

**UNSAFE AND UNTENABLE: EXAMINING
WORKPLACE PROTECTIONS FOR
WAREHOUSE WORKERS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON WORKFORCE
PROTECTIONS**

OF THE

**COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, NOVEMBER 17, 2022

Serial No. 117-59

Printed for the use of the Committee on Education and Labor



Available via: edworkforce.house.gov or www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

60-497 PDF

WASHINGTON : 2025

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UNSAFE AND UNTENABLE: EXAMINING WORKPLACE PROTECTIONS FOR WAREHOUSE WORKERS

Thursday, November 17, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:25 a.m., 2175 Rayburn House Office Building, Washington, DC, Hon. Alma Adams (Chairwoman of the Subcommittee) presiding.

Present: Representatives Adams, Takano, Norcross, Jayapal, Omar, Scott (Ex Officio), Keller, Stefanik, Miller-Meeks, Owens, Steel, and Foxx (Ex Officio).

Staff present: Brittany Alston, Operations Assistant; Ilana Brunner, General Counsel; Rasheedah Hasan, Chief Clerk; Sheila Havenner, Director of Information Technology; Eli Hovland, Policy Associate; Yameen Ibrahim, Staff Assistant; Stephanie Lalle, Communications Director; Kevin McDermott, Director of Labor Policy; Kota Mizutani, Deputy Communication Director; Veronique Pluviose, Staff Director; Dhrtvan Sherman, Staff Assistant; Robert Shull, Labor Policy; Michele Simensky; Banyon Vassar, Deputy Director of Information Technology; Sam Varie, Press Secretary; ArRone Washington, Clerk/Special Assistant to the Staff Director; Cyrus Artz, Minority Staff Director; Caitlin Burke, Minority Professional Staff Member; Michael Davis, Minority Legislative Assistant; Cate Dillon, Minority Director of Operations; Trey Kovacs, Minority Professional Staff Member; Hannah Matesic, Minority Director of Member Services and Coalitions; Audra McGeorge, Minority Communications Director; Eli Mitchell, Minority Legislative Assistant; Ethan Pann, Minority Press Assistant; Gabriella Pistone, Minority Staff Assistant; Krystina Skurk, Minority Speechwriter; Katy Roberts, Minority Staff Assistant; Kelly Tyroler, Minority Professional Staff Member; Joe Wheeler, Minority Professional Staff Member.

Chairwoman ADAMS. Good morning. We are ready to begin. I will countdown from five and then we will start. Five, four, three, two, one. The Subcommittee on Workforce Protections will come to order. I want to welcome everyone, and I do note that a quorum is present.

Before we move into the hearing, I want to thank Mrs. Cherfilus-McCormick for serving on this subcommittee during her tenure with the Committee on Education and Labor. We wish her well, as

she leaves us to go to Foreign Affairs. I would like to also welcome today Mrs. Peltola to the Committee and the Subcommittee on Workforce Protections.

The subcommittee is meeting today to hear testimony in a hearing entitled *Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers*. This is a hybrid hearing pursuant to House Resolution 8 and the regulations hereto.

All microphones, both in the room and on the platform will be kept muted as a general rule, to avoid unnecessary background noise. Members and witnesses will be responsible for unmuting themselves when they are recognized to speak, or when they wish to seek recognition.

When members wish to speak or seek recognition they should unmute themselves and allow a pause of 2 seconds to ensure that the microphone picks up their speech. I also ask that members please identify themselves before they speak. Members who are participating in person should not be logged onto the remote platform in order to avoid feedback, echoes and distortion.

Members participating remotely shall be considered present in the proceeding when they are visible on camera, and they shall be considered not present when they are not visible on camera. The only exception to this is if they are experiencing technical difficulty and inform committee staff of such difficulty.

If any member experiences technical difficulty during the hearing, you should stay connected on the platform, make sure you are muted, excuse me, and use your phone to immediately call the committee's IT director, whose number was provided in advance. Should the Chair need to step away for any reason, another majority member is hereby authorized to assume the gavel in the Chair's absence.

In order to ensure that the committee's 5-minute rule is adhered to, staff will be keeping track of time using the committee's digital timer on the remote platform. For members participating in person, the timer will be broadcast in the committee room on the television monitor, as part of the platform gallery view, and visible in its own thumbnail window.

The committee room timer will not be in use. For members participating remotely, this will be visible in gallery view in its own thumbnail window on the remote platform. Members are asked to wrap up promptly when their time has expired.

Finally, while the recent guidance from the Office of the Attending Physician has made mask-wearing optional at this time, please know that we have in our midst at both the member and staff levels, individuals who are immune compromised, and who will have immediate family members maybe, who are immune compromised as well, and who are not vaccinated, either due to medical reasons or because the vaccine is not yet available to children under 6 months of age.

Therefore, the committee strongly recommends that masks continue to be worn out of concern for the safety of unvaccinated and immune compromised committee members and staff and their families. Pursuant to Committee Rule 8(c), opening statements are limited to the Chair and the Ranking Member. This allows us to hear

from our witnesses sooner, and it provides all members with adequate time to ask questions.

I now recognize myself for the purpose of making an opening statement. Today we are meeting to examine the workplace safety crisis in warehouses, and our responsibility to protect the health and safety of all workers. The demand for warehouse work is rapidly increasing. Between 2000 and 2017, warehouse jobs increased by 90 percent, and the rise of Amazon and the COVID-19 pandemic have only accelerated this growth.

Since January 2020 alone, the number of warehouse workers in the United States grew by more than a third, to 1.8 million workers. To meet the growing demand for warehouse work, unscrupulous warehouse employers have pushed workers to their limits, and prioritized productivity and speed over safety.

As a result, warehouse workers today face greater danger in workplaces that were already precarious. For example, after Walmart failed to meet OSHA standards, a 40-foot shelf fell on top of a warehouse worker and caused her severe neck and back injuries.

Workers in a Rite-Aid distributor center along the Mohave Desert worked without air-conditioning, leading to several cases of heart-related illness. Warehouse workers across the country lacked adequate protections from COVID-19, despite the essential role they played during the pandemic.

These tragedies are not isolated incidents. In 2020, the warehouse and storage industry in the U.S. suffered an injury rate nearly double the rate among all private industries. Industry rates at Amazon warehouses are especially alarming. According to a recent report from the Strategic Organizing Center in 2021, the series injury rate for workers at Amazon warehouses was more than double the rate at non-Amazon warehouses.

This injury rate has a direct impact on workers. At the Amazon warehouse in Staten Island, workers face back-breaking work, 60-hour plus work weeks, 10-hour shifts with mandatory overtime, and dehumanizing working conditions. During a 3-week period in the summer of 2022, four Amazon workers died at four separate warehouses.

Nearly a year ago, six employees were threatened with termination if they stopped working to seek safety during the tornado. Clearly, something is wrong. Worse still, these incidents represent only a fraction of a larger, under reported problem. Companies across the country contract, and subcontract with staffing agencies that place temporary workers in warehouses.

The workers are usually placed in more dangerous conditions than permanent workers. Safety training is insufficient or non-existent. Most employers typically treat temporary employees as expendable. This was the case where Edilberto Caicedo, a temporary worker who died after his skull was crushed on the job. His sister is with us today to tell his story.

We should all agree that warehouse workers like Edilberto should not have to risk their lives to provide for themselves and their families, and we must ensure that employers are held accountable when tragedies do occur. To that end, the Department of

Labor must continue oversight of unsafe working conditions and warehouses.

Congress must continue working to protect the health and safety of all workers. I want to thank Congressman Norcross for his continued advocacy on behalf of warehouse workers in New Jersey, and across the country. His leadership and his subcommittee's work are particularly important as our economy rapidly modernizes and demand for warehouse work continues to increase.

While the 117th Congress is coming to a close, I look forward to working with my colleagues in a bipartisan way to ensure every worker comes home safely at the end of their shift. I now recognized the distinguished Ranking Member for the purpose of an opening statement. You are recognized sir.

[The statement of Chairwoman Adams follows:]



OPENING STATEMENT

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

Opening Statement of Chair Alma Adams (NC-12)
Subcommittee on Workforce Protections
Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers
Zoom
Thursday, November 17, 2022 | 10:15 a.m.

Today, we are meeting to examine the workplace safety crisis in warehouses and our responsibility to protect the health and safety of all workers.

The demand for warehouse work is rapidly increasing. Between 2000 and 2017, warehouse jobs increased by 90 percent, and the rise of Amazon and the COVID-19 pandemic have only accelerated this growth. Since January 2020, alone, the number of warehouse workers in the U.S. grew by more than a third, to 1.8 million workers.

To meet the growing demand for warehouse work, unscrupulous warehouse employers have pushed workers to their limits and prioritized productivity and speed over safety. As a result, warehouse workers today face greater danger in workplaces that were already precarious.

For example, after Walmart failed to meet OSHA standards, a 40-foot shelf fell on top of a warehouse worker and caused her severe neck and back injuries. Workers at a Rite Aid distributor center along the Mojave Desert worked without air conditioning, leading to several cases of heat-related illness. And warehouse workers across the country lacked adequate protections from COVID-19, despite the essential role they played during the pandemic.

These tragedies are not isolated incidents. In 2020, the warehouse and storage industry in the U.S. suffered an injury rate nearly double the rate among all private industries.

Injury rates at Amazon warehouses are especially alarming. According to a recent report from the Strategic Organizing Center, in 2021, the serious injury rate for workers at Amazon warehouses was more than double the rate at non-Amazon warehouses.

This injury rate has a direct impact on workers. At the Amazon warehouse in Staten Island, workers face backbreaking work, 60-hour plus workweeks, 10-hour shifts with mandatory overtime, and dehumanizing working conditions. During a three-week period in the Summer of 2022, four Amazon workers died at four separate warehouses. And, nearly a year ago, six employees were threatened with termination if they stopped working to seek safety during a tornado. Clearly, something is wrong.

Worse still, these incidents represent only a fraction of a larger, under-reported problem. Companies across the country contract and subcontract with staffing agencies that place temporary workers in warehouses. These workers are usually placed in more dangerous conditions than permanent workers, safety training is insufficient or nonexistent, and host employers typically treat temporary employees as expendable. This was the case for Edilberto Zamora, a temporary worker who died after his skull was crushed on the job. His sister is with us today to tell his story.

We should all agree that warehouse workers, like Edilberto, should not have to risk their lives to provide for themselves and their families. And we must ensure that employers are held accountable when tragedies do occur.

To that end, the Department of Labor must continue oversight of unsafe working conditions in warehouses and Congress must continue working to protect the health and safety of all workers. I want to thank Congressman Norcross for his continued advocacy on behalf of warehouse workers in New Jersey and across the country. His leadership and this subcommittee's work are particularly important as our economy rapidly modernizes and demand for warehouse work continues to increase.

While the 117th Congress is coming to a close, I look forward to working with my colleagues in a bipartisan way to ensure every worker comes home safely at the end of their shift.

Mr. KELLER. Thank you, Madam Chair, and I would like to thank our witnesses for being here today. The risks of working in a warehouse are real, and you know, one witness here today has lost a loved one due to an accident. We offer our sincere condolences and assure you that we are committed to the laws mandating safe working conditions, not just in warehouses, but all across our great nation.

You know over the past decade employment in the warehousing and storage sector has grown rapidly, as warehousing and delivery companies are expanding business operations to meet increased demand for online merchandise, the millions of Americans, you know, rely on that for delivery of goods and service for whatever reason.

This was certainly highlighted during the pandemic. The efforts of the warehouse workers are invaluable. Under the Occupational Safety and Health Act, all workers have the right to a safe and healthy workplace. Through my experience in the private sector, I have seen first-hand that the vast majority of America's job creators, our constituents, the people we represent, are committed to ensuring that the people that work on their teams, that come to their business every day, go home to their families each night safe and healthy.

Private sector businesses are embracing new technologies, and best in class safety innovations to protect their workers from occupational hazards in warehouses. The Federal Government should be supportive of these efforts. The Democrats refuse to recognize that the vast majority of job creators, the people we represent, are dedicated to improving health and safety for warehouse workers.

Attacking the industry after it stepped up to the plate during the pandemic is dangerous and grossly unfair. Sending OSHA, with its aggressive playbook, after business owners will not make warehouses safer, but it will harm our economy and workforce. Democrats, the so-called solution to warehouse safety are misguided, more punishment, more unions, and more Federal control is not the answer.

In fact, you know, talk about Federal control, I walked through the capitol, I see numerous OSHA violations right here in this building where fire extinguishers are covered with things sitting in front of them. We as Congress, ought to make sure that we are leading by example.

Whether it is a warehouse, whether it is a factory, no matter where it is, people deserve to have a safe working environment, and most of our job creators are committed to that endeavor because the people that come to work as part of their team are fam-

ily. They are friends, they are members of the community. They need to be safe and healthy for everyone to succeed.

Democrats continued use of OSHA to export more top-down Federal control over the workplace is authoritarian, and if we are going into a recession, as some experts predict, then this is the worst time for the Federal Government to tighten its grip on any industry.

Furthermore, demonizing job creators, again the people for which we work, as well as their employees, is no way to keep workplaces safe. If Democrats were serious about improving workplace safety and warehouses, they would adopt policies to collaborate with employers to prevent accidents before they happen.

Vilifying employers who share the common goal of keeping their workers safe is counterproductive. The best way to increase safety in warehouses is through increased compliance assistance, partnership programs, and education. Why are democrats not focused on this? Workers' safety is not the democrats true focus or end goal.

Democrats' real priority in going after warehouses is mass unionization. Democrats are intent in driving all workers into unions regardless of their preference. By mischaracterizing employees' safety records, and cherry-picking data, democrats hope to get away with exerting more Federal control, and more union control over business owners.

While we support common sense safety precautions in the warehouse industry, and in the workplace overall, Democrats are taking this a bridge too far. As Republicans we believe in private enterprise should dictate productivity and the pace of warehouse work, not Washington bureaucrats.

The bottom line, ensuring safe workplaces is a priority for job creators and this committee. More punishment, more unions, and more Federal control will not achieve our shared goal of worker safety. They will, however, hurt opportunities for job creators to grow their businesses and hire new workers.

Again, I would say that if we are truly concerned about workplace safety, we would lead by example right here in the United States Capitol and make sure that the employees who work here are not exposed to hazards. Thank you, and I yield back.

[The statement of Ranking Member Keller follows:]

11.17.2022 – WP Subcommittee Hearing: Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers

Opening Remarks from WP Ranking Member, Rep. Fred Keller:

“The risks of working in a warehouse are real and one witness here today has lost a loved one due to an accident. We offer our sincere condolences and assure you that we are committed to the laws mandating safe working conditions, not just in warehouses, but all across our great nation.

Over the past decade, employment in the warehousing and storage sector has grown rapidly. Warehousing and delivery companies expanded business operations to meet an increased demand for online merchandise and millions of Americans rely on that for delivery of goods and services, it was certainly highlighted during the pandemic. The efforts of warehouse workers were invaluable.

Under the Occupational Safety and Health Act, all workers have the right to a safe and healthy workplace. Through my experience in the private sector, I have seen firsthand that the vast majority of America’s job creators, our constituents, the people we represent, are committed to ensuring that the people who work on their teams, that come to their business every day go home to their families each night safe and healthy. Private sector businesses are embracing new technologies and best-in-class safety innovations to protect their workers from occupational hazards in warehouses. The federal government should be supportive of these efforts.

“But the Democrats refuse to recognize that the vast majority of job creators, the people we represent, are dedicated to improving health and safety for warehouse workers. Attacking the industry after it stepped up to the plate during the pandemic is dangerous and grossly unfair. Sending the Occupational Safety and Health Administration (OSHA), with its aggressive playbook, after business owners will not make warehouses safer, but it will harm our economy and workforce.

Democrats’ so-called solutions to warehouse safety are misguided. More punishment, more unions, and more federal control is not the answer. In fact, we talk about federal control, I walk through the Capitol, and I see numerous OSHA violations right here in this building, where fire extinguishers are covered with things sitting in front of them. We as Congress ought to make sure that we are leading by example, whether it’s a warehouse, whether it’s a factory—no matter where it is, people deserve to have a safe working environment. Most of our job creators are committed to that endeavor, because the people that come to work as part of their team are family, are friends, are members of the community. They need to be safe and healthy for everyone to succeed.

The Democrats’ continued use of OSHA to export more top-down federal control over the workplace is authoritarian. If we are going into a recession, as some experts predict, then this is the worst time for the federal government to tighten its grip on any industry.

“Furthermore, demonizing job creators, again the people for which we work as well as their employees, is no way to keep workplaces safe. If Democrats were serious about improving workplace safety in warehouses, they would adopt policies to collaborate with employers to prevent accidents before they happen. Vilifying employers who share the common goal of keeping their workers safe is counterproductive. The best way to increase safety in warehouses is through increased compliance assistance, partnership programs, and education.

So, why aren't Democrats focused on this? Because worker safety is not the Democrats' true focus or end goal. Democrats' real priority in going after warehouses is mass unionization. Democrats are intent on driving all workers into unions, regardless of their preference.

By mischaracterizing employers' safety records and cherry-picking data, Democrats hope to get away with exerting more federal control and more union control over business owners. While we support commonsense safety precautions in the warehouse industry and in the workplace overall, Democrats are taking this a bridge too far.

As Republicans, we believe private enterprise should dictate productivity and the pace of warehouse work, not Washington bureaucrats.

Bottom line, ensuring safe workplaces is a priority for job creators and this Committee. But more punishment, more unions, and more federal control won't achieve our shared goal of worker safety. They will, however, hurt opportunities for job creators to grow their businesses and hire new workers. If we are truly concerned about workplace safety, we would lead by example right here in the United States Capitol and make sure that the employees that work here are not exposed to hazards."

Chairwoman ADAMS. Thank you, sir. Without objection, all other members who wish to insert written statements into the record may do so by submitting them to the committee clerk electronically in Microsoft Word format by 5 p.m. on December 1. I would now like to introduce the witnesses.

Mr. Sheheryar Kaoosji is the Executive Director of the Warehouse Workers Resource Center. Mr. Eric Frumin is the Director of Health and Safety Center of the Strategic Organizing Center. Mr. Manesh Rath is a partner at Keller and Heckman. Mr. Rath represents clients in matters related to occupational safety and health law, litigation, wage and hour and class action litigation.

Janeth Caicedo is the sister of Edilberto Zamora Caicedo, a forklift operator who died due to a workplace accident in a New Jersey warehouse in 2019. Since his death, Ms. Caicedo has engaged in advocacy to raise awareness of the hazards and minimal protections that temporary workers face in the warehousing industry.

We appreciate the witnesses for participating today. We look forward to your testimony. Let me remind the witnesses that we have read your written statements, and they will appear in full in the hearing record.

Pursuant to Committee Rule 8(d) and the committee practice, each of you is asked to limit your oral presentation to a 5-minute summary of your written statement.

Before you begin your testimony, please remember to unmute your microphone. During your testimony staff will be keeping track of time, and the timer is visible to you at the witness table, or on screen in gallery view. Please be attentive to the timer, wrap up when your time is over, and remute your microphone.

We will let all of the witnesses make their presentations before we move into member questions. When answering a question please remember to unmute your microphone. The witnesses are aware of their responsibility to provide accurate information to the subcommittee, and therefore we will proceed with their testimony.

I would like to first recognize Mr. Kaoosji. Mr. Kaoosji we will hear from you now.

**STATEMENT OF MR. SHEHERYAR KAOOSJI, EXECUTIVE
DIRECTOR, WAREHOUSE WORKER RESOURCE CENTER**

Mr. KAOOSJI. Thank you. Chair Adams, Ranking Member Keller, thank you for having me today for this important hearing. My name is Sheheryar Kaoosji, and I am the Executive Director of the Warehouse Worker Resource Center. For over a decade, I have worked supporting warehouse workers in southern California, as an organizer, researcher, and policy analyst.

The Warehouse Worker Resource Center is a non-profit organization based in San Bernardino County, California. We support non-union workers who face dangerous and exploitive conditions in the warehouses of the most powerful companies in the world.

Over 40 percent of freight that enters the United States comes in through the ports of Los Angeles and Long Beach. A large percentage of these goods are transported to our region with their stored package then shipped out to the Nation. Over 300,000 people in southern California, and over 1.7 million people nationwide work in these warehouses.

This sector has grown rapidly in just the past 10 years. In January 2012, there were just over 500,000 people employed by warehousing nationwide. Now it is well over 1 and one-half million. Much of this increase has been in the last couple of years and has been just by the growth of Amazon's employment.

This industry includes a significant number of workers who are employed through staffing agencies at low wages. This issue leads to significant problems across our communities. Insecure economic conditions for workers, insecure economies for our region.

Workers who are employed through staffing agencies are more desperate for work, and know they can lose their job any day, if the warehouse operator, or the temp agency says they just do not need them anymore. These millions of temporary and contingent workers tend to be disproportionately people of color, immigrants and women.

According to research by the National Employment Law Project that came out this year, wage theft, workplace injuries, and retaliation are endemic in temp jobs, including warehouse jobs. We have good joint employment laws here in California, and believe they have been critical of holding employers accountable to the law.

We know that the NLRB is currently reviewing joint employment standard. U.S. Department of Labor reinstated joint employment standards last year. These rules create strong disincentives to excessive use of subcontracting and staffing agencies and pushes accountability closer to the decisionmakers and the parties that really have the power.

