuing relationship with the temporary worker, it may be best positioned to comply with requirements such as audiometric testing or medical surveillance. The host employer, in turn, would be the primary party responsible for complying with workplace-specific standards relating to machine guarding, exposure to noise or toxic substances, and other workplace-specific safety and health requirements.

As noted above, although the host employer typically has primary responsibility for determining the hazards in their workplace and complying with worksite-specific requirements, the staffing agency also has a duty. Staffing agencies must ensure they are not sending workers to workplaces with hazards from which they are not protected or on which they have not been trained. Agencies need not become experts on all potential hazards at the host's workplace, but nevertheless have a duty to diligently inquire and determine what, if any, safety and health hazards are present at their client's workplaces. For example, if a staffing agency is supplying workers to a host where they will be working in a manufacturing setting using potentially hazardous equipment, the agency should take reasonable steps to identify any hazards present, to ensure that workers will receive the required training, protective equipment, and other safeguards, and then later verify that the protections are in place.

Prior to accepting a new host employer as a client, or a new project from a current client, both parties should jointly review the task assignments and any job hazard analyses in order to identify and eliminate potential safety and health dangers and provide the necessary protections and training for workers. If information becomes available that questions the adequacy of the

host employer's job hazard analyses, such as injury and illness reports, safety and health complaints or OSHA enforcement history, the staffing agency should make efforts to address those issues with the host employer to ensure that existing hazards are properly assessed and abated to protect the workers. In assessing worksite hazards, host employers typically have the safety and health knowledge and control of worksite operations. However, the staffing agency may itself perform, if feasible, an inspection of the workplace to conduct its own hazard assessment or to ensure implementation of the host employer's safety and health obligations.

It is incumbent on both employers to communicate with each other when a worker is injured, and to determine what measures are to be implemented to prevent future injuries from occurring. Communication between the host employer and staffing agency is of fundamental importance in this regard. For example, if a temporary worker is injured at a host employer worksite, the host employer should inform the staffing agency of the injury, and the staffing agency, in turn, should follow-up about preventive actions taken. Similarly, if a staffing agency learns of a temporary worker's injury (through, for example, the filing of a workers' compensation claim), the staffing agency should inform the host employer to help ensure that preventive measures are taken before additional workers are injured.

When investigations reveal a temporary worker exposed to a violative condition, and the worker is considered to be employed by both a staffing agency and a host employer, OSHA will consider issuing citations to either or both of the employers, depending on the specific facts of the case. This will require Area Offices to make a careful assessment of whether both employers have fulfilled their respective compliance responsibilities in each individual case. These inspections are considered high priority and early consultation between OSHA and SOL is essential to facilitate case development.

Temporary workers have the same rights and protections against retaliation as all other covered workers. Given the importance of communication between employers about the presence of hazards, it is also incumbent on both employers to take necessary steps to ensure that temporary workers are aware of their rights and responsibilities under the OSH Act. Section 11(c) of the OSH Act protects temporary workers who report injuries and illnesses or complain to their employer, OSHA, or other government agencies about unsafe or unhealthful working conditions in the workplace. Temporary workers have the right to report injuries or illnesses or complain to both the host employer and the staffing agency without fear of retribution. Both the staffing agency and the host employer should inform temporary employees how to report injuries and illnesses and include training on the employee's right to report workplace safety concerns. If the CSHO finds evidence of retaliation by either the host employer or the staffing agency for reporting an injury or illness, the CSHO will inform the worker of his/her right to file a retaliation complaint with OSHA.

When to Open an Inspection with the Staffing Agency. When a temporary worker is exposed to a violation, the CSHO should make inquiries into the staffing agency's actual or constructive knowledge of the worksite's hazards – whether the staffing agency knew, or with the exercise of reasonable diligence, could have known about the hazards. The CSHO should review such

factors as the terms of the staffing agency-host employer contract, the interaction and communication between the staffing agency and the host employer, the staffing agency's contact with its temporary workers, whether those workers have had any complaints or concerns and whether they have made those concerns known to the employers (and if not, why not).

