

Protecting Essential Workers in the Fast Food Industry

The COVID-19 crisis continues to impact some communities more than others with disproportionate health and economic burdens in Black and Latinx neighborhoods. That reality is especially felt in certain sectors such as the fast food industry where workers are overwhelmingly people of color. These are employees whose work often goes unnoticed – but they are the definition of essential. The COVID-19 pandemic has made that clear. Fast food workers took no time off and when the shelves of grocery stores were bare, many people relied on fast food restaurants for their meals. This impact was most felt on the Latinx community, many of whom are unable to work from home.

Yet, still, their treatment does not always reflect their essential role. There have been reported instances of retaliation against these workers when they rightfully request safety measures in response to COVID-19. Their calls for action must be addressed. This public health threat has been raised by workers employed by the McDonald’s on Marengo Street in Boyle Heights. There, it was reported that McDonald’s was allegedly in noncompliance with the most basic COVID-19 safety precautions and allegedly retaliated

MOTION

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against employees who raised concern. In fact, there have been six complaints filed with the Department of Public Health and Cal/OSHA since June 2020 about this McDonald's alleged failure to comply with necessary precautions including the mandated Los Angeles County Health Officer Order. On October 6, 2020, SEIU Local 721 issued a letter expressing the need to address the employees' continued concerns and recommended actions. Reports of alleged inadequate personal protective equipment, infrequent disinfecting of surfaces, and lack of information must be addressed immediately. The safety of our communities depends on it.

I, THEREFORE, MOVE that the Board of Supervisors:

1. Direct County Counsel and the Department of Public Health, with other relevant departments, to investigate the complaints raised in the letter dated October 6, 2020 from SEIU Local 721 and to issue a response within 15 days to all points raised in the letter.
2. Direct the Department of Public Health, in collaboration with the Los Angeles County Economic Resiliency Task Force, to contract with faculty or researchers from local academic institutions whose research focuses on working conditions and labor standards of low wage workers to investigate working conditions in the fast food industry, including by partnering with organizations that advocate for fast food workers in Los Angeles County to document workers' first-hand experiences in fast food workplaces.

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HLS:mr



October 6, 2016

Honorable Hilda L. Solis [via email: firstdistrict@bos.lacounty.gov]
Supervisor, 1st District
County of Los Angeles
500 West Temple Street
Los Angeles, CA 90012

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http://www.seiu721.org

Dear Supervisor Solis:

The Los Angeles Board of Supervisors ("Board") should address the public health threat raised by the McDonald's on 1716 Marengo Street in Los Angeles. This McDonald's is operating in noncompliance with even the most basic COVID-19 safety precautions and has retaliated against employees who raised safety concerns. The Board can address these violations and protect the public health, including, as described below, by exercising its authority to direct the Los Angeles County Health Officer to enforce and update its Health Orders; by enacting an ordinance addressing COVID-19 whistleblower retaliation; and by directing the County Counsel to investigate and, if appropriate, pursue a public nuisance lawsuit.

A. Public Health Concerns and Whistleblower Retaliation at the McDonald's on 1716 Marengo Street, LA

On September 4, 2020, the owner/operator of the McDonald's franchise located at 1716 Marengo Street in Los Angeles blatantly retaliated against four employee whistleblowers by firing them for reporting and striking over unsafe working conditions and violations of COVID-19 safety requirements.

As explained in the six complaints these employees have filed with the Los Angeles Public Health Department and Cal-OSHA since June, this McDonald's is failing to comply with basic COVID-19 safety precautions as well as the Los Angeles County Health Officer's Health Orders by failing to provide employees with masks and handwashing supplies; to enforce social distancing; to require customers to wear masks; to regularly and frequently disinfect high-touch surfaces; to instruct and allow workers not to come to work when sick; to inform workers about the availability of paid sick leave; to inform workers when they have been exposed to COVID-19; to require workers exposed to COVID-19 to quarantine; and to immediately close the store and perform a professional deep cleaning after an employee has tested positive for COVID-19.

As a result, multiple employees of this McDonald's have contracted COVID-19. The owner of the Marengo Street restaurant also operates 15 other nearby McDonald's restaurants, several of which have also experienced COVID-19 outbreaks. Yet when employees at the 1716 Marengo Street store went on strike for a third time seeking safer working conditions, the owner, instead of addressing their concerns, retaliated against the leaders of the strike by firing them. Unfortunately, this type of retaliation in response to worker COVID-19 safety complaints is not

limited to the 1716 Marengo Street store, but has been widespread throughout the fast-food industry.¹

B. Response by the Los Angeles Board of Supervisors

Protecting the rights of essential workers to report safety issues and advocate for safer working conditions is critical to ensuring that essential businesses comply with the COVID-19 safety measures instituted by health officials, which in turn is critical to reducing the spread of COVID-19. The Board should ensure that the retaliation at the 1716 Marengo Street store is addressed. There are several avenues for doing so.

First, the Board can direct the Los Angeles Department of Public Health (“LADPH”) to make it a priority to enforce the County Health Officer’s Health Order, as it exists and/or may be modified, against the 1716 Marengo Street McDonald’s. The employees have sent five complaints to LADPH describing violations of the Health Officer’s Health Order,² including such conduct as failing to provide employees masks and failing to enforce social distancing requirements, yet to our knowledge the department has not meaningfully responded or investigated the restaurant. When the employees resorted to self-help by striking, they paid with their jobs. This McDonald’s should not be allowed to continue operating in violation of the Health Orders and basic COVID-19 safety requirements.