As the warehouse sector has changed over the past decade, a key influence on this sector has been Amazon. Amazon opened their first warehouse in California in San Bernardino in 2011, just as that city was entering bankruptcy. The community was excited about a big named employer moving into one of the poorest cities in the Nation.

The community soon saw that when Amazon hired a lot of people, those jobs turned over quickly, due to dangerous conditions, insecure hours, and most of all, a high pace of work. In Amazon facilities and other warehouses, workers are pushed to move as

quickly as possible in order to keep up with the rapid pace of one- or 2-day delivery.

Amazon has accelerated these forces, moving workers rapidly through their facilities in order to keep up with the rapid pace of their operations. Amazon's intention is not to store products, but rather to keep them moving and flowing through their system. This is now the state-of-the-art, and the rest of the industry is working to match it.

When you order a product to arrive in 24 or 48 hours, there is no magic robot or process that makes that happen. The product moves fast because people are running. People move quickly and get injured. Completely avoidable and tragic injuries happen every day to workers due to the high pace of work.

In response to these facts, in 2021 last year, California Assembly member Lorena Gonzalez introduced and passed Assembly Bill 701, the bill that restricts the warehouse employer's ability to discipline workers for not keeping up with quotas and requires employers to provide basic information about quotas to the workers and to the State.

We believe such policies are beneficial to workers across the Nation. Another common issue in warehousing as the industry is growing as climate change is accelerated is heat. In Southern California, this past summer temperatures reached up to 121 degrees outside. This results in hazards for workers across the State, both indoors and out.

The combination of heat and high production quotas make warehousing an especially dangerous job, and one that calls out for attention from regulators. In response, in 2016 we worked with California State Senator Connie Leyva to pass AB 1167, a bill that established indoor heat protections, like extra breaks, water, and training.

We believe these kinds of policy protections, especially when aligned with workers organizing to protect themselves, can save lives and make warehouses more productive by keeping their workers healthy. Amazon is now the largest warehousing company in the country, one that practices high turnover and high pace of work, making that the industry standard.

This is unacceptable. Workers are standing up. In San Bernardino where workers are organizing as Amazon Workers United, and other facilities across the country. The Department of Labor has a key role in making this sector accountable, and we thank you and the State and the government for making this industry accountable. Thank you.

[The prepared statement of Mr. Sheheryar Kaoosji follows.]

Proposed Testimony November 17 2022

Committee on Education and Labor, Subcommittee on Workforce Protections

Sheheryar Kaoosji
Executive Director, Warehouse Worker Resource Center, Ontario, California

The Warehouse Worker Resource Center is a nonprofit organization based in San Bernardino County, California. San Bernardino and Riverside compose the Inland Empire, a region east of Los Angeles County. Warehousing is a significant and growing part of the US economy and a central part of the economy of the Inland Empire and Southern California. For the past decade, the Warehouse Worker Resource Center has been organizing workers in the warehouse industry of Southern California.

We support nonunion workers who face some of the worst conditions in the sector in the warehouses of the most important companies in the world. Over 40% of the freight that enters the United States comes in from the Ports of Los Angeles and Long Beach and a large percentage of these goods are transported by truck to our region where they are stored, packaged and shipped out to the rest of the nation. According to the Bureau of Labor Statistics, over 300,000 people in our region, and over 1.7 million nationwide, work in these warehouses, comprising a large and rapidly growing percentage of jobs in our region and nation.

The sector is growing quickly and a key part of the US economy. The regions of the nation where this sector is growing- the areas just outside of urban centers, the suburban and exurban regions- are places like the Inland Empire, Will County Illinois, central New Jersey- all the key areas of the sector that face similar challenges because they are dealing with the same employers and strategies of employment that are endemic to this sector.

The sector has grown rapidly in just the past ten years. In January 2012, there were just over 500,000 people employed in warehousing nationwide, in January 2019, just over a million. Now there are well over one and a half million. Much of the increase these past three years is made up by growth of Amazon's employment alone- through the COVID pandemic, as people purchased more from home, we have seen warehousing become a common job in every part of the country.

Our region, Inland Southern California, is home to 4.5 million people and is highly dependent on the goods movement sector. Our region has over one billion square feet of warehousing, the largest cluster of warehouses in the world, including operations from every major retailer in the nation, from Amazon to Walmart to Home Depot and Target. These facilities range from indoor-outdoor cross-dock facilities to massive million-square foot fulfillment centers to cold storage facilities. The vast majority of these facilities are non-union, and employ workers on an at-will basis. Research shows that the wages paid in these facilities are, on average, not adequate to support a family. BLS data indicates most jobs in warehousing nationwide average \$17 or \$18

per hour, not enough to sustain a family, especially in expensive, warehouse-dense regions like Southern California, New York/New Jersey or Chicago.

Employment

Data series	Back data	Jul. 2022	Aug. 2022	Sep. 2022	Oct. 2022
Employment (in thousands)					
Employment, all employees (seasonally adjusted)		1,787. 1	1,768. 6	(P)1,762. 1	(P)1,742. 1
Employment, production and nonsupervisory employees		1,573. 6	1,572. 2	(P)1,581. 3	
<p>Footnotes</p> <p>(P) Preliminary</p>					

Earnings by Occupation

Data series	Wages, 2021
-------------	-------------

	Hourly		Annual	
	Median	Mean	Median	Mean
<u>Industrial truck and tractor operators</u>	18.67	20.19	38,840	41,990
<u>Laborers and freight, stock, and material movers, hand</u>	17.68	17.65	36,770	36,710
<u>Shipping, receiving, and traffic clerks</u>	17.80	18.14	37,020	37,720
<u>Stock clerks and order fillers</u>	18.11	18.39	37,670	38,260
<u>Transportation, storage, and distribution managers</u>	45.34	47.61	94,310	99,040

(Source: [Occupational Employment and Wage Statistics](#))

Data extracted on: November 14, 2022 (12:58:13 AM)

**Employment, Hours, and Earnings from the Current Employment Statistics survey
(National)**

Series Id: CEU4349300006

Not Seasonally Adjusted

Series Production and nonsupervisory employees, thousands, warehousing and

Title: storage, not seasonally adjusted

Super Transportation and warehousing

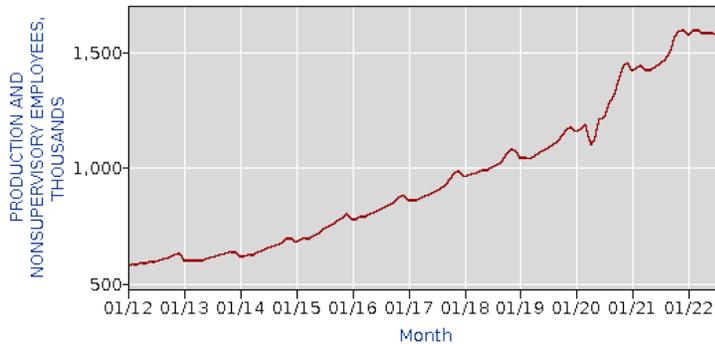
Sector:

Industry: Warehousing and storage

NAICS 493

Code:

Data Type: PRODUCTION AND NONSUPERVISORY EMPLOYEES, THOUSANDS



Common Issues: Subcontracting and Staffing Agencies

The industry includes a significant amount of workers who are employed through staffing agencies and at low wages. In many parts of the sector, workers are employed through staffing agencies. This issue leads to significant issues in our communities, specifically insecure economic conditions for workers across our region, one that is dominated by goods movement and logistics. Workers who are employed through staffing agencies tend to be more desperate for work, and know they could lose their jobs any day, if the warehouse operator just says they don't need them anymore. These millions of temporary and contingent workers tend to be disproportionately people of color, immigrants and women. According to Temp Workers Demand Good Jobs, a report by the National Employment Law Project and Temp Worker Justice that came out this year, wage theft, workplace injuries and retaliation are endemic in temp jobs including warehouse jobs.

Over the past ten years, we have supported workers to collect over \$30 million in stolen wages in warehouses in Southern California. The bulk of these wages were stolen from workers employed through staffing agencies, who are incentivized to not speak up about a short check, or who work for a short period and don't even notice it. The use of subcontracting and staffing

agencies structures legal liability so that the company whose goods are being moved can benefit from workers operating in low wage conditions and sometimes even facing wage theft, health and safety risks and other violations. We see that use temp agencies and subcontracting are strategies to avoid liability that, while common in many sectors of the economy, are employed at a high frequency in warehousing relative to other industries.

For instance in 2011 we worked on a case with a group of workers who moved goods at the largest Walmart warehouses in California, then operated by Schneider Logistics in Riverside County, and faced significant wage theft related to a piece rate scheme. Those workers were employed by staffing agencies but all the products they moved were for Walmart. The workers filed a suit around the wage theft resulting in discovery that Walmart had awareness of the pace of work and rate that they paid per container. We know that the largest companies in the world benefit from the operation of warehouse as cheaply and quickly as possible. In this case, the workers were punished for the warehouses' efficiency, waiting for each container, sleeping in their cars between containers and staying on site for up to a week. When a court allowed Walmart to be named in the class action that workers filed against the warehouse operator and the staffing agencies, the lawsuit was soon settled for \$21 million.

We have good joint employment laws in California and believe that they have been critical to holding employers accountable to the law. We know that the NLRB is currently reviewing the joint employment standard and the US Department of Labor reinstated a joint employment standard last year. These rules create a strong disincentive to excessive use of subcontracting and staffing agencies, and pushes accountability closer to the decision maker and more capitalized party- the retailer or at least warehouse operator rather than some small, fly by night staffing agency.

As the warehouse sector has changed over the past decade, a key influence on the sector has been Amazon. The first Amazon warehouse opened in California in San Bernardino in 2011, as the city entered into bankruptcy. The community was excited about a big name employer moving to one of the poorest cities in the nation. Residents soon saw that Amazon hired a lot of people- and those people turned over quickly, due to dangerous conditions, insecure hours and most of all, high pace of work, or rate, as Amazon terms it.

A core issue of warehousing is pace of work. Workers are pushed to move as quickly as possible in these workplaces, in order to keep up with the rapid pace of delivery necessary to keep the supply chain thin and running smoothly. Amazon has accelerated these forces, moving workers rapidly through their facilities in order to keep up with the rapid pace of their operations. Amazon's intention is not to store products, but rather to keep them moving and flowing through their systems, in order to have as thin and quick a supply chain as possible. This is the state of the art- what the rest of the industry aims to match.

When you order a product to arrive in 24 or 48 hours, there is no magic robot or process that makes that happen. The product moves fast because people run. People move quick and get injured, maybe look away and bump into something. The rates that employer put workers to

keep up with result in higher injury rates, higher turnover, more workers- young people- losing time to injuries and sometimes losing working capacity completely.

Amazon has an additional tool that it uses to move people quickly- data. Amazon, a data company first and foremost, tracks each workers's productivity through their handheld devices as well as cameras tracking their work at all times. With this data companies like Amazon can both identify workers who are working too slowly and work up justification for discipline or termination.

When this is happening in peripheral sectors of the economy, it's a problem. When it's happening at the largest employers in the country, it's a sign of a failing system, one that has failed to take into account human lives and safety. A report by Human Impact Partners, "The Public Health Crisis Hidden in Amazon Warehouses" details the impacts of quotas and rates on warehouse workers at Amazon warehouses in Southern California. The report notes that 75% of workers surveyed experienced physical pain and/or injuries in efforts to 'make rate.'

In response to these facts, the Warehouse Worker Resource Center in partnership with labor and health and safety partners and then-Assemblymember Lorena Gonzalez introduced and passed Assembly Bill 701, a bill that restricts warehouse employers ability to discipline workers for not keeping up with quotas, and requires employers to provide detailed information to workers and the state labor commissioner about their quotas. These kinds of policies are intended to push back against the relentless increase of rate that results in high turnover, as seen in reports like NELP's "Amazon's Disposable Workers: High Injury and Turnover Rates at Fulfillment Centers in California," which details turnover rates of 70% (nationally in 2017) to 100% per year (Amazon warehouses) in warehouses in the U.S.

Other issues that are endemic in the warehousing industry are related and rooted in these insecure conditions. Heat has become a common issue in warehousing as the industry has grown and climate change has accelerated. In Southern California this past summer the temperatures reached up to 121 degrees outside, and this resulted in hazards for workers across the state both indoors and out. The combination of heat and high production quotas make warehousing an especially dangerous job and one that calls out for attention from regulators. In response, in 2016 we worked with California State Senator Connie Leyva to pass AB 1167, a bill to establish protections for indoor workers who face excessive heat. We believe these kinds of policy protections, especially when aligned with workers organizing to protect themselves, can save lives and make warehouses more productive by keeping their workers healthy.

Amazon is now the largest warehousing company and one whose practices of high turnover and pace of work are the industry standard. This is unacceptable and workers are standing up, across the country, organizing for better conditions, engaging their communities and calling for Amazon and other major retailers to do better. We believe that the department of Labor has a key role, with strategic enforcement like OSHA's investigation of Amazon facilities, by

establishing strong joint employment policies, and establishing serious strategies around issues like indoor heat and pace of work.

Chairwoman ADAMS. Thank you, sir. I would like to recognize now Mr. Frumin. You are recognized sir for 5 minutes.

STATEMENT OF MR. ERIC FRUMIN, DIRECTOR OF HEALTH AND SAFETY, STRATEGIC ORGANIZING CENTER

Mr. FRUMIN. Chair Adams, Ranking Member Keller, the SOC greatly appreciates the opportunity to testify today. We cannot have a serious conversation about workers' safety in the warehouse industry without focusing on the enormous toll of serious injury and disability that threatens hundreds of thousands of Amazon workers every single day.

This threat has long since reached crisis proportions, in fact as of last year Amazon caused more serious injuries to warehouse workers than all the rest of America's warehouses combined. In 2021, Jeff Bezos and his managers allowed the serious injury rate to jump by 20 percent. The typical Amazon warehouse worker with a serious injury is away from their regular job for almost 9 weeks.

These horrendous results were a predictable outcome of the company's business model, which prioritizes speed, production, and profit over workers' safety. Amazon optimizes its production system to put worker's bodies under extreme levels of stress, while constantly reminding them that Amazon will fire them if they do not keep up with the inhumane pace of work.

Amazon knows how to stop this. In 2020 as the COVID crisis became full-blown, the Amazon temporarily eased its work speed pressures by suspending disciplinary action based on production metrics, and the company's injury rate in 2020 dropped significantly.

However, as soon as Prime Day approached in October 2020, Amazon reimplemented its work rate requirement and sure enough the injury rate in 2021 jumped up again. This brutal system is not only harmful to workers, it violates Federal law. Earlier this year Washington State OSHA inspectors found "a direct connection between Amazon's employee monitoring and discipline system," and workplace injuries.

They found that Amazon's "very high pace of work," is a so-called willful violation of the OSHA law. Willful violations are very rare. They require that a company either "intentionally disregard, or be plainly indifferent," to the requirements of the OSHA law.

If any employer deserves that description today, it is Amazon. Sadly, this business model is also becoming the norm for the warehouse industry in general. Amazon's system must be stopped before it destroys even more workers' bodies and their livelihoods.

Throughout this crisis, Amazon's executives have repeatedly blamed the severity of the injury crisis at the company, and tried to—excuse me, they denied it, and tried to blame others, including their own workers. They have severely misrepresented their own injury records to investors, journalists, and the public, claiming that these outrageously high injury rates are "about average" within the relevant industries.

The SOC has called on the Securities and Exchange Commission to investigate Amazon's CEO Andy Jassy's public statements. In response to this copious evidence of both rampant injuries at Amazon, and management's utter failure to address the problem, OSHA offices around the country are launching investigations.

The State OSHA agency in Amazon's home State of Washington, and more recently Federal OSHA have undertaken detailed investigations of these abusive practices, the most comprehensive national workplace inspections in OSHA's 52-year history. What has been Amazon's response? More denial and deflection.

Following the violations in Washington State, Amazon has dragged its feet and failed to fix the violations as required by OSHA. The warehouse near Albany, New York, is currently under investigation by Federal OSHA where Amazon reported the highest injury rate of any primary Amazon warehouse in the Nation, 20 serious injuries per 100 workers per year.

For the members of this Committee, that rate of injury would mean that eight of you would have been injured badly enough over the last 2 years to be unable to do your own jobs. On behalf of Amazon workers throughout the Nation, we demand that Amazon stop denying the dangers, stop opposing OSHA's interventions, and comply with the orders to fix these hazards.

Andy Jassy could issue a directive this afternoon to stop firing workers whose bodies just require a break from the pressure, nothing is preventing him from doing so. We urgently request that the committee continue to focus its own attention on this crisis, including urging Secretary Walsh to continue the administration's full support for OSHA's interventions to improve safety conditions in the warehouse industry, including these investigations.

Alerting the leadership of the Nation's warehousing companies to the dangers of the Amazon business model and demanding that Amazon fulfill its legal mandate to protect workers. Thank you very much again for the opportunity to testify today, and happy to answer any questions.

[The prepared statement of Mr. Frumin follows.]



Testimony of Eric Frumin
Strategic Organizing Center

Before the

House Committee on Education and Labor, Workforce Protections Subcommittee

On

Workplace Protections for Warehouse Workers

Washington, DC.
Nov. 17, 2022

Chair Adams, Ranking Member Keller:

I am Eric Frumin, the Health and Safety Director for the Strategic Organizing Center. The SOC is a democratic coalition of national labor unions founded in 2005 representing more than 2.3 million workers. The SOC greatly appreciates the opportunity to testify today about working conditions and the health and safety of workers in the warehouse industry.

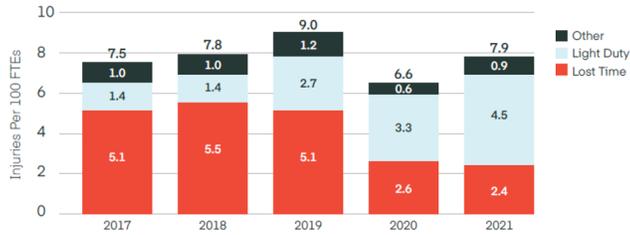
We cannot have a serious conversation about worker safety in the warehouse industry without focusing on the enormous toll of serious injury and disability that threatens hundreds of thousands of Amazon warehouse workers every single day.

Since 2020, we analyzed the last five years of Amazon's internal injury data about the dangers in the warehouse industry and found that this threat has long since reached crisis proportions.¹ See Figure 1, showing the injury rates reported by Amazon at all its facilities 2017-2021.

¹ These internal corporate data are collected by OSHA, and [released publicly on OSHA's Injury Tracking Application \(ITA\) website](#). Our reports, and details about the sources for the data used in those reports, are available at www.thesoc.org, including [The Injury Machine](#) (March, 2022) and [Primed for Pain](#) (June 2021). We have also documented the similar hazards in the company's delivery operations ([The Worst Mile](#), June 2022), as well as Amazon's failure to properly identify and report to OSHA thousands of the COVID cases likely transmitted within its facilities ([The Hidden Pandemic](#), November, 2021).

Figure 1

Annual Injury Rates by Type at Amazon Facilities, 2017-2021



A

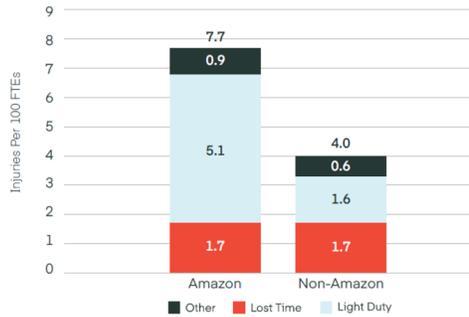
In fact, as of last year, Amazon caused more serious injuries to warehouse workers than all the rest of America’s warehouses combined. See Table 1 on p. 8

Despite Jeff Bezos’ 2021 pledge to make Amazon “the Earth’s Safest Place to Work,” Bezos and his managers allowed the company’s overall injury rate to jump by 20% in the same year.

A serious injury is one that prevents a worker from returning to her regular job, classified as “light duty” or “lost time.” In 2021, Amazon’s serious injury rate was over double the rate for non-Amazon warehouses (6.8 serious injuries/100 full-time equivalent workers (FTE’s) for Amazon as compared to 3.3/100 for non-Amazon warehouses). See Figure 2.

Figure 2

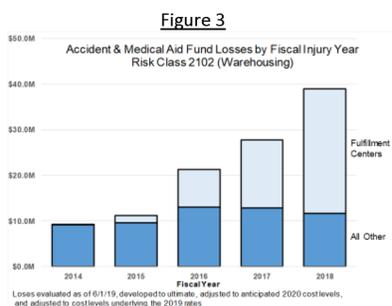
Injury Rates by Type at Amazon and Non-Amazon Warehouses, 2021



And these are not short-term disabilities – after a serious injury, the typical Amazon warehouse worker is away from their regular job for almost 9 weeks.

The Injury Crisis in Washington State, Amazon’s Home State

The crisis at Amazon is not just a recent change, either. Indeed, in the company’s home state, the publicly-available signs of trouble were striking years ago. As early as 2016, as Amazon’s increased its warehouse infrastructure, the state’s Department of Labor and Industries (L&I) started seeing a sharp increase in the number of workers compensation cases attributable solely to the growth of “Fulfillment Centers,” and which continued through 2018 (based on the L&I’s June 2019 analysis) – increasing employer Workers Compensation premium costs for the entire warehouse industry. Seen Figure 3.