As noted above, the staffing agency has a basic duty to inquire into the conditions at the host worksite. The decision to open an inspection with the staffing agency is not dependent upon whether or not a staffing agency management representative is on-site. If a temporary worker is or could be exposed to a serious hazard or if the staffing agency does not appear to have taken any actions to learn of the conditions at the host's worksite, then the CSHO should initiate an inspection with the staffing agency. In all other instances, Area Directors may decide, based upon the evidence found during the inquiries, whether to open an inspection with the staffing agency.

Resources. Determining the responsibilities of host employers and staffing agencies will be highly fact-specific. To assist the field in such cases, the Directorate of Enforcement Programs is preparing a series of bulletins on various aspects of the TWI. The first bulletin addresses recordkeeping requirements and can be found on our Temporary Worker webpage. The second bulletin will address whistleblower protection rights. Other topics may include personal protective equipment, training, hazard communication, duty-to-inquire, hearing conservation programs, exposures to heat, and powered industrial trucks. A compliance directive is also planned.

In addition, a large number of resources devoted to the TWI have been assembled on OSHA's [internal website](#). These include existing interpretive guidance and compliance directives related to temporary worker issues on recordkeeping, hazard communication, bloodborne pathogens, and other standards. More resources will be added in the future.

Conclusion. Too often in recent months, it has been OSHA's sad duty to investigate fatalities and injuries involving temporary workers who were not given the necessary safety and health protections required under the Act. In the TWI, we are attempting to ensure that all employers, whether host or staffing agency, individually and collaboratively, fulfill their duties to their workers, so that at the end of the shift of every work day, all temporary workers in the United States can return home safely.

As noted above, further guidance in the form of bulletins and a compliance directive will be forthcoming. Should you have any further questions, please contact Mary Lynn in the Office of Chemical Process Safety and Enforcement Initiatives, at lynn.mary@dol.gov.

cc: Jim Maddux, Director, DOC
Doug Kalinowski, DCSP

Complaint Receiving Office	Date Received	Formal or Non-Formal?	Corporate or Franchise?	Establishment Location (address)
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SAMPLE:
Denver AO

3/15/2015 Formal

Corporate

1234 Spear Ln.
Denver, CO

Tampa AO

3/24/2015 Formal

Franchise

5890 S. Orange Blossom Trail,
Orlando, FL 32839

3/3/2015 Formal

Corporate

3306 S. University Drive, Miramar,
Florida

3/12/2015 Formal

Franchise

1215 S. Lewis Street,
Metter Georgia

Complaint items	Date Opened Inspection	Walkaround rep? If Y, from where? (union)	Other relevant information (if any)	Findings
1) lack of PPE 2) burns 3)no HAZCOM 4) no PPE training	3/16/2015	Y - from FFWC		
1) Clean around grills that are too hot; 2) Lack of PPE; 3) Floors, aisles and walkways are not maintained free of water and hot oil; 4) First aid kit is not stocked; 5) No HAZCOM training received	3/27/2015	N		E5 Deliberative process [Redacted]
1) burns; 2) No PPE; 3) No PPE Training; 4) Damaged PPE; 5) Pay for PPE; 6) Slippery/wet floors; 7) No first aid kits; 8) Haz Com training	3/6/2015	N		E5 Deliberative process [Redacted] e
1) Protective gloves; 2) No BBP Program	3/18/2015	N		E5 Deliberative process [Redacted]

Complaint Receiving Office	Date Received	Formal or Non-Formal?	Corporate or Franchise?	Establishment Location (address)	Complaint items	Date Opened Inspection	Walkaround rep? If Y, from where? (union)	Other relevant information (if any)	Findings
SAMPLE: Denver AO	3/15/2015	Formal	Corporate	1234 Spear Ln. Denver, CO	1) lack of PPE 2) burns 3)no HAZCOM 4) no PPE training	3/16/2015	Y - from FFWC		
Tampa AO	3/24/2015	Formal	Franchise	5890 S. Orange Blossom Trail, Orlando, FL 32839	1) Clean around grills that are too hot; 2) Lack of PPE; 3) Floors, aisles and walkways are not maintained free of water and hot oil; 4) First aid kit is not stocked; 5) No HAZCOM training received	3/27/2015	N		E5 Deliberative process
	3/3/2015	Formal	Corporate	3306 S. University Drive, Miramar, Florida	1) burns; 2) No PPE; 3) No PPE Training; 4) Damaged PPE; 5) Pay for PPE; 6) Slippery/wet floors; 7) No first aid kits; 8) Haz Com training	3/6/2015	N		E5 Deliberative process
	3/12/2015	Formal	Franchise	1215 S. Lewis Street, Metter Georgia	1) Protective gloves; 2) No BBP Program	3/18/2015	N		E5 Deliberative process