Second, the Board can direct the Los Angeles County Health Officer to update the Health Officer’s COVID-19 Health Orders to prohibit employers from retaliating against employees for raising and reporting COVID-19 safety concerns with management or government agencies, and to make compliance with that prohibition a condition of businesses opening and remaining open. The Health Officer has the authority to take such action under the Health & Safety Code, including under Section 10104 (authority to “take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any ... ‘state of emergency,’ or ‘local emergency’”), Section 120175 (authority to take such “measures as may be necessary to prevent the spread of [a communicable] disease or occurrence of additional cases” in the Health Officer’s jurisdiction), and Section 114409 (authority to “temporarily suspend” a food facility’s permit and “order the food facility ... immediately closed” if a food facility is an “imminent health hazard”). And the Board has the authority to direct the Department or Health Officer to do so. *See* Health & Safety Code §101025, 101030; L.A. Admin. Code §§2.73.030, 2.73.050.

Third, the Board can update and then pass the pending correction to the motion for expanding compliance with Health Officer Orders by establishing a County Public Health Councils Program. *See* Board Order No. 10 of July 21, 2020; Corrections moved on Sept. 1, 2020. The proposed correction as currently written would instruct County Counsel, in consultation with the Directors of Public Health and Consumer and Business Affairs, to draft an ordinance enabling the implementation of Public Health Councils that includes provisions addressing retaliation against workers for participating in Public Health Councils. The correction should be updated to require preparation of an ordinance that also includes a provision that prohibits fast-food restaurants and/or other essential businesses from retaliating against workers who report COVID-19 safety issues to government agencies, the press, or their employer. The ordinance could relieve pressure on LADPH or the Los Angeles District Attorney to enforce against retaliation and allow the County Counsel to do so. If the ordinance is placed in the County Health Code, then the County can enforce it in the City of Los Angeles at stores like the 1716 Marengo Street McDonald’s.

¹ *See, e.g.*, Los Angeles Times, “Low-wage workers face retaliation for demanding COVID-19 safety measures at work” (Aug. 15, 2020), available at <https://www.latimes.com/california/story/2020-08-15/coronavirus-workers-retaliation-claims>.

² The Health Order is available at http://www.ph.lacounty.gov/media/Coronavirus/docs/HOO/2020_09_04_HOO_Safer_at_Home.pdf (requiring essential business to comply with social distancing protocol) and http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Reopening_SocialDistancing.pdf (social distancing protocol requiring businesses to ensure social distancing; inform and allow employees not to work sick; inform employees who were exposed to COVID-19, including about when to quarantine; provide masks at no cost; ensure frequent disinfection of high-use areas; and provide hand washing supplies).

Finally, the Board can direct the County Counsel to research, report back on, and, if appropriate, file a public nuisance lawsuit against the 1716 Marengo Street McDonald's. The Board could also direct the County Counsel to coordinate with the Los Angeles City Attorney on such a potential lawsuit. The store's termination of whistleblowing

employees and continuation of operations without complying with COVID-19 safety measures constitute a public nuisance because they substantially and unreasonably interfere with the health and safety of the public by contributing to and increasing the risk of community spread of the COVID-19 virus. *See* Cal. Civ. Code § 3479 (a "nuisance" is "[a]nything which is injurious to health, ... so as to interfere with the comfortable enjoyment of life or property"); *id.* §3480 (a nuisance is "public" if it "affects at the same time an entire community or neighborhood, or any considerable number of persons"); *People v. ConAgra Grocery Prod. Co.*, 17 Cal.App.5th 51, 79 (2017) ("A public nuisance cause of action is established by proof that a defendant knowingly created or assisted in the creation of a substantial and unreasonable interference with a public right."); *see also* Restatement (Second) of Torts §821B & cmt. g (contributing to the spread or transmission of a disease, or the risk of the spread or transmission of a disease, constitutes an actionable public nuisance). The plaintiffs in a recent public nuisance suit against a McDonald's franchisee in Oakland that was similarly failing to comply with COVID-19 safety precautions, including discouraging employees from using sick leave, have successfully secured a temporary restraining order and preliminary injunction against the franchisee. *See Hernandez, et al., v. VES McDonald's, et al.*, Case No. RG20064825, Alameda Superior Court. An action to abate a public nuisance can be brought by the county counsel or district attorney of any county in which the nuisance exists. C.C.P. §731.

The Board has authority to direct the County Counsel with respect to bringing civil public nuisance actions. Although the Los Angeles County Charter ordinarily provides that County Counsel has "exclusive charge and control of all civil proceedings in which the County ... is concerned," LA County Charter art. VI, §21; *see also Bd. of Sup'rs of Los Angeles Cty. v. Simpson*, 36 Cal. 2d 671, 673-74 (1951) ("the provisions of the Government Code with reference to county counsels ... apply only to county counsels appointed thereunder," and "would not apply ... where the office of county counsel is established by charter"), California Code of Civil Procedure §731 expressly provides that the "county counsel ... in any county ... in which the nuisance exists *shall bring an action* whenever directed by the board of supervisors of the county."

Respectfully,



Bob Schoonover
President

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