Source: WA Dept. of Labor and Industries

That sharp increase led L&I in 2020 to reclassify employers in the warehouse industry, separating Fulfillment Centers and assigning all the increased premium costs to the new category – with the strong support of the warehouse industry.²

Which warehouse companies owned these out-of-control warehouses? Only Amazon.

And at the time of that rulemaking, Amazon’s Dupont, WA warehouse had the highest injury rate of any Amazon warehouse in the nation reported to OSHA’s ITA website – a total injury rate of 23.9 serious injuries per 100 “full-time equivalent employees” (FTE’s). In response to both the state’s workers compensation rulemaking and the emerging chorus of media reports about the injury crisis at Amazon, including the company’s injury data that journalists and others had received,³ Washington’s Labor & Industries agency (L&I) opened an inspection at the Dupont warehouse. Six months later, on May 4, 2021, in an enforcement action unprecedented in OSHA’s 50-year history, L&I issued a Citation at the Dupont site documenting ergonomic hazards in multiple job “processes” at Dupont:

² Testimony of Robert Mitchell, Retro & Finance manager at the Washington Food Industry Association, WA L&I warehouse industry reclassification rulemaking, Oct. 27, 2020. (On file with SOC)

³ Prominently, the report by the Center for Investigative Reporting/Reveal: <https://www.theatlantic.com/technology/archive/2019/11/amazon-warehouse-reports-show-worker-injuries/602530/>

Inbound: Unloading trailers, palletizing, pallet to pallet transfer, de-palletizing, and sorting. Unboxing and checking in, transferring to conveyor, stowing on shelves.

Outbound: Picking from shelves, transferring and packing items and loading trailers. Lifting, awkward postures, and repetitive motions were the primary risk factors. Risk levels varied from relatively low, such as at the AFE wall, to very high, such as when loading trailers.

Pace of work: Employees are expected to maintain a very high pace of work. Information collected documented that pressure is put on workers to maintain that pace without adequate recovery time to reduce the risk of MSDs. There is a direct connection between Amazon's employee monitoring and discipline systems and workplace MSDs.

Source: OSHA citation # 317961850

This was certainly not the first time that a federal or state OSHA agency had found that ergonomic hazards violated the OSH Act. However, it was the first time in OSHA's history when OSHA had determined that the "Pace of Work" in and of itself was a violation – separately from the physical engineering of the workplace (such as the height of the equipment, the weights of the packages, etc.).

Amazon at that point had a choice, knowing as it did that its injury rates were steadily climbing in 2017-2019. Throughout that period, Amazon had seen the serious injury rates at Dupont hover around the astonishingly high rate of 20 serious injuries/100 FTEs, and actually increase in 2020 to its peak of 23.9 cases – the highest in Amazon's US warehouse operations.

By 2021, Amazon had demonstrated its failure to apply its considerable resources to preventing this crisis: not once throughout these years did Amazon ask its in-house ergonomics experts to visit the Dupont warehouse, a short drive from the company's Seattle headquarters. In fact, the very first time that a staff Amazon ergonomics expert set foot in the Dupont warehouse was after the L&I inspectors arrived to start their surprise inspection.⁴

Amazon chose not to comply with the OSHA Citation's straightforward mandate to conduct a scientifically-based ergonomics assessment to reduce the high risks of injury in Dupont. Instead, it appealed that violation, and then demanded that the WA appeals board give Amazon special permission to escape the state law's mandate to "abate" serious hazards during the appeals process.

Knowing that the appeal would easily take years (and indeed, the appeal is still pending with no decision likely in the near future), L&I strongly objected to any "stay" of the abatement requirement. The state Attorney General warned the appeals board that if Amazon were not compelled to address OSHA's findings, "it is indisputable that...there will be hundreds of serious injuries at this worksite while this litigation is pending."⁵ The appeals board responded by denying Amazon's request for a "Stay of Abatement."

⁴ L&I inspector interview with Dupont Site Safety Manager Chris Murphy, 1/21/21: Q: Other than our site visit [L&I Inspection], had you met with [Amazon's ergonomics team members] or pulled them [in] on a project? Murphy Answer: "No, not that I can think of."

⁵ Department's Opposition to Motion to Stay Abatement, Re: AMAZON COM SERVICES LLC DBA AMAZON COM, Docket No. 21 W0156, Board of Industrial Appeals to the State of Washington, Jul. 2, 2021, p. 7, <https://www.courts.wa.gov/>
See also: "Fine with fines? Amazon isn't making enough changes to protect warehouse workers, state says," Seattle Times, Mar. 29, 2022: https://www.union-bulletin.com/seattle-times/-fine-with-fines-amazon-isn-t-making-enough-changes-to-protect-warehouse-workers-state-says/article_234fb26f-2eeb-569d-8128-168a236fc6c0.html

Throughout this period, Amazon continued to deny that it had a crisis, that its engineering designs were causing injury risks or that it had enforceable production quotas.⁶

In response to a worker complaint, in September, 2021 L&I opened a second inspection, at another Amazon warehouse even closer to Seattle, in Kent WA. Injury rates in Kent were also very high compared to the rest of the warehouse industry and even to other Amazon warehouses. Amazon responded initially by blocking the inspectors and their experts from even collecting the basic scientific information to evaluate injury risks.⁷

L&I persisted, secured a warrant from the Washington court, and completed the investigation. On March 9, 2022, L&I issued a second Citation, with virtually the same violations as in the previous Citation in Dupont. However, because of Amazon's resistance to L&I's previous efforts, L&I classified the violations as Willful. Inspectors said the "willful" determination was made at Kent because the company "is demonstrating plain indifference in that they have been made aware of the hazards and increased injury rates yet are making no effort to take corrective action."⁸

Willful violations are very rare under the OSHA law – requiring that a company either "intentionally disregard" or be "plainly indifferent" to the requirements of the law. If any employer in modern industrial history deserved that description, it is Amazon.

Once again, Amazon responded to the latest violations by appealing the Citation and again demanding that the appeals board "stay" the "abatement" requirement during the years of appeals proceedings. Once again, the appeals board denied Amazon's request, and the appeal is still pending, with little prospect of relief in sight for the hundreds of Kent workers at risk for serious injuries in the jobs identified by L&I as posing high risks of serious injury.⁹

⁶ Seattle Times, June 10, 2021: "[Amazon to maintain pace of warehouse work despite regulator's citation.](https://www.seattletimes.com/business/amazon/amazon-to-maintain-pace-of-warehouse-work-despite-regulators-citation/)" <https://www.seattletimes.com/business/amazon/amazon-to-maintain-pace-of-warehouse-work-despite-regulators-citation/>. "Amazon says its productivity targets for warehouse workers will remain unchanged despite a [determination last month](#) from Washington state's workplace safety regulator that the pressure Amazon places on workers to meet those targets is causing injuries and violating the law. 'Safety and performance targets can go hand in hand, that can continue to be the case,' said Heather MacDougall, Amazon's vice president of worldwide health and safety, at a news conference Wednesday ... Amazon spokesperson Alyssa Bronikowski said in an email that workers are given ample time to rest during shifts, and that the company is 'continuously learning and seeing improvements.'"

⁷ Business Insider, Dec. 23, 2021: "[Amazon tried to bar state officials from entering warehouses to investigate workplace safety complaints, officials say.](#)" "Amazon tried to bar workplace safety inspectors from entering warehouses near Seattle, state officials said. The company also made 'multiple' and 'direct' attempts to 'undermine our data collection,' the officials said."

⁸ Enforcement Case File Information, Washington State Department of Labor and Industries, inspection number 317965723, Mar. 9, 2022 (obtained in response to public records request; on file with SOC)

⁹ Same Kent case file.

Now Amazon has gone on the offensive – challenging in US Federal court the constitutionality of the WA state law requiring employers to “abate” violations during appeals.¹⁰ These kinds of protections have been essential for decades in protecting workers in high-hazard industries like underground mining. It is unacceptable to make workers wait for years while appeals over serious violations are pending, and Amazon’s failure to comply with existing citations is a perfect example of the need for that protection. The high injury risks that Amazon has inflicted on its workforce are completely unacceptable.

But these horrendous results are no “accident”. They are a predictable outcome of the company’s business model, which prioritizes speed, production and profit over worker safety. Amazon optimizes its production system to put workers’ bodies under extreme levels of stress — far beyond any reasonable expectation of safety -- while constantly reminding them that Amazon will fire them if they don’t keep up with the inhumane pace of work.¹¹

Amazon knows how to stop this brutal set of conditions. In 2020, as Amazon’s COVID cases became a full-blown crisis, temporarily eased its work speed pressures by suspending disciplinary action based on production metrics. And the company’s injury rate in 2020 dropped significantly. So there is no secret to an immediate fix to help Amazon’s workforce.

However, as soon as Prime Day approached in October, 2020, Amazon reimplemented its work rate requirement, and sure enough the injury rate in 2021 jumped up again.

Sadly, it is no surprise that this business model is also becoming the norm for the rest of the warehouse industry. During the WA State proceedings on the classification of employers under the Workers Compensation law, the representative for the grocery industry who supported separating “Fulfillment Centers” from other warehouses warned the Department of Labor and Industries about the likelihood that other employers would move to the Amazon model:

Although for 2021, Amazon will ... not be the only entity in that risk code for long. As our economy and technology advances, so will businesses. We will eventually see other companies based in Washington state ... join Amazon in this new risk code as other places advance as Amazon has. Amazon is an industry type leader, but there will be others as it is the way of the future.¹²

Which is exactly why this hearing is so important to America’s workers, their families and communities. Amazon’s system – “The Injury Machine” – must be stopped before it destroys even more workers’ bodies and livelihoods.

Throughout this crisis, Amazon’s executives have repeatedly denied the severity of the injury crisis at the company, and tried to blame everyone else – including their own workers. They have severely

¹⁰ Complaint For Declaratory and Injunctive Relief, Amazon.com Services vs Washington Department of Labor and Industries, US District Court, Eastern District of Washington, Dkt. # 2:22-cv-01404, Oct. 3, 2022.

¹¹ See: Business Insider, “[Amazon workers say minor aches suddenly became debilitating as they raced to meet speed targets](#)” Oct. 19, 2022

¹² Robert Mitchel testimony, WA L&I warehouse industry reclassification rulemaking, Oct. 27, 2020.

misrepresented their own injury records to investors, journalists and the public, claiming that these outrageously high injury rates were “about average” within the relevant industries.

We have alerted the Securities and Exchange Commission to these material misrepresentations, and called on the SEC to investigate Amazon CEO Andy Jassy’s public statements, which seem to have misled even sophisticated investors.¹³

In response to the copious evidence of both rampant injuries at Amazon and the management’s utter failure to address the problem, OSHA offices around the nation are launching investigations. Both Washington State and Federal OSHA have undertaken detailed investigations of these abusive workloads – the most comprehensive national workplace inspections in OSHA’s 52-year history.

One of the warehouses currently under investigation by Federal OSHA is the ALB1 warehouse near Albany, NY, where Amazon reported in 2021 the highest injury rate of any primary Amazon warehouse in the nation – 20 serious injuries/100 workers.

For members of this Committee, that rate would mean that 8 of you would have been injured badly enough over the last two years to be unable to do your jobs.

As the next holiday shopping season begins, and on behalf of Amazon workers throughout the nation, we demand that Amazon stop denying the dangers, stop opposing OSHA’s interventions, and comply with the orders to fix hazards. Yes, following some of those orders from OSHA could take a little time. But Andy Jassy could issue a directive this afternoon to stop firing workers whose bodies require a break from the pressure. Nothing is preventing him from doing so.

We again appreciate the chance to bring these abuses to your attention, and urgently request that Committee continue to focus its own attention on this crisis, including:

- Urging Secretary Walsh to continue the Administration’s full support for OSHA’s interventions to improve conditions in the warehouse industry, including these investigations;
- Alerting the leadership of the nation’s warehousing companies to the dangers of the Amazon business model; and
- Demanding that Amazon fulfill its legal mandate to protect workers.

Thank you.

Respectfully Submitted,

Eric Frumin
Health and Safety Director
Strategic Organizing Center

¹³ SOC Complaint to Securities and Exchange Commission: <https://thesoc.org/what-we-do/soc-request-for-sec-investigation-of-amazon-com-inc-s-false-and-misleading-health-and-safety-disclosures/>

Table 1

**Injury rates among largest employers in US
warehouse industry**

(Warehouse sites reported by employers to
OSHA Injury Tracking Application, 2021)

Employers Reporting Injuries	Number of warehouse sites	Total injuries	Total "Lost-time"	Total "Light-Duty"	Total LT and LD	Total employees	Avg. employees/warehouse
All	4,492	54,578	18,957	30,326	49283	1,153,131	257
Amazon	308	26,875	6,290	18,655	24945	371,492	1,206
All non-Amazon	4,184	27,703	12,667	11,671	24,338	699702	167

Source: Worker injury data reported by employers to OSHA's Injury Tracking Application, for worksites with at least 20 employees in an average pay period in 2021, in industry NAICS code 49311 – General Warehousing and Storage

Chairwoman ADAMS. Thank you, sir. I now recognize Mr. Rath.

**STATEMENT OF MR. MANESH RATH, PARTNER, KELLER AND
HECKMAN**

Mr. RATH. Good morning, Chair Adams, Ranking Member Keller, members of this subcommittee. I am grateful for the opportunity to appear and participate in this hearing. I am Manesh Rath. I am

a partner at the law firm Keller and Heckman, here in Washington, DC.

For the past 27 years, I have dedicated myself to working with employers to improve the workplace, including the field of workplace safety and health. In my testimony today, I am expressing only my own understanding of the fields of occupational safety and health law and administrative law, and I am not here as a representative of my firm, of its clients, or of any other interest.

The employers with whom I have worked, some of them are among the largest operations in the world, are all sincerely dedicated to the goal of reducing, and hopefully eliminating workplace injuries, illnesses, and fatalities. Warehouse and distribution is a complex operation. Products are coming in, being sorted, stored, picked, and moved out constantly.

It is a 24-hour operation in some cases. Employers in the warehouse and distribution sector, with whom I have worked, have been dedicated to trying to understand the incidences of injuries and illnesses in their workplace, trying to identify potential hazards, and to developing improvements in the workplace to make it a better place for the field of workplace safety and health.

These employers have successfully driven injury and illness rates down through careful examination of their operations, and forceful, creative interventions to reduce injuries and illnesses. I say successfully, because that is the unmistakable conclusion drawn by the U.S. Bureau of Labor Statistics.

The Bureau of Labor Statistics reported that warehousing had a rate of 9.5 non-fatal occupational injuries per 100 full-time employees in the year 2003. By 2017, employers have driven that rate down to 5.0 of non-fatal occupational injuries for 100 full-time equivalent employees.

There is still more work that can be done, and the employers with whom I have worked are dedicated to that work of driving additional safety and health improvements. How have warehouses and distribution employers achieved this impressive improvement in workplace safety? In my observations, some of the safety and interventions the warehouse industry employers have introduced in their workplaces include acclimatization programs to address musculoskeletal disorders.

Increased and improved education programs, so that employees can share in the common goal of being responsible through their own conduct for everyone's safety. Implementing a buddy system, pairing experienced employees with less tenured workers to teach, oversee, and reinforce sound safety practices.

Intensive adaptations to the physical work plants and equipment, designed to improve the ergonomic interface between workers and their tasks, such as weight-bearing hoist arms, hydraulic lifts, hydraulic work tables, hydraulic and powered forklifts and scissor lifts, and the introduction of robotics, and other forms of automation.

As I mentioned, these interventions have led to a statistical improvement in injury and illness rates in warehouses, and the distribution centers. While I recognize the misapprehension that increased work speed can lead to increased injuries, this is not an unavoidable, or inescapable causal relationship.

Increases in product speed should not, and need, not come at the expense of safety. Increased production speeds may be accommodated by additional safety adjustments to for example, machine guarding, personal protective equipment, and forms of automation that may allow increased production speed while actually reducing injuries and illnesses at the same time.

Certainly, this appears to have been the case, and the conclusion drawn in a study in the poultry industry involving over 20 plants—20 plants, I apologize. While improvements in safety in warehouses has been driven by dedicated employers, OSHA can play a valued role as well. The agency can revitalize its consultation program, which has been long underutilized. The agency can publish guidance documents as well.

When the pandemic struck OSHA issued over 20 guidance documents in a matter of months. By contrast, rulemaking can take a couple of years or longer. OSHA can develop an alliance program with warehousing and distribution industry groups as it has with other industry groups in order to share successful interventions.

This Subcommittee can rightly applaud the significant safety successes of employers in warehousing distribution, and can encourage OSHA to participate in that process collaborative, rather than as an adversary in order to improve the safety in warehouses. Thank you for the opportunity to appear before you. I look forward to addressing any questions you may have.

[The prepared statement of Mr. Rath follows.]

TESTIMONY
OF
MANESH K. RATH
BEFORE THE
WORKFORCE PROTECTIONS SUBCOMMITTEE
OF THE
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ON

“Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers”

On November 17, 2022

Good morning, Chair Adams, Ranking Member Keller, and members of this Subcommittee. I am grateful for the opportunity to speak before this Subcommittee on this issue today.

I am Manesh Rath. I am a partner at the law firm Keller and Heckman LLP, here in Washington, D.C. In large part, my practice is centered upon occupational safety and health (OSHA) law. For twenty-seven years in practice, I have represented industry groups and employers in collaborating with labor, professional associations, the scientific community, and government to develop and maintain a safer and more healthful workplace. I have taught several thousand safety and health professionals, labor-management professionals, attorneys, and university students on matters involving OSHA law, litigation, employment law, and legal ethics. With a few esteemed OSHA law attorneys, I have served on the panel of authors and editors of two authoritative books in the field of OSHA law.

In my testimony today, I am expressing only my own understanding of the fields of occupational safety and health law and administrative law. I am not here as a representative of my firm, any of our clients, or any other interest.

1. An Employer’s Internal Injury and Illness Data Forms A Part of An Ongoing Feedback Cycle That Leads to Self-Driven Improvements in Safety and Health

An employer’s internal injury and illness data contributes to a feedback cycle whereby an employer can detect patterns, underlying causation, and other contributors. This feedback better enables the employer to develop and implement interventions, improving workplace safety and health.

The U.S. Bureau of Labor Statistics notes that employers can use their own injury and illness data for the purposes of education and prevention.¹ While the concept of isolating a root cause is of debatable merit, nevertheless employers strive to understand contributing factors and search for effective interventions.

2. Using Its Own Data, the Warehousing and Distribution Sector Has Implemented Numerous and Intensive Improvements In Safety and Health, Leading to Significant Reductions in Injuries and Illnesses

Employers in the warehousing and distribution sector have benefited from careful, introspective examination of internal injury and illness data. On that basis, in our work we have observed that employers have devised a number of improvements, both to their physical plants and to the administrative practice of their operations, which, in our observations of those worksites, has led to significant reductions in workplace injuries and illnesses. Here are some examples:

- Employers in the warehousing and distribution sector have concluded that a slow acclimatization to job tasks that involve materials handling can significantly reduce the onset of work-related musculoskeletal disorders. While in the short term this is by no means the most productive method of onboarding workers, warehouse and distribution employers embrace this approach for its safety and health benefits.
- Increased and improved educational programs have led to reductions in injuries and illnesses in the warehouse and distribution sector. Again, while this can be costly, employers in this sector have adopted it for its safety and health benefits.
- Some employers have implemented a buddy system, assigning workers to perform tasks in pairs. In some cases, this buddy system imposes, as a job duty, a responsibility for each other's safety. In other cases, a buddy system assigns more experienced employees to newer hires so that safe procedures can be taught and reinforced for periods much longer than a workers' initial safety orientation and job education.
- Many employers that we have worked with have embraced the use of periodic breaks and start-of-shift warm-up exercises in an effort to reduce the risk of workplace injuries associated with materials management.
- Employers in warehousing and distribution have installed costly ergonomic adaptations to the workplace. These include the use of conveyor systems; weight-bearing picking hoist arms; hydraulic-lift adjustable lift tables and work surfaces; hydraulic and powered forklifts and scissor lifts; and mechanical and powered pallet trucks and stackers.
- In addition, some employers in warehousing and distribution that are among the most dedicated to workplace safety and health are using or examining the costly use of machination, robotics, and other forms of automation for those tasks that have the highest statistical case for injuries.

¹ William J. Wiatrowski, "Using workplace safety and health data for injury prevention," Monthly Labor Review, U.S. Bureau of Labor Statistics, October 2013, <https://doi.org/10.21916/mlr.2013.34>

These examples form a part of warehousing and distribution employers' continuous cycle of interventions, internal data collection, evaluation of efficacy, and rededication to additional or improved interventions.

Indeed, neither OSHA nor this Subcommittee can generate any rule, requirement, enforcement or other intervention that could hope to rival the effectiveness, scale, cost, and speed of the interventions already underway or being considered by employers in the warehousing and distribution space.

3. Overall, Injuries, Illnesses, and Fatalities in the Workplace Have Been Declining For the Past Eight Decades

Data trends, when they are presented over a short interval, must necessarily be greeted with skepticism, for the brief interval clearly signals the possibility of data cherry-picking. Additionally, 2020 was an anomalous year. The pandemic led to skewed injury and illness rates due to reported cases of COVID-19. Therefore, any change in data between 2020 and 2021 will necessarily fail to support any reliable conclusions about workplace safety.