Reply to the attention of:

OCT 29 2014

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: *Dorothy Dougherty*
DOROTHY DOUGHERTY
Deputy Assistant Secretary

FROM: *For* *Thomas J. Galassi*
THOMAS GALASSI, Director
Directorate of Enforcement Programs

SUBJECT: Temporary Worker Initiative: Staffing Agency Citation
Cover Letter

The Temporary Worker Initiative (TWI) seeks to prevent work-related injuries and illnesses among temporary workers.¹ One approach for achieving this goal is to increase awareness of the risk temporary workers face and of employers' responsibility to protect those workers. At times, the staffing agency may have little knowledge about the working conditions of their temporary workers.

In an effort to further the goals of the TWI, we are asking that the following practices be implemented in the Area Offices:

1. The Area Office will send copies of any citations or Hazard Alert Letters (HAL) issued to the host employer to the staffing agencies whose employees work at any host employer site. Please forward the attached template to Area Directors for creating a cover letter to be sent with the copy of the citations or HAL to the staffing agency.
2. When an Area Office issues citations to both the host employer and the staffing agency, please forward copies of all the citations by email to Mary Lynn in the Office of Chemical Process Safety and Enforcement Initiatives, at lynn.mary@dol.gov and copy Marisa Johnson, at Johnson.marisa@dol.gov.

¹ For the purposes of the TWI, "temporary workers" are workers hired and paid by a staffing agency and supplied to a host employer to perform work. In general, OSHA will consider the staffing agency and host employer to be "joint employers" of the worker.

We appreciate the efforts of the field in implementing these instructions. Should you have any questions, please contact Mary Lynn in the Office of Chemical Process Safety and Enforcement Initiatives, at lynn.mary@dol.gov. Thank you for your continued assistance in this enforcement initiative.

cc: Jim Maddux, Director, DOC
Doug Kalinowski, Director, DCSP

Area Office Letterhead

Date Field

Staffing Agency Employer
Attn: Manager's Name
Address

RE: OSHA Inspection No. #####

Dear Mr./Ms. Manager,

On **enter date**, the Occupational Safety and Health Administration (OSHA) conducted an inspection at **Name of Company**, located at 1200 ABC Blvd, TX 70008. This inspection was conducted as a result of a **NEP, LEP, fatality, injury, complaint, etc.(enter description)**. OSHA understands that your agency employs temporary workers who perform work for [Name of Company] at this job site.

While the extent of responsibility under the law for staffing agencies and host employers is dependent on the specific facts of each case, staffing agencies and host employers are *jointly responsible* for maintaining a safe work environment for temporary workers. Temporary staffing agencies and host employers share control over the worker, and OSHA may hold both the host employer and the staffing agency responsible for violative condition(s) in the appropriate case.

Enclosed you will find copies of (**citations/hazard alert letters**) issued to **Name of Company** for violations of the OSH Act. We are forwarding you these copies to ensure that you are fully aware of the hazards at that job site. Please review these documents and ensure that appropriate steps are taken to protect your employees at that job site. Please note that Section 11(c) of the OSH Act provides protection for employees against retaliation due to their involvement in protected safety and health related activity.

On April 29, 2013, OSHA launched the Temporary Worker Initiative (TWI) in order to help prevent work-related injuries and illnesses among temporary workers. See OSHA News Release 13-800-NAT, *OSHA launches initiative to protect temporary workers*, April 29, 2013.

A useful resource for information related to temporary workers, including recommended practices, can be found on OSHA's *Protecting Temporary Workers* webpage, available at http://www.osha.gov/temp_workers/.

If you have any questions concerning this matter, please do not hesitate to contact this office.
We appreciate your support and interest in the safety and health of your employees.

Sincerely,

XXXX
Area Director