The long-term national statistics, however, present evidence that leads to an unmistakable conclusion: employers in all sectors have successfully reduced the number of non-fatal injuries and illnesses continuously for more than the past fifty years. See Appendix at Table 1.²

With respect to workplace fatalities, transportation, or motor vehicle related fatalities, contribute the largest fraction of fatalities in the sector; thus, when examining safety and health inside the warehouse, the fraction of any sector-based statistics that derives from motor vehicle fatalities should be parsed out in order to better understand hazards inside the warehouse or distribution facility. See Table 2.

The rate and total number of work-related fatalities, like non-fatal injuries and illnesses, have steadily declined, regardless of the time scale being examined. See Appendix at Table 3.³ While changes to the size of, and disruptions within, the labor pool may create fluctuations from one year to the next in total fatalities, the fatality rate, over time, has thankfully experienced ongoing decline. See Table 3. Even OSHA has stated the same, noting that the workplace fatality rate is now one third of the figures experienced fifty years ago.⁴

This national trend is also prevalent in the warehouse and distribution sector. While the number of warehouses has doubled in the past decade, and employees in the sector have doubled from 645,200 in 2010 to 1,304,900 in 2020, (see Appendix at Table 4)⁵ the total number of non-

² Jeff Brown, "Nearly 50 years of occupational safety and health data," Beyond the Numbers: Workplace Injuries, vol. 9, no. 9 (U.S. Bureau of Labor Statistics, July 2020), <https://www.bls.gov/opub/btn/volume-9/nearly-50-years-of-occupational-safety-and-health-data.htm>

³ See BLS chart at Appendix at Tables 1-3. See also Work-related Fatality Trends, National Safety Council, 2021, available at <https://injuryfacts.nsc.org/work/work-overview/work-related-fatality-trends/>

⁴ See Occupational Safety and Health Administration's Commonly Used Statistics, available at <https://www.osha.gov/data/commonstats>

⁵ See: U.S. Bureau of Labor Statistics, Databases, tables, & Calculators by Subject.

transportation fatalities in warehousing has remained relatively steady, increasing by only 9 additional fatalities during that time.⁶ This data, when adjusted for growth in the industry and after removing motor vehicle accidents, indicates that the fatality rate has been decreasing over time in the warehousing and distribution sector.⁷ This indicates that, while motor vehicle safety presents the largest opportunity for reducing workplace fatalities, attention needs to be paid with specificity to in-warehouse fatalities and their causative factors in order to better apply resources to those hazards which may have a contributing effect.

Unsurprisingly, the long steady reduction in workplace fatalities precedes the advent of the Occupational Safety and Health Administration, indicating that the reason for the ever-safer American workplace can be credited to employers, and not to OSHA's agency intervention. See Appendix at Table 5.⁸

4. Warehouse Work Speed and Worker Safety Can Co-Exist

Work acclimatization, proper education, administrative interventions like breaks, start-of-shift warm-ups, and other interventions are widely believed by employers in the warehouse and distribution sector to have a beneficial effect on safety and health. However, there is no or poor evidence to support an assertion that worker speed affects worker safety. On the contrary, one of the largest and most reliable studies ever conducted indicates that employers can increase work speed while dramatically reducing injury rates. A pilot study, conducted by The National Advisory Committee on Microbiological Criteria for Foods, began in 1997 and involved 20 chicken processing plants.⁹ This was called the Hazard Analysis and Critical Control Point (HACCP) Inspection Models Project (HIMP).¹⁰ While the study's objective was to test alternatives for food inspection, the data revealed something else of great interest to workplace safety.¹¹ As part of the study, the processing plants increased their line speed from 140 birds per minute (BPM) to 175 bpm.¹² What the committee discovered was that, although line speed increased by 25 percent, the incidence of workplace injuries and illnesses declined by 86 percent.¹³

Series ID: CES4349300001. All employees, thousands, warehousing and storage, seasonally adjusted, January 2012 to January 2022. See also: Fady Attia, Five Insightful Statistics Related to Warehouse Safety, January 5, 2021, Damotech, available at <https://www.damotech.com/blog/5-insightful-statistics-related-to-warehouse-safety>

⁶ id.

⁷ News Release, Bureau of Labor Statistics, U.S. Department of Labor, USDL-21-2145, "National Census of Fatal Occupational Injuries in 2020," at Table 3.

⁸ Marian L. Tupy, The market is the real driver of better working conditions, Sep. 16, 2018, Foundation for Economic Education, available at <https://fee.org/articles/workplace-fatalities-fell-95-in-the-20th-century-who-deserves-the-credit/>

⁹ FDA, HACCP Principles and Application Guidelines, August 14, 1997, available at <https://www.fda.gov/food/hazard-analysis-critical-control-point-haccp/haccp-principles-application-guidelines>

¹⁰ id.

¹¹ National Chicken Council, Poultry Line Speeds: What are poultry processing line speeds? Are line speeds in the U.S. regulated by the government? Are faster line speeds unsafe for poultry processing workers? available at <https://www.chickencheck.in/faq/poultry-line-speed/>

¹² id.

¹³ id.

This dramatic improvement in worker safety, occurring concurrent with increases in line speed, was achieved through continued improvements implemented by employers, such as improved machine guarding, improved designs to personal protective equipment, increased use of automation, and intensive worker educational programs.¹⁴ These are the same interventions that have been studied and implemented – and which will continue to be improved upon - in the warehousing and distribution sector.

In sum, an employer can innovate to find ways to improve both operational efficiency and worker safety, as indeed it has a duty to maintain excellence in both.

5. OSHA Can Play a Valuable Role In Improving Safety and Health in Warehousing and Distribution Through Consultation and the Issuance of Practical Guidance

The U.S. Occupational Safety and Health Administration has a valuable role to play in improving safety and health in warehouse and distribution establishments. OSHA can assist in worker safety through consultation with employers; the development of practical guidance; and industry alliances.

While OSHA's performance standards set forth a safety objective, a required endpoint, and leave the method of achieving it up to the employer to figure out, by contrast guidance documents can provide more practical input into specific measures that employers can consider. During the COVID-19 pandemic, for example, OSHA issued at least twenty guidance documents, and translated them into fourteen additional languages. It accomplished this within a matter of a few months; by contrast, it can take a couple of years or more to promulgate a single standard. OSHA should therefore consider the value that it can add by sharing industry practices through the development of guidance documents.

OSHA has developed a consultation program, one which it currently underfunds and often overlooks. Yet consultation with industry creates a collaborative relationship that can solicit the acquired knowledge of management, employees, and the agency. This program should be revitalized to better serve the common objective of improving safety and health in the warehouse and distribution sector.

Over the years, OSHA has engaged in dozens of alliances with industry groups. In these alliance arrangements, the agency and industry groups have exchanged information and collaborated on the development of safer practices that are industry specific. This Subcommittee can encourage the agency to enter into an alliance with groups representing and attended by the warehousing and distribution sector.

These suggestions present OSHA with opportunities to improve warehouse safety and health that are collaborative – and they are also preventative rather than remedial.

¹⁴ Id.

6. Conclusion

Any endeavor to understand and improve the safety and health of workers in the warehouse and distribution sector should begin by learning about the significant improvements that employers in this sector have already implemented, and by evaluating the impact of those interventions.

As I have testified herein, my observation of the distribution and warehousing industry is that employers in that sector have utilized their own internal injury and illness data to advance safety and health in the workplace. Employers in this sector have developed and implemented thoughtful and impactful interventions to improve worker safety. As a result, they have succeeded in presiding over significant reductions in worker injuries and illness.

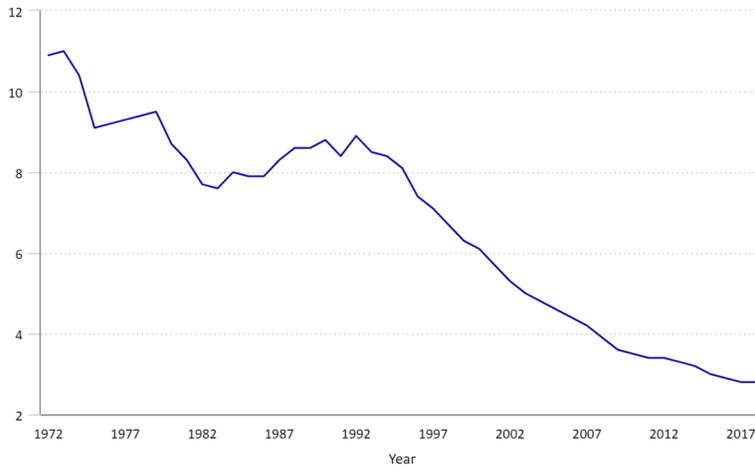
OSHA can play a valuable role in this process by providing consultation services, issuing guidance, and by sharing practices between employers that have been successful.

Thank you for the opportunity to appear before this Subcommittee. I look forward to addressing any questions you may have.

APPENDIX

TABLE 1

Chart 1. Incidence rates of nonfatal occupational injuries and illnesses, private industry, 1972–2018

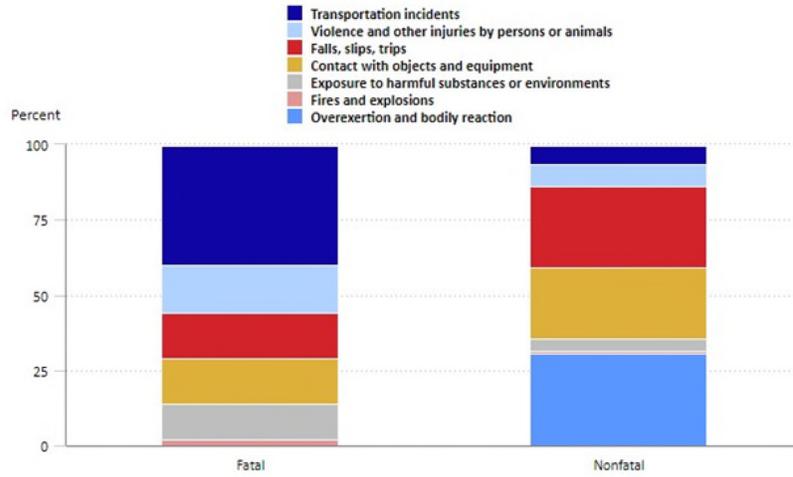


Hover over chart to view data.
Source: U.S. Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses.



TABLE 2

Chart 3. Distribution of fatal work injuries and nonfatal work injuries and illnesses by major event category, 2018



Click legend items to change data display. Hover over chart to view data.
 Source: U.S. Bureau of Labor Statistics, Census of Fatal Occupational Injuries and Survey of Occupational Injuries and Illnesses.

TABLE 3

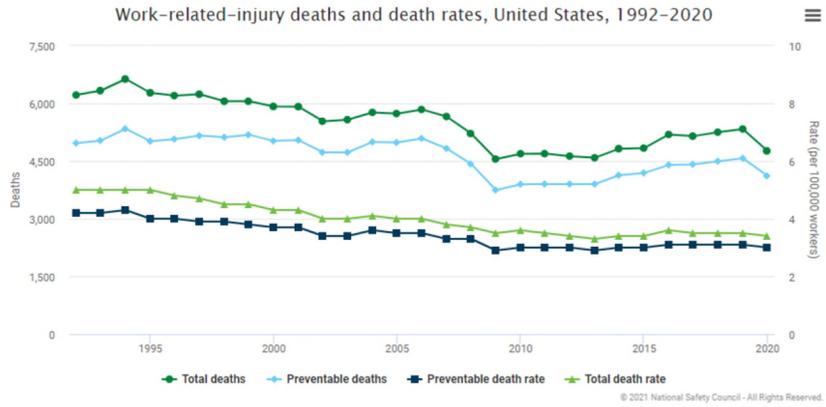
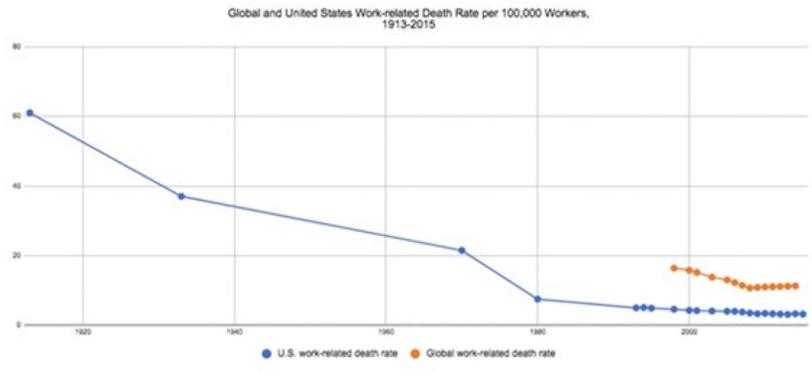


TABLE 4



Source: U.S. Bureau of Labor Statistics, Databases, tables, & Calculators by Subject.

Series ID: CES4349300001. All employees, thousands, warehousing and storage, seasonally adjusted, January 2012 to January 2022.

TABLE 5

Source: Foundation on Economic Education

Chairwoman ADAMS. Thank you, sir. We will now hear from Ms. Calcedo. You are recognized now for 5 minutes.

**STATEMENT OF MS. JANETH CAICEDO, SISTER, SISTER OF
EDILBERTO CAICEDO**

Ms. CAICEDO. Good morning members of the Workplace Protection Subcommittee of the House Committee on Education and Labor. I would like to thank Chair Adams and Ranking Member Keller for the invitation to share my story today of the importance of health and safety protections to warehouse workers.

I am here to testify about the importance of workplace safety standards for warehouse workers. I cannot explain why it seems that our society sees it as normal that the workers who get paid the least to do the most physically demanding jobs, and they are expected to risk their health and safety at work.

We need to change this expectation. Warehouse and logistics workers are truly essential to our economy, and the health and safety risks they are subject to must be exposed. This summer, three New Jersey Amazon workers died on the job within 3 weeks of each other. It hard to believe that it is just a coincidence that these workers passed away during one of the busiest times of the year, Prime Day.

Perhaps not everyone can understand what it's like for families like these to suffer a loss due to health and safety risks at their job being ignored. Unfortunately, I can.

On August 19, 2019, my brother came to my bedroom door, and he yelled to me, "Hey, Monster, it's time to go to work. I'll see you at five." He headed out to his assignment at TI Logistics in Kearny, New Jersey, a company that managed warehousing and distribution of products for companies like CVS and American Eagle.

The reason I said this assignment, rather than his job, is because my brother was a temp worker, employed via a licensed staffing

agency. Warehouse workers employees via staffing agencies in New Jersey and elsewhere are much more likely to risk serious injury than even the already dangerous jobs performed by direct hire warehouse workers.

At nine, I received a call that my brother Edilberto was at the hospital with a very, very dangerous injury in his brain. He died 4 days later. It was a drastic change in my life, in my family's life, and nothing, nothing has been the same again.

My mom, who is 93 years old, still feels that he will come 1 day to tell her what happened. I think the accident was the company's fault. The company did not follow OSHA regulations. There was no interest in keeping a safe workplace at all. The company was accepting contract after contract, and piling people inside the warehouse without maintaining any type of safety protocols.

The equipment was also unsafe. The company did not keep up the machines, and did not provide adequate training. These conditions would end up killing my brother. The conditions in my brother Edilberto's workplace were not safe at all. The managers focused only on adding customer after customer, and though they continued piling people inside the warehouse, they never paused to make sure that there were reasonable safe working conditions that would allow workers to go home at the end of the day to their families.

Equipment was not maintained and continued to be used when it was not working properly. Temporary warehouse workers like my brother could not speak up about safety risks and expect to keep their jobs.

Whether from the staffing agencies themselves, or the companies that contract with them, when temporary workers speak up, they are retaliated against. They are removed from their assignment, taken off the schedule, or fired. As the other witnesses have explained, the warehousing and logistics industry is rife with safety risks.

Imagine what this means for workers employed in warehouses via staffing agencies, which by design shield companies from responsibility for the working conditions of the workers they employ. Temporary warehouse workers like my brother, do not worry that they will face retaliation for raising safety issues, they know they will.

To even call my brother a temp worker is not entirely accurate. After my brother's death, I began to look more closely at the industry he worked in, and particularly into staffing agencies' role in health and safety at warehouses in New Jersey. I learned about a study from 2015 that showed that nearly half of all New Jersey warehouse workers are "temporary workers".

The majority of these temporary workers, work at the same assignment for more than 2 years. Temporary workers, in addition to the outsized risk to their safety, generally do not qualify for health benefits, often have their wages stolen, are subject to predatory fees, and are threatened when they try to take legally allowed time off. That is certainly the case in New Jersey.

Chairwoman ADAMS. Would you please wrap up your comments. We are over time.

Ms. CAICEDO. Sure. After checking a lot of cases that I noticed about the safety of the security of the job place, I am sure that

there are—that you, the Representatives, will make the difference. I think that all the workers deserve respect and dignified treatment and a safe workplace. Please be fair to——

[The prepared statement of Ms. Calcedo follows.]

STATEMENT OF TESTIMONY

Good morning members of the Workforce Protections Subcommittee of the House Committee on Education and Labor. I'd like to thank Chair Alma Adams and Ranking Member Fred Keller for the invitation to share my story today on the importance of health and safety protections for warehouse workers.

My name is Janeth Caicedo and I am here to testify about the importance of workplace safety standards for warehouse workers.

I can't explain why, but it seems that our society sees it as normal that the workers who get paid the least to do the most physically demanding jobs should *expect* to risk their health and safety at work. We need to change this expectation. Warehouse and logistics workers are essential to our economy, and the health and safety risks they are subject to must be exposed.

This summer, three New Jersey Amazon workers died on the job within three weeks of each other. It's hard to believe that it is just a coincidence that these workers passed away during one of the busiest times of year for Amazon- Prime Day. Perhaps not everyone can understand what it's like for families like these to suffer a loss due to health and safety risks at their job being ignored. Unfortunately I can.

On August 19th, 2019, my brother, Edilberto Caicedo, came to my bedroom door and he yelled to me, "Hey, lazy monster. It's time to go to work. I'll see you at five." He headed out to his assignment at TI Logistics in Kearny, NewJ, a company that managed warehousing and distribution of products for companies like CVS and American Eagle. The reason I say his assignment rather than his job is because my brother was a temp worker, employed via an unlicensed staffing agency. Warehouse workers employed via staffing agencies in New Jersey and elsewhere are much more likely to risk serious injury than even the already dangerous jobs performed by direct-hire warehouse workers. At nine, I received a call that my brother Edilberto was at the hospital with a very, very dangerous injury in his brain. He died four days later. It was a drastic change in my life, in my family's life, and nothing, nothing has been the same again.

My mom, who is 93 years old, still feels that he will come one day to tell her what happened. I think the accident was the company's fault. The company didn't follow OSHA regulations. There was no interest in keeping a safe workplace at all. The company was accepting contract after contract and piling people inside the warehouse without maintaining any type of safety protocol. The equipment was also unsafe. The company didn't keep up the machines and didn't provide adequate training. These conditions would end up killing my brother.

The conditions in my brother Edilberto's workplace were not safe at all. The managers focused only on adding customer after customer, and though they continued piling people inside the warehouse they never paused to make sure that there were reasonable safe working conditions that would allow workers to go home at the end of each day to their families. Equipment wasn't maintained, and continued to be used when it wasn't working properly, but temporary warehouse workers like my brother could not speak up about safety risks and expect to keep their jobs.

Whether from the staffing agencies themselves, or the companies that contract with them, when temporary workers speak up, they are retaliated against. They are removed from their assignment, taken off the schedule, or fired. As the other witnesses have explained, the

warehousing and logistics industry is rife with safety risks, but imagine what this means for workers employed in warehouses via staffing agencies, which by design shield companies from responsibility for the working conditions of the workers they employ. Temporary warehouse workers like my brother don't *worry* that they'll face retaliation for raising safety issues; they *know* they will.

To even call my brother a "temp worker" is not entirely accurate. After my brother's death I began to look more closely at the industry he worked in, and particularly into staffing agencies' role in health and safety at warehouses in New Jersey. I learned about a study from 2015 that showed that nearly half of all New Jersey warehouse workers are, quote, "temporary workers", and that a majority of these temporary workers worked at the same assignment for more than two years. Temporary workers, in addition to the outsized risk to their safety, generally do not qualify for health benefits, often have their wages stolen, are subject to predatory fees, and are threatened when they try to take legally allowed time off. That is certainly the case in New Jersey. It is important to understand that these workers are not just filling in when other workers aren't available; they are the backbone of an industry that is critical to our state's economy, but they lack the safety protections they deserve.

And what happened to my brother Edilberto is not an isolated incident. Tragedy for warehouse workers, particularly temporary warehouse workers, is nothing new. To mention just a few, over Labor Day Weekend, four temp workers were killed when the van carrying them back from a warehouse job crashed in Palisades Park, New Jersey. In 2014, Ronald Smith, a temporary worker assigned by Abacus Staffing to work at an Amazon facility in Avenel NJ was killed on the job in a forklift accident. In 2013, temporary worker Day Davis was killed on his *first day* of work at a Bacardi warehouse in Florida. In 2020, Duntate Young, a 23-year-old temporary worker assigned to work at FedEx in Tennessee was killed when she was crushed by a shipping container. Despite regulators determination that FedEx failed to keep its workplace "free from recognized hazards that were causing or likely to cause death or serious physical harm to employees," this multi-billion dollar corporation was fined only \$5960. Is that the value we place on a human life? 6000 dollars?!

As you can clearly see, the conditions in many warehouses, and in the one where my brother worked, are not fit for a human being. As you consider taking additional steps to protect US warehouse workers, I want you to keep in mind all of the temporary workers in New Jersey like my brother Edilberto, that performed essential work for one of our state's most important industries, but paid the cost of employer negligence with his life.

Don't forget that you can make the difference. I think that any worker deserves respectful, dignified treatment and a safe workplace, and you, as representatives elected to protect our country and you, as our representatives, are needed to make sure workers' lives are protected. Please be fair to us. You are now the tool to make sure that a lot of lives are saved and you are going to make the difference. Please do it. I want that you think about the possibility that somebody has your life or one of your family member's life in his hands, and you wish that they'd make the good decision, the right decision.

Legislators, both on the state level and on the federal level, must take action to assure that all warehouse workers get the basic protections that they need so that their spouses, their children, their brothers, and their sisters, don't go through what my family and I have been forced to go through. This means we need protections for both direct-hire and temporary warehouse workers.

Each day that passes without sufficient regulation of warehouse worker safety is another day that we should *expect* the worst to occur. Now you have the power to make a difference. You have the power to save lives. You have the power to give the people a different life. Please work to change warehouse work to make it safe for everyone. You are going to go back home and you be able to hug your family. I won't be able to hug my brother again. So when you hug your family, please think about the difference that you are going to make. I wish you and I wish that your family is safe and protected. Thank you again to Chair Adams, Ranking Member Keller, and all of the members of the subcommittee for having me here today to share my experience with you, and for taking these life and death matters seriously.

Chairwoman ADAMS. Thank you, ma'am. Thank you, ma'am, we have got to move on. Thank you. Under Rule 9(a), we will now question witnesses under the 5-minute rule, and I will be recognizing the subcommittee members in seniority order. Again, to ensure that the member's 5-minute rule is adhered to, staff will be keeping track of time. Please be attentive to the time, wrap up when your time is over, and mute your microphone.

I am going to recognize myself as Chair for 5 minutes. Mr. Frumin, the Strategic Organizing Center's report spoke about the pace of work being a contributor to workplace safety concerns in warehouses. Can you please speak to how businesses can create a healthy balance between fulfilling orders for customers and ensuring that the pace does not endanger workers?

Mr. FRUMIN. Thank you very much, Chair Adams. The pace of work is a fact of life for many jobs, including certainly warehouse workers, and there is nothing to say that in and of itself a particular job is going to be dangerous or not based on simply the pace of work. We want to be realistic about this. However, what is apparent is that if you do not pay attention to how fast you, as an employer, are pushing people, you could easily push them far too fast.

At a certain point, and that can be very quickly in the way managers treat people, you can be pushing them far beyond the ability of their bodies to handle it. How do you judge what is appropriate? Well, first of all you listen to workers and their complaints, and Amazon workers have been complaining about this for years publicly, to OSHA, to their managers with no success.

However, also, you can apply simple basic principles of ergonomics to say well, we know from prior experience that in this type of job you can predict that at this pace of work the job is going to be far too dangerous and needs to be slowed down until we can figure out a different way to do it that makes it safer to work quickly, so there are different ways to manage it, thank you.

Chairwoman ADAMS. Thank you, sir. Thank you. My next question is to Ms. Caicedo. Before I begin, I wanted to tell you how first of all deeply sorry I am for your loss. Thank you for joining us to share your story. Is there anything you would like to tell us about the kind of person your brother was, and how we can make sure his memory is honored appropriately?

Ms. CAICEDO. I could define my brother as a generous person. He was always generous with the time, with the service. He was so generous that when he died he was an organ donor. Always, 15 days before he died, he said it is important to give life to others, and I think that this is the way to honor him. To work to give life to others.

Chairwoman ADAMS. Thank you, ma'am. My final question, Mr. Frumin and Mr. Kaoosji. The reports that we have heard about excessive heat in warehouses is quite disturbing. Can you discuss briefly what is being done, or what could be done better to ensure proper temperature control in these warehouses, Mr. Frumin?

Mr. FRUMIN. Sorry. Well, certainly, one thing to do is to, you know, give, take accurate real time temperature measurements, and make sure workers know about it. Make sure workers are trained to understand when those conditions approach danger and what the warning signs are so that they can make sure that they are reporting any symptoms, and that managers know how to respond to it.

It is a combination of controlling the temperature and the conditions but making sure that workers have actionable rights to be protected from those conditions if they are having any symptoms, and beyond that you know, to pay attention to the law. Unfortunately, what we have seen, and Mr. Kaoosji can comment on this in more detail, is companies repeatedly ignoring, even where it is a legal requirement, to protect workers from excessive, dangerous heat exposures.

Chairwoman ADAMS. Thank you, sir. Mr. Kaoosji, would you like to comment please?

Mr. KAOOSJI. Yes, thank you. Here in California, we have an interesting situation where we have an outdoor heat standard that has existed since 2006 and applies to a lot of workers who work out in docks and stores and warehouses and ancillary places.

We see how that works, and it works when you know the employer proactively is required to (inaudible). Sorry, effectively give workers extra breaks and rest when the temperatures are above a certain temperature. We are hoping that that is something that can establish in the indoor heat standard situation as well. That is the kind of situation that we, you know, are working toward with the establishment of the indoor heat standard here in California.

Chairwoman ADAMS. [Inaudible.]

Mrs. FOXX. I ask for a point of personal privilege to begin my comments. I want to thank Congressman Fred Keller for the tremendous service he has done for our country, for his constituents and for this committee. One thing I have learned about Fred while serving with him in Congress is that he is someone who always shows up, who has always prepared to work on behalf of job creators and workers.

Who is as committed to upholding the Constitution as one can be. Saying Fred will be missed is an understatement. He is the embodiment of a public servant, and of a statesman, someone who always puts the work first. He did not come to Congress for the spotlight. He came to Congress to make a difference.

I can definitely say he has accomplished that goal. Well done Congressman Keller. We wish you the best in your future endeavors, knowing that whatever you do next, will be in further service to your community and to this country. Thank you, Madam Chairman. Now I am prepared to ask my questions.

Chairwoman ADAMS. Yes ma'am, you are recognized for 5 minutes, thank you.

Mrs. FOXX. Thank you, Madam Chairman. While the topic of today's hearing is theoretically occupational safety in warehouses, it appears the Democrats real goal is to bash job creators and promote policies that drive all workers into unions, regardless of their preference.

Democrats so-called solutions to warehouse safety are misguided. In fact, nothing in the written testimony shows that unionized warehouses are safer than non-unionized facilities. Mr. Rath, returning to the topic of today's hearing, what are some of the key factors to ensure workers' safety in warehouses?

Mr. RATH. Thank you for your question. The first process, which employers have to engage in, is to understand where injuries and illnesses are occurring, and then to try to intervene with the appropriate remedial devices, and this could involve changes to equipment, automation, it could involve mechanization of tasks that are more likely to cause injuries or have historically caused those injuries.

Then a testing and evaluation of those inventions to find out what works, and how those can be refined and improved upon.

Mrs. FOXX. Thank you very much. Another question Mr. Rath, on October 31, National Labor Relations Board General Counsel Jennifer Abruzzo, issued a memo urging the Board to adopt a new framework requiring an employer to prove its employee monitoring, or management practices are narrowly tailored to address a legitimate business need, and outweigh employees' rights to organize under the National Labor Relations Act.

How would such a policy chill the use of innovative, wearable technology that improves safety in the workplace?

Mr. RATH. Thank you for your question. The first response that I think that employers should make is that safety and health in the workplace is a legitimate business necessity. Nobody should question that. Second of all, the problem with the National Labor Relations Board's opinion is that safety and health and the employer's ability to pursue improvements to safety and health, should be unfettered by the challenge presented to the employee's National Labor Relations Act rights.

The safety has to come first. The idea of wearables is employed for safety. One example would be in geofencing to keep employees out of unsafe areas. Another would be proximity sensors that manage safely the distance and space between workers and for example, motor vehicles, or powered industrial trucks, forklifts, et cetera.

This has nothing to do with privacy—an employee's privacy, and that is not a consideration that should be taken into account when safety and health is involved.

Mrs. FOXX. Thank you, Mr. Rath. The private sector has been rapidly innovating to improve workplace safety in warehouses. What could the government do to encourage these efforts? Conversely, what current or proposed government actions could impede these innovations?

Mr. RATH. Thank you for your question. The question of government involvement necessarily requires that we understand that all improvements in workplace safety and health must be implemented by the employer, therefore it is important for government

to play a collaborative role with employers, and for employees, to play a collaborative role with employers, rather than an adversarial one.

Some of the collaborative approaches that the Occupational Safety and Health Administration has taken in the past include the issuance of guidance documents. During the pandemic the last administration's Occupational Safety and Health Administration issued 20 guidance documents in a matter of months, much more rapidly than it could have developed or promulgated a rule under traditional rulemaking.

The same goes for alliance programs. Programs that associate with industry groups in order to understand what best practices have been working. Finally, their consultation program has been long underutilized and could be revitalized for the purpose of improving safety and health for example, in warehouses and distribution centers.

Mrs. FOXX. Thank you so much, Mr. Rath. I just want to add to what Mr. Rath is saying. I know of no employer in this country who will knowingly put workers at risk anywhere, leastwise in warehouses. Employers care about their employees, personally, furthermore, they have much invested in them, and want to keep them safe.

It is a shame to not have more collaboration and to look toward helping keep individual employees safe, instead of just trying to unionize them. I yield back.

Chairwoman ADAMS. Thank you, thank you. I want to yield now to California, Mr. Takano, you are recognized sir for 5 minutes.

Mr. TAKANO. Thank you, Madam Chair. Mr. Kaoosji, if possible, I would like to show you a chart, the group Warehouse Workers for Justice provided. If the staff could put that chart up please. The Warehouse Workers for Justice provided a chart of Walmart's import distribution center in Elwood, Illinois. This chart shows a network of relations between a lead retailer, and a third-party logistics company, and various chains of subcontracted staffing companies.

Mr. Kaoosji, you should have this chart in your possession for your review. Is this structure of employment common in the industry?

Mr. KAOOSJI. Thank you, Mr. Takano. Yes, it absolutely is. This is a similar structure that Walmart had here in Riverside County as well, close to your district near the Mira Loma area. About 10 years ago, we dealt with Walmart and Schneider Logistics, specifically around staff development safety issues, and they have with Walmart, Schneider, and Rogers Premier were a part of that.

We continue to see a lot of big retailers like Walmart use subcontracting of the warehouse operation, but especially the subcontracting of staffing operations for a few reasons. Often, reduce their own liability directly, around health and safety or wage theft issues that occur, but also to be able to turn on and off the labor spigot very quickly, to say we do not want workers tomorrow and quickly be able to you know cutoff the labor.

That is kind of the structure, but it is very common here in California, across the country.

Mr. TAKANO. Well, the significance of this sort of structure is that these subcontractors, who actually contract with the labor, insulate the main beneficiary, which is Walmart, or whoever is the big retailer from liability. You know, if the wage theft is happening at the subcontractor level, this sort of structure insulates Walmart legally, to some extent.

Mr. KAOOSJI. To some extent. It depends on where the law is at, and this has been a constant fight and dispute at different levels. Here in California, we have established over the last 10 years some pretty good joint employment laws around both health and safety and wage theft. When we are engaged with the similar structure with Walmart and Schneiders in Riverside, the lawyers were able to show that Walmart actually was, you know, aware of what was going on in that facility and attempted to add them to the lawsuit.

On a national level we have seen the U.S. DOL under, you know, the current administration has taken a more appropriate approach toward joint employment, and taking you know not just the direct employer of record, which would be the staffing agency, but also the operator into account, and keeping this viewed constantly.

Mr. TAKANO. Well, thank you. The point is that we have had a lot of discussion in committee and hearings about joint employer and the necessity to have good joint employer regulations, and in law, so that companies like the top companies, the top retailers are not able to escape liability for health and safety violations, and for wage theft that are committed by the subcontractors.

Now over the last 2 years several states across the country, such as California, New York, and Minnesota, have either enacted, or advanced legislation which would require employers in the warehouse industry to provide advance and detailed notices of new productivity or output requirements to their workers.

In many states, legislation also prohibits management from enforcing quotas that conflict with a worker's earned rest, meal breaks, or ability to use the restroom. Can you explain why these pieces of legislation are needed to protect warehouse workers?

Mr. KAOOSJI. Yes. When workers are working on a rate, when workers are not represented by a union, they often work, and they have to work every day to show that they are productive and valuable to the company, whether they are directly employed, or sometimes through a staffing agency you have to show that you're productive in order to make sure that the company keeps you.

Workers will push through a break, will push through lunch in order to show that they are keeping up with their rate because they know if they do not keep up they will not have work the next day. Those protections proactively coming down from the State is really important because otherwise workers are incentivized essentially by those quotas to work through those mandated breaks and lunches, those sorts of things.

Mr. TAKANO. Well, thank you sir, my time has run out. Madam Chair, I yield back.

Chairwoman ADAMS. Thank sir. I want to recognize Mr. Keller, 5 minutes sir.

Mr. KELLER. Thank you, Madam Chair. Mr. Rath, time and time again we have heard the Democrats in this committee demonize employers and their commitment to keeping their workers safe. In

my experience, this cannot be farther from the truth. I would like to ask you, do employers in the warehousing industry care about the health and safety of their workers?

Mr. RATH. Thank you for your question. With respect to the employers that I have worked with, every single one of them, they have not only been fully dedicated to improving workplace safety, but they have experienced actual improvements in workplace safety through their own innovations, through their own devices, and through their own investments.

I will add one more thing. When consulted as to the requirements of the Occupational Safety and Health Act, or any other safety law, employers have consistently that I have worked with, gone above and beyond those requirements voluntarily in order to optimize safety, well beyond what the laws would have expected of them.

Mr. KELLER. OK. You say they have improved safety. Do they record like their incident rates?

Mr. RATH. Yes. The question of the Occupational Safety and Health Act's recordkeeping rule yes, an injury or an illness that's work related would be recorded.

Mr. KELLER. You would not happen to know what any of those are would you? The people you have worked with that have improved their safety?

Mr. RATH. I do not typically have an access to their injury and illness rates unless it becomes a specific question of law that I am asked to opine on.

Mr. KELLER. OK, OK, because my experience having worked in private industry in a factory, in a lumber warehouse sometimes, I know that employers care about the team of people that come to help make them successful. This has turned into wage theft, and joint employer, when we are supposed to be concerned about people's safety.

We talk about Walmart and Amazon, but the Federal Government runs the United States Postal Service, which performs the same services that warehouses do, delivering packages and moving goods as Amazon and Walmart. My point is, if we were truly concerned with making sure people were safe, rather than cherry-picking statistics, and certain employers, we would take a look at the whole industry, everyone that handles goods and provides services in warehousing and delivery, would we not, in your opinion?

Mr. RATH. Yes. The example of the post office exemplifies the complexities associated with these kinds of operations.

Mr. KELLER. Yes. It is sad when anybody gets injured at work. I am going to say that right now. I will tell you what, there probably is not anybody that feels worse, than the employer. You do not want to see somebody get hurt. People want their team that makes them successful to be safe.

You know we talk about wage theft. That even came into this hearing. Quite frankly, we call it wage theft and every other thing except when we raise taxes. We raise taxes on people, and we do not call that wage theft. We probably should. This is a hearing on safety.

I am committed to making sure that the people I represent are treated fairly, and we have true measurables that improve that

safety for everyone. One other thing I did want to question because Mr. Rath, during the Obama administration, OSHA tried to discourage post-accident drug testing in the workplace by amending its injury and illness reporting rule.

The Trump OSHA later issued a memo clarifying that the agency's regulations do not prohibit the post-action drug testing. Is drug testing a critical tool to keep warehouses safe?

Mr. RATH. Thank you for this question. The largest body of data to support an answer to your question comes from the insurance industry that receives all workers comp claims, and the insurance industry has weighed in unequivocally that they support the use of drug and alcohol testing in the workplace as a mechanism for driving down injuries and illnesses.

It was unfortunate, therefore, that any fraction of the government, including the Occupational Safety and Health Administration, would have been opposed in any degree to the use of alcohol and drug testing in the workplace knowing what the insurance companies have reported that it has a positive effect on driving down injuries and illnesses.

Mr. KELLER. You know I would say that the Federal Government recognizes the importance of making sure people operating machinery are not intoxicated, or under the influence of drugs because CDL drivers, you know, take in some cases, you can do pre-employment drug screening and random, whereas states require random drug screening for that.

I think it is a matter of safety. If we really want to get to the issues let us stop talking about all of these other things, and let us talk about everyone's safety. Thank you and I yield back.

[Ranking Member Fred Keller (R-PA) will enter in the record a letter from the National Retail Federation.]

Chairwoman ADAMS. Thank you, sir. Let me recognize Mr. Norcross, you have 5 minutes sir.

Mr. NORCROSS. Thank you, Madam Chairwoman and Chairman Scott for putting together this hearing, incredibly important. Three times in my career as an electrician I was on a site where a colleague was killed.

Nothing prepared you for something like that. I remember hearing, I remember seeing one of those times. The shock that came over me. To watch somebody, die in front of you on the job. I think we all are concerned about workers safety no matter where you work, that is a given.

An employer and an employee work together, and they all want to be safe, but the numbers do not lie. This is not about Amazon. This is not about Walmart. This is not about anything but workers' safety. We have to look into it a little bit.

This year New Jersey, within a 3-week span on the job, three employees died. Three different warehouses, one common element was they happened to be in Amazon warehouses. That caught my attention. I started looking into it. Safety is critical, I worked onsite, safety is job one.

When problems start, it is generally speaking when it is not job one, and when people are lax about safety. That is when people get hurt, that is when people die. OSHA encourages working together voluntarily putting these things together, but we need to do better

when you hear some of the statistics. We are not cherry-picking anything.

Amazon claims to be earth's safest place to work. It might be true for some of the white-collar jobs, but the numbers are not lying to us. We are not looking to unionize, we are not trying to beat up Amazon, we are trying to keep people from being hurt and dying. They are humans here. Their families care when they do not come home.

That is a big deal. It is not about the profit, it is about keeping people alive. Mr. Frumin, the strategic organizers have released this report this April showing that despite employing only 33 percent of the Nation's warehouse workers, they represented 50 percent of the injuries. This is the largest employer of warehouse workers. We are not cherry-picking, they are No. 1.

Happen to be the biggest injury rate. These are recorded injuries by OSHA standards, which are reported by Amazon. Not a third party. Amazon actually reports it. It also concluded that the serious injury rate of lost time at work, serious injury, I am not talking about breaking a fingernail here.

In Amazon warehouses is 88 percent higher than the serious injury rates at non-Amazon warehouses, apples to apples. Amazon generally had new, advanced facilities, somewhere around 5 years old as an average. High tech company. I have had ongoing conversations trying to dig into this to find out what is going on that people are being injured at Amazon much higher than any other warehouse.

That is what I am asking. When we look at the statistics, it is not lying. It is a straight-out number of people being hurt, and these are serious injuries. What conclusions have you found, or led to believe why this is happening? Why in only their warehouses and not others, you could answer that.

Mr. FRUMIN. Mr. Norcross, thank you very much for that question. I will try to be brief. The two things that Amazon does to distinguish itself is push people harder through you know algorithms, computerized monitoring, that no other company does to that extent.

Second, they use robots to make the jobs even worse. The injury rates in their robotic facilities are much higher than they are in their regular warehouses. They distinguish themselves by using advanced technology that they are such experts at, to injure their own workers, thank you.

Mr. NORCROSS. Thank you. Let us make it the safest place to work. I yield back the balance of my time.

Chairwoman ADAMS. Thank you, sir. I want to yield now to Ms. Miller-Meeks, you have 5 minutes ma'am.

Mrs. Miller-Meeks. Thank you, Madam Chair, and Mr. Rath, just watching your body language during the last question, do you have any comment on the previous question that was posed about the Amazon warehouse?

Mr. RATH. Well, I think that any given employer, and I am not here to represent Amazon or any other specific interest, but any given employer that has experienced an above-average injury or illness really than their sector, has an opportunity to understand why that is happening, and to develop solutions, and intervene,

and then test and evaluate those proposed solutions and refine them.

I would also add that when you look at a company that has been rapidly developing, or has been introducing new facilities, or new automation, that an increase in injuries or illnesses may not be happening in spite of that newness, but it may be happening specifically because of those disruptions, and that that needs to be examined and refined.

That we have to understand that growth sometimes disrupts the ongoing progress that an employer can make in the field of safety and health.

Mrs. Miller-Meeks. My understanding is that while the warehousing and storage sector has rapidly grown over the last decade, the total number of fatal injuries in warehouses has remained relatively the same over time, so does this data indicate that the fatality rate has been decreasing over time in the warehousing and distribution sector?

Mr. RATH. For the sector generally it does seem to indicate that. In the past decade, or about the past decade that sector has doubled in its workforce population, while the fatalities have remained very low, about 30. That is an increase from 21, it is about a 33 percent increase, but as a rate it certainly would reflect a decline in fatality rate, even though the population of workers in that sector seems to have doubled.

Mrs. Miller-Meeks. My colleagues have certainly mentioned that you know has there been cherry-picking of data from 2020 and 2021 in an attempt to show dramatic increases in workplace injury and illness rates. How are the data from these years potentially skewed, and therefore less relevant when examining warehouse safety?

Mr. RATH. Thank you for your question. Your question was with respect to the years 2020 and 2021, and I would observe that certainly the COVID pandemic would have a disruptive effect in the management of injury and illness rate and fatalities because OSHA specifically had asked that COVID cases, positive cases be presumptively treated as work-related in the absence of any clear and convincing evidence that the case was not work-related, or induced from societal exposures.

That would for years to come we will now look back at data from those years and have to accommodate for OSHA's request that it be overinclusive.

Mrs. Miller-Meeks. I can tell you as a physician, and as a former director of the Department of Public Health, and having done vaccine clinics at jobsites throughout my district, I am talking about all of our public health. You know, a majority of the cases were acquired in non-workplace settings.

The fact that that data is skewed in that direction does make it questionable going forward. Mr. Rath, in 2001 Congress repealed OSHA's ergonomics standard through a congressional Review Act resolution of disapproval. Why did this standard receive such strong opposition from Congress and the regulated community?

Mr. RATH. Thank you for that question. I began my time with Keller and Heckman 20 years ago during the ergonomics rule-making, and I can share that the proposal that OSHA had promul-

gated was that any single incident of musculoskeletal disorders would have required vast and expensive engineering controls to the work facility, even at the expense of rechanneling those resources where they could have achieved greater reductions, more meaningful reductions in other areas of workplace injuries and illnesses—slips, trips, falls, struck by injuries, et cetera.

That that was outside of the scope of OSHA's authority being an authority to promulgate rules where there are significant health concerns, not a single musculoskeletal disorder. That was problematic to Congress at the time.

Mrs. Miller-Meeks. Thank you very much. I yield back my time.

Chairwoman ADAMS. Thank you very much. Ms. Jayapal, you have 5 minutes ma'am.

Ms. JAYAPAL. Thank you, Madam Chair. I am the very proud Representative for Washington's 7th congressional District. That is the headquarters of Amazon, and I am very proud that Amazon started in my district. It went from being a garage project, to being one of the largest economic engines in the country, very, very powerful.

I am very proud that my constituents, many of whom, a big majority of whom actually work for Amazon, have voted me in in the most recent election, with the largest margin, with the most votes of any Member of Congress in the country. That is because they care that their employer is an employer who is going to really protect all workers.

Many of the workers in my district are not working in the warehouses. I do have a warehouse south of Seattle, which I'm going to talk about, but what I want to say is that if you are a large driving economic engine, which Amazon is, then you have even more responsibility to protect and chart the most optimum course for the workers who are giving you that success.

I am proud of a lot of the Amazon workers in Seattle who have stepped up, whether it is on climate change, or protecting warehouse workers despite many of them fearing losing their jobs and losing their jobs. It is important for them to know that they are working for an employer who has the power to chart a different course for one of the largest employers in the country.

I wanted to direct a couple of questions to Mr. Frumin. In 2020, the Washington Department of Labor and Industries began an investigation into two Amazon warehouses located in Dupont, which is just south of Seattle. Mr. Frumin, you have spoken about this in your testimony, and I wanted to give you an opportunity to speak more about this intentional disregard, and what the investigation found in terms of the results.

Mr. FRUMIN. Thank you, Ms. Jayapal. Yes, in 2020 the Washington Department of Labor and Industries went into the Amazon warehouse in Dupont, south of Seattle, which for that year was having the highest rate of injuries of any Amazon warehouse in the entire country, about 20 percent, over 20 percent, extraordinarily high.

After a few months and talking to workers and observing the conditions with their own experts, yes, they found you know some very serious violations. They issued that citation, and it covered the most, some of the most common jobs in the warehouse like

loading trucks and unloading trucks. I am sure they hoped that Amazon would respect their findings, and accept them because the problems were obvious, and that the company would then go about the business of fixing them.

Sadly they did not. A few months later in response to a worker complaint, they went to the other big warehouse near Seattle in Kent, found the same kinds of violations, the same kinds of problems, also very high injury rates, and then issued a second set of citations with the violations that they then had to call willful because the company was, as I have said before, denying the severity of the problem.

Denying that the problem even existed. We have seen this unfortunate pattern of the company failing to accept you know the facts, their own facts, their own evidence, and making it difficult for OSHA to force them to clean up their act.

Ms. JAYAPAL. According to Amazon's website, it has a health and safety workforce of 8,000 people worldwide. At what point did Amazon deploy these personnel to address the crisis in the Dupont warehouse?

Mr. FRUMIN. Well you would have thought that they would have done it years before when the injury rates were already very high. It turned out from what the inspectors noted, that the very first day someone from the corporate ergonomics team came to the Dupont warehouse was when after the inspector showed up, not before. Not the year before, not 2 years before, so this is very unfortunate.

Ms. JAYAPAL. Mr. Frumin, you know, what I find very disappointing is that instead of paying the fine, instead of working with the Washington State Department of Labor and Industries, which has a very fine record, and making the necessary changes to protect workers safety, Amazon is instead suing the State Department of Labor and Industries, and is claiming it is basically just on due process violations.

Rather than protecting the workers, they are suing the Department of Labor and Industries. I just have to say that it is disappointing to me because I know we have a new generation of leadership in Andy Jassy, I hope. He is a constituent of mine, I am very proud to represent him.

I hope that he would use his leadership in a different way, to chart a different course for Amazon where this incredible economic engine that I am so proud of having in my district, can actually work for workers safety, can work to make Amazon, not a company that we lift up here in this committee for violating—

Chairwoman ADAMS. The gentlelady's out of time.

Ms. JAYAPAL [continuing]. Health and safety considerations, but one that actually is moving that forward. I thank you for your indulgence Madam Chair, I yield back.

Chairwoman ADAMS. Thank you. Mr. Owens, you are now recognized sir for 5 minutes.

Mr. OWENS. Thank you, Madam Chair. I just wanted to say that this last year and a half I have had a chance to go through all my district and around the country. The biggest concern across the board in workforce, it seems like no matter which industry it is, you need to find good workers, you want to retain good workers.

That is exactly, I would think that every industry out there, particularly warehouse industry, they are looking for people that they can actually hold on to, they could retain, pay well. It seems that it is kind of counter intuitive to me to want to pay more.

By the way, the per-hour wages, the highest we have ever had in this country, so it is counterintuitive to see that we are paying people more, and appearing, according to the Democrats on the other side, would care less. Some kind of way we do not mind employees getting hurt, being disrespected. At the same time, we all need to have good workers.

The solution that I am seeing as I am hearing through all this Committee meeting, is that the answer to all this is more unions. That is not what I think we should be heading to in that direction. Mr. Rath, in your written testimony you noted that some warehouses have implemented a buddy system program to address workforce safety.

Can you elaborate on this further? Do you believe this practice has been effective in keeping warehouse workers safe?

Mr. RATH. Thank you for that question. In my experience working with the employers that have employed the buddy system, the system works because what it hopes to achieve is take tenured employees, and partner them with less tenured workers to try and share not only safe practices, but to observe and monitor and correct unsafe practices, and to reinforce education on safety and health practices.

Then finally, the value of the buddy system is the imparting of a corporate culture, which should be a top-down culture that prioritizes workers safety. One worker's vulnerability to injuries and illnesses is often dependent upon the compliance of the workers adjacent to them, and who intersect with them in multiple, sometimes concordant, or at other times conflicting tasks.

The buddy system is a method by which safety and health priorities or the culture that values safety and health first can be imparted by senior employees who have embraced that culture to junior most employees who are new to that culture.

Mr. OWENS. Thank you. You also mentioned in your testimony the use of robotics. I am happy to see, visiting warehouses, it seems to be very safe, very potential way of making things happen. I have heard a little earlier testimony that it seems to be of some danger.

In discussing the use of robotics and other forms of automation for certain high-risk tasks, can you speak to the effectiveness of this, and experience of your clients in terms of the costs of some of these costly, yet effective measures can be implemented?

Mr. RATH. Thank you for that question. Robotics, and other forms of automation are extremely expensive, but employers embrace them as a method of achieving improved workplace safety and health because injuries, in particular, occur in the space where employees intersect with their task.

Automation, oftentimes, improves—increases that space, or distances employees from dangerous tasks. In addition, if you eliminate motor vehicle accidents from just the warehouse and distribution sector, and you are looking just inside the warehouse, inside the plants, musculoskeletal disorders account for the largest fraction of injuries.

The second and third are struck by and slips and falls. Automation has an effect of reducing the muscular-skeletal load on workers, and transferring it to machination.

Mr. OWENS. Thank you. I yield back my time.

Chairwoman ADAMS. Thank you, sir. Let me yield to the Chair of the full Committee on Education and Labor Mr. Scott, 5 minutes sir.

Mr. SCOTT. Thank you, Madam Chair. Mr. Kaoosji, we understand that temporary workers are much more likely to get injured than others. Can you say what can be done to reduce the injury rate of temporary workers?

Mr. KAOOSJI. Thank you. We believe that you know temporary work is being expanded and exploited in significant ways by the warehousing industry and other sectors. We believe that there should be you know, these jobs should really be temporary if they are temporary.

We should not have people working at staffing agencies for long periods, but rather employers should convert workers to direct employment as soon as they can. It is important also to make sure that there is good training and education for workers initially, their first 10 days is the most dangerous to workers that are new to a site should be given clear education about the way the place operates, given support by the employer.

Often workers are temps, they show up in the workplace. They are just thrown in, just figure it out, and that is good. The most dangerous situation for a worker, especially a worker who is incentivized, like I said earlier, to work as fast as possible, to be able to get that permanent employment, to be able to even get the assignment the next day.

We believe that a combination of things. Reduction of pace of work, the workers do not feel like they have to rush as much. Clearer protections for workers in education for workers in the workplace, and education when there is something about safety procedures. Again, the intent toward employment, permanent, full-time employment that workers, both the space to know they will be at work tomorrow.

The ability to understand they can slow down on things.

Mr. SCOTT. OK, thank you. Mr. Frumin, we are talking about technology, robotic technology. Exactly how does robotic technology affect the injury rate and why?

Mr. FRUMIN. Well, what we've observed in our analyses of the injury trends at Amazon is instructive. Amazon is by far the biggest use of robotics in the warehouse industry. They spent almost a billion dollars a few years ago to buy the biggest supplier of robotics, and maybe there was hope that it would eliminate the more stressful jobs, the kind of jobs that Mr. Rath was talking about.

What we saw was the opposite. What we saw was robots being used to structure an assembly line type operation that forced the workers to work in a very fast pace with no flexibility in their jobs. They basically became extensions of a machine, of the injury machine at Amazon.

This is basically turning the clock back 100 years, and industrial engineering, it is making workers just a total function of the machine pace, not relieving them of the dangerous jobs.

Mr. SCOTT. Thank you. Now several states have passed laws to try to reduce injuries in warehouses. Have any studies been done to show which laws are effective in actually reducing injuries? I would ask Mr. Kaoosji or Mr. Frumin.

Mr. FRUMIN. Well, I do not believe we have seen that study in New York, and I will let Mr. Kaoosji speak about California.

Mr. KAOOSJI. In California, the bill that passed last year is still just barely getting implemented, and no I do not have big data on injuries.

Mr. SCOTT. Thank you. Mr. Rath, you saw the chart of the contractor, the employer, and the subcontractors. If that were the structure, who would actually be liable for an OSHA violation?

Mr. RATH. Thank you for that question, Mr. Scott. The Occupational Safety and Health Law as a field has adopted a concept called the multi-employer worksite doctrine, and so it could theoretically be any number of employers, including the employer who has control over the premises, or of the operations, the employer who actually directly engages workers, and the employer who might be associated and co-located on the same premises and performing other tasks.

Mr. SCOTT. Is there any chance that there would not be an employer?

Mr. RATH. When there is an injury or an illness, it is not necessarily so that the employer is responsible for that injury and illness, if that is your question.

Mr. SCOTT. Thank you. Madam Chair, I yield back.

Chairwoman ADAMS. Thank you, Mr. Chair. I want to yield to Ms. Jayapal.

Ms. JAYAPAL. Thank you, Madam Chair. I ask unanimous consent to enter into the record this article from the Intercept, How Amazon's Onsite Emergency Care Endangers the Warehouse Workers it's Supposed to Protect.

Chairwoman ADAMS. So ordered.

Ms. JAYAPAL. Thank you, Madam Chair.

[The information of Ms. Jayapal follows:]

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**The
Intercept_**

HOW AMAZON'S ON-SITE EMERGENCY CARE ENDANGERS THE WAREHOUSE WORKERS IT'S SUPPOSED TO

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medical technicians on staff there that they had a headache and blurred vision – classic symptoms of a concussion. According to company protocol, Amazon’s medical staff should have sent the worker to a hospital or doctor’s office for further evaluation, or at least called a physician for advice. They did neither.

This was one of six instances at the Robbinsville fulfillment center between February and May in which staff at the Amcare clinic failed to provide adequate medical care to injured employees, according to a warning letter issued in August by the Department of Labor’s

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Occupational Safety and Health Administration, the federal agency responsible for workplace safety. In another incident, a worker came to the clinic with a possibly fractured finger, but Amcare medical staff failed to send them to an outside clinic for a professional opinion. A worker with an eye injury repeatedly asked to be sent to the hospital, but Amcare staff denied the requests. The next week, another worker came to the clinic four days in a row complaining of intense finger pain. According to company protocol, the clinic should have been checking on the employee every two hours. Instead, Amcare evaluated them once per day for three days without recommending outside care.

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warning letter to Amazon, reported here for the first time. New Jersey state laws do not allow EMTs and ATs to practice medicine independently; a physician must supervise their work.”



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An investigation by The Intercept and Type Investigations – drawing on previously unreported documents, an interview with a former OSHA medical expert, and interviews with 15 current and former Amcare employees – found multiple instances in which clinic staffers violated Amazon’s own rules as well as government regulations. The investigation found that Amcare employees nationwide were pressured to sweep injuries and medical issues under the rug at the expense of employee health.

Amazon, a company that is now worth \$800 billion and has reshaped

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The strenuous nature of the work at Amazon’s warehouses can take its toll on the human body: As [Reveal](#) and [The Atlantic](#) reported last week, the rates of serious injury at 23 fulfillment centers from which data could be obtained were more than double the industry average in 2018. The company’s Amcare clinics are intended to address the many minor aches and pains workers experience on the job. The company claims that this care falls under the category of “first aid,” which, according to an OSHA letter to Amazon, is defined as “emergency care provided for injury or sudden illness before emergency medical treatment is available.” These clinics operate in most, if not all, of the company’s ware-

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houses, and they are staffed by EMTs and supervised by safety managers. According to a former OSHA medical officer and multiple former Amazon employees interviewed for this story, safety managers are not required to have extensive medical training. (Amazon declined to answer specific questions about its safety managers' training as well as other details reported in this story.)

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the EMTs.

At Amcare clinics across the country, however, staff members have made medical decisions that go beyond basic first aid, the investigation by The Intercept and Type Investigations uncovered.

Since 2015, Amazon workers have filed at least 10 complaints about problems at Amcare — all of which OSHA deemed “valid” — according to previously unreported documents obtained through a Freedom of Information Act request. These 10 complaints represent a small fraction

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of the hundreds of general health and safety complaints filed by Amazon workers in the last seven years. The complaints alleged that employees were being sent back to work with no medical care after requesting treatment, that injured employees were being told they must wait two weeks to see if their conditions worsened before being seen by doctors, and that Amcare staffers were not adequately trained. One complaint, made by phone in December 2017 from Tracy, California, alleged that Amcare simply refused to treat an injury. Though the complaints were determined to be valid, the agency did not follow up with an inspection in every case; OSHA is a small agency that employs about

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being reported here for the first time.

Accounts from Amcare employees across the country reveal that problems identified by OSHA are likely not confined to the warehouses it inspected. In interviews with The Intercept and Type Investigations, 15 current

Ten EMTs said their bosses pressured them to send injured employees back to the warehouse floor.

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and former on-site medical representatives – Amazon’s term for the EMTs who staff Amcare – from fulfillment centers in 11 states bolster OSHA’s findings. Ten of the medical technicians said their bosses pressured them to send injured employees back to the warehouse floor when they likely needed additional medical attention. Eight felt like there was a conflict of interest between their manager’s priorities and their duties as medical professionals. Four said they were pressured to underreport or misclassify injuries. Some Amcare staff members described a positive experience with Amazon; even so, they expressed concerns about tensions between the

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is our top priority. Amcare, amongst a variety of other programs, ensures that employees are taken care of while in our building by offering first aid to injured or ill associates. Our Onsite Medical Representatives follow clear, established company guidelines for first aid treatment in accordance with local, state, and federal regulations. At any point associates can choose to visit a doctor, no associate should ever be discouraged from seeking care, and all full-time employees receive comprehensive health benefits starting on day one of employment.”

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ers for outside treatment immediately if they report pain levels of 10 out of 10. They're supposed to send anyone with a possible concussion or fracture to a hospital or doctor's office. If an employee asks to see a doctor, the EMTs are supposed to refer them immediately. If there's any question about whether a worker might require more than first aid, the EMTs are supposed to call a physician hotline for advice.

In practice, however, the protocols were not always followed. The OSHA investigations found that Amcare staffers sometimes disregarded internal criteria when making decisions about who went to

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the emergency room and who was sent back to work. According to federal regulators, that meant the medical technicians crossed the line from administering basic first aid into providing more serious medical care.

At Amcare, “they refuse to send injured employees immediately to dr,” one worker at the Robbinsville fulfillment center wrote in a complaint forwarded to OSHA’s area office in Marlton, New Jersey, in September 2015. The person went on to complain that managers ignored doctors’ orders that injured employees be put on light duty. “There are many

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lier this summer. This is her first time speaking publicly about investi- gating Amazon.

As part of her investigations, Fagan’s team reviewed an Amcare manual that said on-site medical representatives were allowed to treat injured employees repeatedly for up to 14 days before referring them for out- side treatment. As first responders, however, EMTs aren’t trained to pro- vide ongoing medical care – and even if they were, they aren’t allowed to practice independently. According to New Jersey law, EMTs are not allowed to make important decisions like whether or not to refer pa-

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tients for further treatment without supervision from physicians. Additionally, repeat visits over a long period of time can constitute medical care beyond “first aid,” according to OSHA’s 2016 hazard alert letter. That means the clinic was potentially operating outside its legal boundaries.

During that first Robbinsville investigation, Fagan found that EMTs’ decisions were not being supervised by medical professionals. The medical staff was reporting directly to safety managers, who are responsible for a wide range of building operations but not required to undergo exten-

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practice in New Jersey. The doctor did not respond to requests for comment, and Amazon declined to answer questions on the arrangement.)

“This just is, to me, an egregious lack of care for the health and safety of their workers.”

Fagan said that many large corporations employ corporate medical departments staffed with doctors and nurses who oversee internal clinics – people on hand who could intervene in inci-

dents like the ones uncovered in Robbinsville. When Fagan conducted a similar investigation into the poultry processing industry, several slaughterhouses responded by hiring nurses to evaluate worker injuries on site. “None of this seems to be going on” at Amazon, she said, based on her investigations in New Jersey. “They have one part-time consultant, a medical director in Seattle, who does no oversight. This just is, to me, an egregious lack of care for the health and safety of their workers.”

OSHA has limited regulatory authority over health care providers. That

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The agency issued a hazard alert letter instead of a citation because the company was still relatively new. (Both OSHA and Amazon declined to produce copies of Amazon’s responses to the agency’s hazard alert letters.) The letter also recommended that Amazon voluntarily take certain steps to address the issues it identified, including bringing on a local doctor to oversee the clinic’s operations. Fagan said Amazon largely dismissed their concerns in its response letter. “They say they’re not actually working under that license,” Fagan said of the EMTs. “They don’t think they need any kind of medical supervision, so they blew off our suggestions.”

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out of official recordkeeping logs. Her interviews with employees confirmed that supervisors were discouraging workers from reporting injuries.

Federal regulations require that companies record all work-related injuries that involve days away from work, transfer to light duty, a significant diagnosis from a doctor, or any medical treatment beyond first aid. The reports inform the Bureau of Labor Statistics' industry injury rates and are meant to function as an internal corporate metric for improving safety standards.

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Accusations of faulty recordkeeping at Amazon are not confined to Robbinsville. An OSHA inspection of an Amazon facility in Kenosha, Wisconsin, found that the warehouse failed to record 15 injuries in a 28-day period in October 2015. At least three anonymous complaints to OSHA between January 2016 and August 2018 in Carlsbad, California; Lebanon, Tennessee; and Phoenix, Arizona, explicitly referenced management's failure to keep accurate injury logs.

Four current and former EMTs interviewed as part of Type and The Intercept's investigation also said colleagues or supervisors pressured

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representatives from seeking outside medical care for warehouse workers and safety managers from recording legitimate injuries in compliance with federal law.

Around the time that OSHA was investigating the fulfillment center in Robbinsville, New Jersey, David Troutman, the on-site medical representative in Phoenix, Arizona, got a call to assist an employee who had turned cold and clammy. He said he remembered maneuvering the man into a wheelchair and checking his blood sugar. It was dangerously low,

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he recalled. Troutman asked the man if he was diabetic. The man, who by that point had lost his ability to speak, nodded and groaned.

Troutman said he wanted to call an ambulance, but another Amcare staffer worried their manager would question their decision to send the man to the hospital. Troutman and his colleague argued, then eventually administered oral glucose and allowed the man to sit in the Amcare clinic for two and a half hours until he regained the ability to speak. "In a typical situation, 911 gets called," Troutman said. "They're going to start an IV."

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crimination, harassment, and retaliation complaints filed with California's Department of Fair Employment and Housing. An employee at a fulfillment center in Eastvale, California, who sustained a back injury in July 2018 filed a complaint alleging that he was treated with ice for two weeks at Amcare and then told that he must return to his regular duties, despite the fact that he had not yet seen a doctor. He missed work because of the pain and was fired. Another injured employee requested to go to the emergency room in 2016 and was denied, in apparent violation of the company's safety protocols. A third employee

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claimed they were treated for a back injury with Icy Hot and terminated for requesting medical care. In all three cases, the employees were issued right-to-sue letters by the DFEH.

One safety manager who oversaw an Amcare clinic in southern California from 2016 to 2017 said that managers face immense internal scrutiny from their own su-

“Some safety managers would say, ‘We need to write one on every one, and if it gets through. it

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safety manager, who requested anonymity because he signed a nondis- closure agreement when he left the company. “In Amazon’s case, they” – safety staffers in his region – “would often override the doctor’s decision that it was a workplace incident based on this justification process.” Amazon put the safety manager on notice that he was at risk of being fired. He described this process as “brutal, painful.” He left the company after one year.

An on-site medical representative who worked at an Amcare clinic around the same time described the system: Safety staff would write out

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“non-recordable justifications,” or NRJs, to accompany injury reports and make the case for keeping the incidents off the official logs. Two regional managers would then have to approve the decision not to record an injury. “Every incident where there was recordable-level criteria, it would be reviewed to see if it could possibly be written up as an NRJ,” the medical technician, who spoke on the condition of anonymity in order not to jeopardize their continuing work as an EMT, said. “Some safety managers would say, ‘We need to write one on every one, and if it gets through, it gets through.’”

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big or small, which results in elevated recordable rates and makes comparisons misleading,” a spokesperson wrote. “It’s incorrect to assert that we provide Amcare on site in order to discourage associates from seeking care or attempting to keep fewer records – we offer this service to our employees so that they can receive the care they need right away.”

Amazon did not respond to Type and The Intercept’s questions about its process of reviewing injury reports to determine if they are recordable, but, in response to questions from Reveal about injury reports, a

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spokesperson told the reporters that Amazon changed its policies in 2016 to promote greater transparency.



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After its 2015 investigation into the Robbinsville fulfillment center, OSHA issued Amazon a \$7,000 fine for the record-keeping violations Fagan's team uncovered. The fine was paltry compared with Amazon's billions in profits, but it sent a message. A follow-up investigation in 2017 revealed that the number of injuries recorded at the Robbinsville fulfillment center increased nearly fourfold the following year.

A regional safety manager told OSHA the increase in injury rates was a result of over-recording. By the next year, the number of recorded in-

juries had fallen back to 2015 levels.

There's reason to suspect that the problem of undercounting injuries continues at Amazon fulfillment centers around the country. In the fall of 2017, OSHA launched an inspection of a fulfillment center in Florence, New Jersey, Fagan said, after it received a formal whistleblower complaint expressing concern about multiple incidents at Amcare. The most serious allegation, according to Fagan, involved a temporary worker who suffered a cut to the head while a corporate audit team was inspecting the building. Instead of taking the injured

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Personnel from corporate auditors.

complained that on-site medical representatives were operating with no medical oversight.

Over the course of their investigation, Fagan and her team identified 131 unique employee injuries between September 20, 2017, and October 31, 2017. They couldn't fully evaluate many of the incidents because much of the documentation they received from Amazon was incomplete. In spite of this, Fagan's team identified four instances of medical

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mismanagement – broadly, anything that compromises worker health – and nine additional instances of suspected mismanagement within the six-week period.

Once, a piece of dust or wood lodged itself in an employee's eye. "That's an acute medical problem that needs to be referred right away to either an emergency room, eye doctor, or clinic," Fagan said. But Amcare did not send the employee for further medical treatment. The worker waited two days before seeking medical care on their own, and the injury ultimately forced them to miss multiple days of work.

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Fagan also found two cases that should have been recorded and an additional six potential record-keeping violations during this six-week period – though the actual numbers may have been higher because the records were incomplete. Despite Fagan's findings, no hazard alert letter or citations were issued as a result of this investigation.

In September 2019, OSHA completed a third investigation of Amcare operations in New Jersey, this time back in the Robbinsville fulfillment center. Not much had changed, the inspectors found – leading to the letter sent to Amazon referencing the six incidents between February

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and May at the plant, including the concussion, where Amazon failed to provide adequate medical care to injured employees. “Amazon had not adequately addressed the issues that OSHA identified during the previous inspection,” OSHA wrote, summarizing its findings. The agency uncovered six instances of medical mismanagement. EMTs were still working outside their scope of practice with no on-site medical supervision. Amcare was still providing treatment beyond first aid. “The current inspection revealed similar issues,” the agency wrote in the hazard alert letter, referencing its previous 2015 missive.

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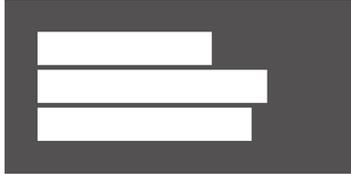
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Chairwoman ADAMS. I want to now recognize Mrs. Steel, you have 5 minutes ma'am.

Mrs. STEEL. Thank you, Chairwoman Adams and Ranking Member Keller. Companies all across the country are leading the way to keep their employees safe. Every employer I met wants to keep their employees safe. We have a labor shortage. Employers need to keep their employees healthy and at work.

In California, we have seen port backlogs, truck shortages, and record smash and grabs, crime rate is very high. California's econ-

omy is already being attacked by California Dems. Continuing to put into place new burdensome regulations on companies driving up the cost of goods to record Democrat created inflation.

In California, it is really, really getting bad. I want to ask a question to Mr. Rath. My home State of California recently passed and implemented AB 705, this law will create a new quota system to ensure existing health and safety standards. Will AB 705, increase manufacturing shortage and distribution cost? Will AB 705 open the door for more costly losses?

Does this bill bring essential protection to employees?

Mr. RATH. Thank you for that question. It appears to me that your question properly belongs in the field of economics, and not law, and so I have to defer to any colleague who has more expertise in economics, with the economic effect.

I can say this, the Occupational Safety and Health Act, at the Federal level was promulgated in 1970. The rates of reduction in fatalities in the workplace was greater prior to 1970, and continued post-1970, indicating that employers have been primarily responsible for improvements in safety and health, and not excessive rule-making.

Rulemaking has acknowledged after the fact, the best practices from the great corporate practices that had already been adopted in any particular sector, and so the statistical case for reduction and fatalities or in injury and illnesses, if you extend beyond the 50 years of OSHA, reveals that it has been employer interventions and not regulatory interventions that have been the driver of those safety successes.

Mrs. STEEL. Thank you, Mr. Rath. I have a second question. Unions often fight against robotics and automation. We have seen this at the Port of Long Beach, and technology makes the workplace safer, and it provides employees with the high tech skills that benefit their future employment.

Can you share how employees are trying to improve to their effective measures, such as robotics and automation, even if it comes with a high price tag? Do those new technologies improve safety?

Mr. RATH. Thank you for your question. In the warehouse and distribution sector the largest cause for injuries and illnesses inside the plant is musculoskeletal disorders, and automation has the effect of removing from the worker and moving to the machine the most repetitive tasks, and the tasks that are the most load bearing upon the individual worker.

That has an effect of reducing injury and illness rates inside a warehouse, or a distribution center.

Mrs. STEEL. Thank you very much. Thank you Chairwoman, I yield back.

Chairwoman ADAMS. Thank you very much. I want to yield to Ms. Omar. You have 5 minutes ma'am.

Ms. OMAR. Thank you, Chairwoman. With all the media attention around recent layoffs in the corporate offices of Amazon, I want to remind us of the longstanding economic insecurity that Amazon's warehouse workers and drivers experience regularly. According to organizers in my district, Amazon has recently laid—tried to lay off dozens of employees at a warehouse in Egan, Min-

nesota, just because they could not switch from day shifts to night shifts.

These workers, many of whom come from low-income and immigrant households, are being forced to either leave or suddenly accept midnight work schedules. We stand in solidarity with Minnesota's warehouse workers, and all who work to fight against unfair labor practices.

Between 2019 and 2021, Amazon's profits tripled, reaching more than 33 billion dollars. In 2020, Jeff Bezos net worth exploded from 115 billion, to 188 billion dollars. et During that same time the serious injury rate of Amazon warehouses was more than double the rate of non-Amazon warehouses.

In Minnesota alone, OSHA found 792 work related injuries at Amazon warehouses from 2018 to 2020. This means that one in nine Amazon warehouse workers are injured on the job annually in Minnesota. This is utterly shameful and unacceptable.

Mr. Frumin, could you tell us why Amazon refuses to make its workplaces much safer, even with all the resources that it has at its disposal?

Mr. FRUMIN. Thank you, Representative Omar. I wish I could be inside their minds. I am not going to go there, but they will have to speak for themselves. They have denied that the problem even exists, so you know why do they need to change?

What is clear is that they have a deep investment in their business model to push workers as fast as possible, faster than humanly possible, to get the products out the door, to meet their fast delivery times, to keep ahead of their competitors. That is what they are about, and they do not deny it, and they are proud of it.

Jeff Bezos has said that. We are confronted with a company which is not going to change on its own. We cannot tell you why they think that, but they are going to have to be forced to do that. There are different ways, but you and the Congress know that the Department of Labor has the authority to do that, and we want to see those investigations and enforcement efforts take place.

It would be nice if Amazon were one of the good employers that have been spoken about here today, that are doing all the right things. Only putting in robots where they cannot hurt people, nothing could be farther from the truth, and anyone who spent 5 minutes in an Amazon warehouse or looked at the facts that Amazon has reported to OSHA, knows differently.

Ms. OMAR. Yes. I have, and I do agree with you. Thank you for that. It is shameful to continue to put profits over people. I want to discuss the prevalence of extreme weather events that are also putting workers in harm's way. Climate change and natural disasters have only become more devastating, making already dangerous workplaces even more unsafe for warehouse workers.

Sir, how could Amazon, and other corporations better weatherize their warehouses and improve workplace policies to prevent worker harm from climate change-related dangers?

Mr. FRUMIN. Well, I will speak initially to the heat issue, and then ask Mr. Kaosji to describe it in further detail, but you know we have seen at Amazon a historic record of them failing to take every measure possible to protect workers from heat, that is not

necessarily a simple matter in a warehouse, but certainly giving workers the ability to speak up, and get answers from supervisors.

What should I do when I am feeling sick, having decent medical treatment by trained professionals under proper medical supervision, that is very important in recognizing the early symptoms, and unfortunately what we have seen at Amazon is low level emergency medical technicians, operating with no medical supervision in violation of State medical licensing laws, giving improper treatment to workers, and that is not going to solve that problem.

Mr. Kaoosji.

Mr. KAOSJI. Well, we saw when the heatwave in September when it was over 120 degrees in San Bernardino that only when workers spoke up, and collectively took action, were they given extra breaks, water, rest. When the company is put in a place where they actually are forced to provide those extra breaks, it is more proactive than workers who are not in a position to speak up themselves, they will still get those protections, that is how we see it.

Ms. OMAR. Really appreciate you all. Thank you so much. I yield back.

Chairwoman ADAMS. Thank you. I want to remind my colleagues that pursuant to committee practice, materials for submission to the hearing record must be submitted to the committee clerk within 14 days following the last day of the hearing, so by close of business December 1, preferably in Microsoft Word format.

The materials submitted must address the subject matter of the hearing. Only a member of the subcommittee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the committee clerk within the required timeframe.

Please recognize that in the future that link may no longer work. Pursuant to House Rules and Regulations, items for the record should be submitted to the clerk electronically by emailing submission to edandlabor.hearings@mailthehouse.gov.

Again, I want to thank the witnesses for their participation today. Members of the subcommittee may have some additional questions for you, and we ask the witnesses to please respond to those questions in writing. The hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to committee practice, witness questions for the hearing record must be submitted to the majority committee staff or committee clerk within 7 days.

The questions submitted must address the subject matter of the hearing. I am going to recognize myself now for the purpose of making my closing statement.

Thank you to our witnesses for your time and testimony. Thank you to the committee members for their participation.

Warehouse work can be dangerous work. Unfortunately, as our witnesses made clear, the modern economy is increasing pressure on employers to make an already precarious workplace more dangerous. As I shared earlier, this Subcommittee is responsible for

ensuring that every worker comes home safely at the end of their shift.

Throughout the 117th Congress, we have made significant progress toward achieving that goal. We held 13 hearings to elevate the voices of workers the voices of workers across the Nation. The House passed three of our bills that strengthened the safety network for workers.

We pushed the administration to adopt an enforceable emergency workplace safety standard, and protect workers from COVID-19. Thanks to the leadership of this Subcommittee, President Biden signed legislation into law to shore up financing for the Black Lung Benefits Program, to ensure disabled miners have improved access to the compensation and the care that they need.

Thank you again to my colleagues for your commitment to improving workplace safety. I look forward to continuing our work in the 118th Congress. If there is no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]



COMMITTEE ON
EDUCATION AND LABOR
U. S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

December 1, 2022

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BRAD FINSTAD, MINNESOTA
JOSEPH SEMPOLINSKI, NEW YORK

Ms. Janeth Caicedo
Sister of Edilberto Caicedo
220 W. Jersey Ave
Elizabeth, NJ

Dear Ms. Caicedo:

I would like to thank you for testifying before the House Committee on Education and Labor, Subcommittee on Workforce Protections hearing entitled "*Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers*" held on Thursday, November 17, 2022, at 10:15 a.m. (Eastern Time).

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Thursday, December 15, 2022, for inclusion in the official hearing record. Your responses should be sent to Clerks of the Committee at E<estimony@mail.house.gov and Robert (Bob) Shull (Robert.Shull@mail.house.gov) of the Committee staff.

I appreciate your time and continued contribution to the work of the Committee

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Committee on Education and Labor
Subcommittee on Workforce Protections
“Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers”
Thursday, November 17, 2022
10:15 a.m. (Eastern Time)

Representative Ilhan Omar (D-MN)

1. I first want to thank you for your powerful testimony and sharing the memory of your brother with us today. I understand that you have been tirelessly fighting to improve the inhumane working conditions in U.S. warehouses, and so I am honored to join you in this important fight.
 - a. Ms. Caicedo, as you have met with other temporary workers in the industry and their families, what are some of the issues that you have heard the most?
 - b. How do you see what happened to your brother as connected to what the other witnesses testified to regarding conditions that immigrant and temporary warehouse workers face daily?

Dear Congresswoman Omar and Subcommittee Members,

Thank you for the opportunity to testify, as well as for the thoughtful follow-up questions..

For your **first question**, regarding the issues I and we hear most from temporary workers in the warehousing and logistics industries, the abuses that temporary workers face are many. Temporary workers, in addition to the outsized risk to their [safety](#), generally do not qualify for [health benefits](#), often have their wages stolen, are subject discrimination, and to predatory fees for things like transportation and background checks. But perhaps the issue most critical to the health and safety of temporary workers in the warehousing and logistics is retaliation. Whether from the staffing agencies themselves, or the companies that contract with them, when temporary workers speak up about workplace issues, they are retaliated against. They are removed from their assignment, taken off the schedule, or fired. As the other witnesses have explained, the warehousing and logistics industry is rife with safety risks, but imagine what this means for workers employed in warehouses via [staffing agencies](#), which by design shield companies from responsibility for the working conditions of the workers they employ. Temporary warehouse workers like my brother don't *worry* that they'll face retaliation for raising safety issues; they *know* they will, and so no matter how serious the health and safety issue they may face, temporary workers will be hesitant to report it.

Additionally, it should be noted that temporary workers, who are contracted by corporations often to help that corporation avoid responsibility for working conditions and seen as expendable, are [frequently overlooked when it comes to health and safety training](#).

Many of the abuses temporary workers face are addressed in New Jersey's Temporary Workers' Bill of Rights (NJ A1474/S511), which is awaiting a final vote in the State Senate. The bill, the most comprehensive of its kind to date, ought to serve as a model for other states, and as an inspiration to reinvigorate the fight for national legislation to grant temporary workers many of the same basic protections that the law gives to directly-hired workers. Over decades, workers have fought for fair pay, for access to employer-based healthcare, for whistleblower protections, and for reasonable schedules. They didn't struggle to win those rights just to then have them "temped out", and stripped away. We need national legislation to establish basic standards for *all* workers, and end the race to the bottom that is being driven by staffing agencies and their corporate clients.

As far as your **second question** related to the connection between my testimony, and the testimony of Mr. Frumin and Mr. Kaoosji which was focused on health and safety issues at Amazon, the links are many. The first and most obvious is the connection related to the consequences of employer negligence on health and safety. This summer, [three New Jersey Amazon workers died](#) on the job within three weeks of each other. Perhaps not everyone can understand what it's like for families like these to suffer a loss due to health and safety risks at their job being ignored. I can.

I am [without my brother because of negligence](#). Because the company he worked for failed to fix conditions they knew were dangerous. Amazon, at this point, can't say it doesn't know the dangers its workers face every day. Mr. Frumin and Mr. Kaoosji has shown the statistics. The connection between Amazon workers and other immigrant temporary workers is the degree to which their employers dehumanize them. The ruthless pursuit of profit by Amazon and the companies and staffing agencies that exploit temporary workers turns workers, at best, into numbers, where, it seems, there is a certain amount of acceptable loss that these employers calculate before taking action to *prevent* accidents, injuries, and deaths. Families like mine understand the grave consequences of Amazon's and the staffing agencies' way of doing business.



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JOSEPH SEMPOLINSKI, NEW YORK

Mr. Eric Frumin
Director of Health and Safety
Strategic Organizing Center
90 Broad St., Suite 710
New York, NY 10004

Dear Mr. Frumin:

I would like to thank you for testifying before the House Committee on Education and Labor, Subcommittee on Workforce Protections hearing entitled "*Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers*" held on Thursday, November 17, 2022, at 10:15 a.m. (Eastern Time).

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Thursday, December 15, 2022, for inclusion in the official hearing record. Your responses should be sent to Clerks of the Committee at E<estimony@mail.house.gov and Robert (Bob) Shull (Robert.Shull@mail.house.gov) of the Committee staff.

I appreciate your time and continued contribution to the work of the Committee

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Committee on Education and Labor
Subcommittee on Workforce Protections
“Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers”
Thursday, November 17, 2022
10:15 a.m. (Eastern Time)

Chairman Robert “Bobby” Scott (D-VA)

1. A witness testified in the hearing that flat fatality rates for the warehouse industry and a generalized decline in injury rates in the private sector as a whole suggest that warehouses are safe and that employers, left to their own devices, will provide safe workplaces for employees in this industry.
 - a. What can you tell us about injury data trends and other indicators of safety issues in the warehouse industry from the 1990s to the present?
 - b. Do you believe that warehouse employers should be trusted to look to their own internal data and deliver safety innovations without the pressure of safety standards? Why or why not?

Representative Pramila Jayapal (D-WA)

1. Amazon houses on-site clinics through their Amcare program to administer first aid and address occupational health concerns raised by staff. However, investigations indicate that at some warehouses, Amcare staff are engaging in practices beyond this capacity. In 2015, the Occupational Safety and Health Administration issued a letter to Amazon executives revealing that a July 1, 2015 inspection of a Robbinsville, New Jersey warehouse showed Amcare staff were providing services in violation of Amazon’s own policies and “providing medical care outside their [legal] scope of practice, without proper supervision.”
 - a. What was the nature of the hazard that OSHA found in its 2015 inspection and what recommendations did OSHA provide to Amazon in its letter?
 - b. In 2019, OSHA issued another hazard letter to Amazon citing the same hazard identified 4 years earlier at the same warehouse. What recommendations from the 2015 letter, if any, had been implemented by Amazon during this period?
2. In March, 2022, the Washington State Department of Labor and Industries issued a citation to Amazon for willful violations of state health and safety laws at a warehouse in Kent, Washington. While Amazon appeals the citation, it is also suing the state over its policy requiring employers to address the hazards before the citation is finally adjudicated, alleging it violates the company’s right to due process.
 - a. In your view, what does this indicate about Amazon’s commitment to safety?



90 Broad St., Room 710
New York, NY 10004
Direct phone: 332-220-1960
EFrumin@thesoc.org

December 15, 2022

US House Education and Labor Committee – Clerk
2176 RHOB
Washington, DC 20515
Via email: E<estimony@mail.house.gov

Dear Sir/Madam:

Per the December 1, 2022 request from Chair Robert Scott, attached are the SOC's responses to the Questions For the Record from Mr. Scott and from Rep. Pramila Jayapal, respectively, following the November 17, 2022 hearing on working conditions in the warehouse industry.

In addition to our responses, attached are many of the documents to which these responses either refer or quote directly.

We request that all of these documents be incorporated together into the Record of the hearing.

Please contact me if you have any further questions at the contact information shown above.

Respectfully submitted,

/s/

Eric Frumin
Health and Safety Director
Strategic Organizing Center

Cc: Robert Shull, Committee Staff

Response to Questions For the Record – Chair Robert Scott**Chairman Robert “Bobby” Scott (D-VA)**

1. A witness testified in the hearing that flat fatality rates for the warehouse industry and a generalized decline in injury rates in the private sector as a whole suggest that warehouses are safe and that employers, left to their own devices, will provide safe workplaces for employees in this industry.

a. What can you tell us about injury data trends and other indicators of safety issues in the warehouse industry from the 1990s to the present?

THE INJURY CRISIS IN THE WAREHOUSE INDUSTRY.

The testimony of Mr. Rath presented a severely misleading portrayal of the dangers to warehouse workers – and of both the ability and willingness of employers to address those problems on their own.

The industry’s reports to the US Bureau of Labor Statistics reveal an industry failing to contain a crisis.

The BLS Annual Survey, on which Mr. Rath relies, provides estimated injury rates, based on a statistical sample of employers across industries and states. See Table 1

It shows that beginning in 2018, the warehouse industry has broadly failed to improve the rates of serious injuries. Beginning in 2016, the injury data that warehouse industry reported to BLS showed no substantial improvement, and BLS’ estimated injury rates for all cases (“Total Cases”) actually increased in 2021 by 12% in one year, to 5.6 cases per 100 workers. Worse, the industry’s estimated rate of disabling injuries and illnesses involving lost-time or light-duty cases (known as the DART rate) started to increase again 2017 – and by 2021 had increased in total by 21%.

In his opening statement, Mr. Rath cited the rate in 2017 that as evidence of the industry’s commitment to protecting its workers.

The BLS itself had a different view: when issuing its Nov. 9 press release regarding the 2021 estimated injury levels, one week before the hearing, the BLS itself said the following about this distinctive worsening in the risks in the warehouse industry:

“Total recordable injury and illness cases increased in six private industry sectors in 2021. Retail trade and transportation and warehousing had the largest increases in cases...Transportation and warehousing increased from 206,900 cases in 2020 to 253,100 cases in 2021.

Mr. Rath's testimony is at best misleading, and worse flatly contradicted by facts that he failed to include. Section 3 of his prepared statement is entitled: "Overall, Injuries, Illnesses, and Fatalities in the Workplace Have Been Declining For the Past Eight Decades."

However, this written statement provides absolutely no data on "injuries" or "illnesses" other than the data on fatal injuries for the private-sector economy generally and eventually for the warehouse industry.

First, his written testimony provided charts and graphs (called "Tables") in Tables 1-3 on non-fatal and fatal injuries in the private sector without disclosing any information specific to the warehouse industry that is the focus of this hearing.

Table 4 discusses employment in the warehouse industry, but discloses no data on injuries or other health and safety matters.

Table 5 shows the trend in fatal injuries generally, but again provides no data specific to the warehouse industry.

On pp. 4-5, he cites these fatality data and then states that "that the fatality rate has been decreasing over time in the warehousing and distribution sector."

However, as indicated above, none of these data or conclusions shed any light whatsoever on the crisis of increasing non-fatal injury rates in the warehouse sector generally or at Amazon, the largest single company within the industry – a crisis that threatens large numbers of warehouse workers every day.

This presentation is at best misleading. Furthermore despite Mr. Rath's expertise in the field of worker safety it omits authoritative sources of warehouse industry safety information including the Bureau of Labor Statistics Annual Survey and OSHA Injury Tracking program, both of which show a much worse profile of the warehouse industry than that which Rath attempts to present.

In addition to the vague, unsubstantiated claims in his prepared statement that employers have been adequately protecting their workers' safety, Mr. Rath's verbal initial statement affirmed the following:

"Employers in the warehouse industry with whom I have worked have been dedicated to trying to understand the incidences of injury and illness in their workplaces, trying to identify potential hazards, and to developing improvements in the workplace to make it a better place in the field of safety and health. And these employers have successfully driven injury and illness rates down, through careful examination of their operations and forceful, creative interventions to successfully reduce injuries and illnesses.

I say successfully because that is the unmistakable conclusion of the US Bureau of Labor Statistics. The BLS reported that warehouse industry had a rate of 9.5 non-fatal injuries and illness per 100 full-time equivalent employees in 2003. By 2017, employers had driven that rate down to 5.0 non-fatal injuries per 100 full-time equivalent employees." (see hearing video, starting at 29:00)

Mr. Rath's opening statement provided no explanation for his referencing the BLS data only through 2017, while omitting from his testimony the available BLS data for 2018-2021.

Amazon: the source of much of the industry's safety crisis

As SOC explained in our testimony, nearly 5,000 warehouses from employers like Amazon and others reported their own individual injury data to OSHA (separately from BLS's estimated rates based on the same kinds of employer reports). These data showed also showed an increase in the numbers and rates of injuries, including serious injuries. But the injuries at Amazon's warehouses far overshadowed the rising injuries from the rest of the industry: Amazon reported more serious injuries than the rest of the warehouse sector combined.

And Amazon's rates of serious injuries alone were more than double the rates for the other warehouse companies who reported their data to OSHA, and jumped by over 15% from 2020 to 2021 (5.9 cases/100 FTE's in 2020 vs 6.8 in 2021).

With over half of all the injuries now publicly reported arising at Amazon warehouses, it is clear that much of the increase in the numbers and rates in the warehouse industry nationally are driven by the crisis at Amazon warehouses.

These data which Amazon and other have been made publicly available by OSHA to the employers and their attorneys like Mr. Rath for almost a full year. Yet his testimony completely fails to even acknowledge their existence. Nor does his testimony consider the urgent implications of these well-documented trends for employers in the warehouse industry who are considering emulating the abysmal performance of Amazon's management systems on worker safety.

Finally, our testimony also addressed the Amazon's outsized role in driving up not only the numbers of serious injury and injury rates, but also costs to other employers as well. As explained in our testimony, in Washington State, the state's workers compensation agency was forced to create a specific industry category for fulfillment centers in order to avoid shifting Amazon's increasing workers compensation costs onto the rest of the industry.

The example of employer actions in the poultry industry are both flatly wrong and irrelevant to the warehouse industry.

Contrary to Mr. Rath's testimony, the report that he cites by the National Advisory Committee on Microbiological Criteria for Foods did not show that increased line speeds are compatible with improved worker safety in poultry plants.¹

In misrepresenting this report, Mr. Rath was not inventing it out of whole cloth—he simply embellished misleading statements about it from a new poultry industry advertisement/website (linked to in his statement) set up by the National Chicken Council.²

¹ Rath at 4-5.

² Id. at 4, n. 11.

This National Chicken Council’s website, full of half-truths and misleading statements, is part of the chicken industry’s own campaign to increase line speeds in their plants.

In reality, the pilot program referred to by Mr. Rath and on the National Chicken Council’s website, which he cites, was a program implemented by the U.S. Department of Agriculture (USDA) that related only to ‘food safety’ issues. The acronyms used to describe this pilot were ‘HACCP’ and ‘HIMP’. This food safety pilot involved only 20 out of over 200 poultry plants and allowed those 20 plants to operate with fewer USDA food safety inspectors. Instead, the 20 plants used company personnel to do some of the duties once done by government inspectors. These 20 plants, because they were now paying for workers to take over some of the USDA’s former responsibilities, were allowed to increase line speeds— from the legally allowed 140 birds per minute to 175 birds per minutes (the plants could thus increase production and make up for any costs they incurred by replacing trained inspectors with untrained company workers.)

However, there was never any actual “study” of the impact of decades of this pilot program on food safety. In fact, in 2013, the Government Accountability Office found that USDA had not ‘thoroughly evaluated the performance of each of the pilot projects over time.’³ Further, the USDA found that **those 20 plants in the pilot did not actually increase line speeds** at all. In fact the USDA found that the average speed in the 20 plants was 130 birds per minute—much less than the 140 birds per minute limit in effect for all other plants.⁴ **And there was never any study done of the impact of any of the pilot USDA programs on worker safety.**

Another fact totally absent from both Mr. Rath’s testimony and the National Chicken Council website was that in 2014, the USDA **decided not to allow poultry plants to increase line speeds**. In 2014, USDA issued their New Poultry Inspection System, and because of concerns over consumer and worker safety, the agency did **not allow plants to increase line speeds**.⁵ That final rule was the result of a two-and-a-half year rulemaking process during which the USDA received and considered more than 250,000 public [comments](#). The question of the maximum allowable line speed—and in particular the detrimental effects of increased line speed on worker safety and health—was the single most commented-upon aspect of the USDA’s rulemaking. In making the decision to prohibit line speed increases, the USDA considered an extensive rulemaking record demonstrating the harms that faster line speeds can cause poultry workers.

Mr. Rath’s testimony also cites a drop in injury rates in the poultry industry over 30 years. However, the data he cites are the industry’s self-reported rates, rates that three government agencies have called out as seriously underreported. In fact, USDA concluded in its final rule in 2014 regulating the poultry industry that “poultry processors’ injury and illness logs often do not reflect the full extent of work-related conditions experienced by poultry workers,” and

³ <https://www.gao.gov/assets/gao-13-775.pdf>

⁴ <https://www.regulations.gov/document/FSIS-2011-0012-2263>

⁵ <https://www.regulations.gov/document/FSIS-2011-0012-2263>

further recognized that **“systematic underreporting of work-related injuries and illnesses could make it difficult to accurately assess the extent to which poultry workers suffer from work related injuries and musculoskeletal diseases and disorders.”**⁶

Just a few years ago, in two published studies⁷, NIOSH documented alarmingly high rates of carpal tunnel syndrome among workers in two chicken processing plants—rates from 34% to 42%. The NIOSH studies, referred to above, found rampant underreporting in chicken plants of musculoskeletal disorders. In one plant for example, where over a hundred workers had a confirmed diagnosis of carpal tunnel syndrome, the company self-reported only a handful on their OSHA 300 logs.

OSHA has also found rampant poultry underreporting of injuries. OSHA has cited poultry processing plants for failure to record injuries and illnesses requiring more than first aid,⁸ and for actively discouraging workers from reporting injuries by delaying medical treatment at first aid stations.⁹ These practices are not isolated incidents, but instead persist at poultry processing plants around the country. In 2016, OSHA cited a Pilgrim’s Pride poultry plant in Florida (JBS/Pilgrim’s Pride is the largest meat company in the world) for practices that resulted in severe underreporting of work-related injuries, finding after inspection that the employer “delayed evaluation, care, and/or treatment from a medical provider” and “failed to make timely appropriate medical referrals for employees with injuries related to chronic and acute exposures and incidents.”¹⁰ This was only the second citation of this kind for delaying necessary medical care in OSHA’s fifty-year history.

The House Select Subcommittee on the Coronavirus further found that the poultry industry **flagrantly underreported the number of their workers sick with COVID-19 by two thirds.**¹¹

Poultry plants are among the harshest working environments in U.S. manufacturing. In plants across the country, workers stand close together—side-by-side, on both sides of long conveyor belts, in cold, damp, dangerously loud conditions—holding knives and scissors. They make the same forceful cuts or movements thousands of times a day. A typical poultry worker handles dozens of birds **per minute**. In the holiday months, workers put in eight-to-ten hour days, six or seven days per week to meet demand. Turnover in these plants can average 60%, but can run as high as 150%.

⁶ <https://www.regulations.gov/document/FSIS-2011-0012-2263>

⁷ <https://www.cdc.gov/niosh/hhe/reports/pdfs/2014-0040-3232.pdf> and <https://www.cdc.gov/niosh/hhe/reports/pdfs/2012-0125-3204.pdf>

⁸ https://www.osha.gov/ords/imis/establishment.inspection_detail?id=975114.015

⁹ <https://www.osha.gov/news/newsreleases/region3/09022015>

¹⁰ <https://www.osha.gov/news/newsreleases/region4/07272016>

¹¹ <https://coronavirus.house.gov/news/press-releases/select-subcommittee-releases-data-showing-coronavirus-infections-and-deaths>

Poultry companies report more severe injuries, such as amputations and injuries or illnesses that result in the overnight stay at a hospital, to OSHA than industries that are popularly recognized as hazardous, including sawmills, industrial building construction, and oil and gas well drilling. Amputations in poultry workers are almost five times as frequent as the average for all industries.¹² Among the tens of thousands of companies that reported severe injuries to OSHA, several poultry companies ranked among the highest reporters—Tyson Foods is among the top five, Pilgrim’s Pride/JBS is sixth, Cargill Meat Solutions and Koch Foods are all in the top thirty.¹³

Poultry processing employment involves factors that increase the risk of workers developing work related injuries and illnesses. Of key concern, the fast pace, highly repetitive and forceful movements required of workers throughout the plant greatly increases their risk of developing musculoskeletal disorders, such as carpal tunnel syndrome. Despite repeated studies in this industry in the past 20 years that found a high prevalence of carpal tunnel syndrome, poultry processing jobs continue to be hazardous. Overwhelming evidence shows that allowing chicken processing plants to operate at faster line speeds will dramatically worsen the already unsafe working conditions in poultry plants.

NIOSH made recommendations to decrease the high rates of carpal tunnel syndrome in the plants mentioned above—but the plants did not implement key recommendations. As a follow up to those recommendations, NIOSH wrote a letter to the head of FSIS in April 2014, explaining to FSIS that processing line speeds are a key cause of these and other musculoskeletal disorders: “Line speed affects the periodicity of repetitive and forceful movements, which are key causes of musculoskeletal disorders.” In other words, the faster the line speed, the greater the risk of harm.¹⁴

b. Do you believe that warehouse employers should be trusted to look to their own internal data and deliver safety innovations without the pressure of safety standards? Why or why not?

Our experience over the last 50 years suggests that workers, their communities and their elected representatives cannot trust employers to self-regulate with regard to worker health and safety.

We can certainly be concerned that some employers will ignore the obvious evidence of serious injury. There were 1,110 separate warehouse companies which reported their annual injury

¹² https://www.bls.gov/web/osh/cd_r5.htm; poultry processing = 2.5 vs 0.5 for all industries

¹³ <https://www.hrw.org/report/2019/09/04/when-were-dead-and-buried-our-bones-will-keep-hurting/workers-rights-under-threat>

¹⁴ <https://www.cdc.gov/niosh/topics/poultry/letterapril72014.html>

numbers to OSHA in 2021, covering 4,492 separate individual warehouses with an average at least 20 employees each, accounting for total of 1,153,131 employees. See Table 2.

The injuries reported by these employer numbers speak loudly to also say that no, we cannot rely on employers in the warehouse industry to police themselves.

The median total injury/illness rate for this group was 3.5 injuries/illnesses per 100 workers. This is far above the 2.7 cases/100 workers average total injury rate estimated by the BLS for all of private industry, so we know that the warehouse industry already has a problem. Yes, 2,874 warehouses reported no injuries/illnesses at all to OSHA for 2021 – an admirable record if it is truly accurate.¹⁵ But almost the same number (2,613) reported to OSHA their injury rates above the level for the private sector generally.

Worse, fully 1,452 of the warehouses reported to OSHA that their total injury rate was higher than the warehouse industry average estimated in 2021 by BLS. This is fully one-third of the entire group of warehouses reporting their annual injury data to OSHA. Of these, 532 warehouses (one out of 8) reported that their injury rate was over double the 3.5 average estimated in 2021 by the BLS's survey.

And this sad performance is accentuated by the fact that the largest employer in the industry has failed to take responsibility for the tidal waves of injuries that have afflicted its workers for years. Worse, as we have explained in our prepared testimony, Amazon has relentlessly denied that they even have a serious problem, misrepresenting these same data to its workers, the public, the media and shareholders. One such shareholder is the huge investment management firm Blackrock, the largest single shareholder at Amazon, which publicly acknowledged earlier this year that it relied on the explanation provided by Amazon's management about the extent of the injury crisis. In doing so, Blackrock voted against a shareholder proposal to require an "independent audit and report of working conditions" at Amazon warehouses. This proposal failed, due largely to the management's objections and the support which those objections found among shareholders like Blackrock who believe Amazon's assurances that its worker safety program was sufficient.

Since the hearing, we have learned that this proposal failed by a relatively small margin: 56% - 44%. This represents a difference of only 22,061,299 shares out of the total of 207,204,341¹⁶ if Blackrock had listened to other voices instead of taking the word of Amazon's management, it might well have voted differently, and its huge bloc of shares would have produced majority support for the audit proposal.

¹⁵ See House Committee Majority Staff report "HIDDEN TRAGEDY: Underreporting of Workplace Injuries and Illnesses," June 2008.,

¹⁶ Amazon May 25, 2022 8-K report to the SEC;
https://www.sec.gov/ix?doc=/Archives/edgar/data/0001018724/000110465922065872/tm2215904d1_8k.htm

In sum, we believe that many warehouse employers, Amazon foremost among them, have already demonstrated that they are willing to accept a high risk of injury from their own operations to their employees, and that neither workers, their communities nor the US Congress should ever consider weakening the few protections that currently exist.

On the contrary, they should follow the lead from the state legislatures in California and New York, who have added additional protections (CA AB701 and NY SB 8922) for warehouse workers from precisely the kinds of unregulated dangers that stalk Amazon's warehouses today – abusive workloads and production quotas backed up with monitoring and discipline systems to enforce those quotas.

Response to Questions For the Record – Rep. Jayapal**Representative Pramila Jayapal (D-WA)**

1. Amazon houses on-site clinics through their Amcare program to administer first aid and address occupational health concerns raised by staff. However, investigations indicate that at some warehouses, Amcare staff are engaging in practices beyond this capacity. In 2015, the Occupational Safety and Health Administration issued a letter to Amazon executives revealing that a July 1, 2015 inspection of a Robbinsville, New Jersey warehouse showed Amcare staff were providing services in violation of Amazon’s own policies and “providing medical care outside their [legal] scope of practice, without proper supervision.”

a. What was the nature of the hazard that OSHA found in its 2015 inspection and what recommendations did OSHA provide to Amazon in its letter?

On July 1, 2015, in response to four separate employee complaints, the OSHA Area Office in Marlton, NJ started an inspection at Amazon’s Robbinsville, NJ Fulfillment Center. While OSHA’s records do not indicate the specific nature of the hazards or violations discussed in the workers’ complaints, the inspection was focused on ergonomic hazards. The inspector interviewed 67 individual workers, and reviewed medical and injury records for the entire warehouse. OSHA’s records do not show the total number of workers employed at the time of the inspection, but by 2017 Amazon reported to OSHA that it employed an annual average of 4200 workers.

The OSHA investigators found dozens of instances of Amazon’s staff failing to keep proper records of the workers’ injuries, and issued a Citation itemizing those violations on Dec. 21, 2015 including the maximum applicable penalty.

However, the OSHA office also sought the assistance of OSHA’s expert physicians from OSHA’s National Office, a highly infrequent part of an OSHA inspection. They sought to investigate the ergonomic hazards, as well as the treatment of the injured workers by Amazon’s on-site AmCare staff. This investigation included interviews with the physician in Seattle whom Amazon identified as the corporate physician consultant, as well as the emergency medical technicians (EMTs) on site.

Attached is a copy of the Citation (including the specific violations) which arose from that medical review. It revealed several disturbing aspects of Amazon’s operations in Robbinsville. First, it itemized the 26 cases of worker injuries or illnesses that clearly should have been recorded onto the required injury records, but were not so recorded.

Also attached is a redacted version of the 2015 Medical Review document.

Per Rep. Jayapal’s specific question, it also concluded that despite Amazon’s claims that its EMTs who staff AmCare offices provide only “first aid”, AmCare EMTs were clearly providing medical care:

Amazon training materials clearly document training on how staff should deliver medical care by providing information on descriptions and mechanisms of injuries and illnesses, listing treatment options, detailing physical examination elements, and emphasizing important information to obtain in the patient histories. The AMCARE staff are performing medical care whenever they take a patient history, perform a physical examination, make a clinical assessment and form an injury or illness management plan. (p. 13).

Clearly, the OMRs are providing medical care to Amazon employees. They are performing assessments and making decisions on disposition, whether it is to see a worker back in AMCARE, refer the worker to a physician or send the worker to the Emergency Department for immediate care. They are, in some cases, seeing workers for multiple days to weeks without referral to a healthcare provider for definitive evaluation and treatment. (p. 12)

It then determined that Amazon's design of its AmCare service was medically improper:

AMCARE's structure, staffing, and supervision are inappropriate for the level of medical care being provided. This puts the workers receiving inappropriate care at risk and the AMCARE staff at risk of working outside the scope of their license. (pp. 13-14)

Dr. [redacted] does not supervise or provide oversight for the AMCARE staff. He does not review first aid logs or provide any training for the AMCARE staff. He has no responsibility for the actual care provided in AMCARE... He also feels that the "14-day" rule regarding referral to a physician for MSD symptoms is too long. He would prefer to decrease the time to referral from 14 days to 3-4 days. (p.7)

Although Amazon professes that only first aid care is provided in AMCARE, this is not accurate. Medical (or health) care, consisting of a clinical history, physical examination, assessment and management plan, is being performed by the OMRs in AMCARE. The choice of providing only first aid treatment does not make the care only first aid. (p. 12)

Medical care must be provided or supervised by a healthcare provider licensed to practice independently, per New Jersey State law. EMTs do not practice independently, and Amazon specifically states that the OMRs, although all licensed EMTs, are not practicing under their licenses. The Associate Care Policy indicates that there should be an "Occupational Medical Provider" for the facility but does not explain the occupational medical provider's responsibilities. The interviewed OMRs could not say who the occupational medical provider is, and the space where an occupational medical provider name and phone number was to be listed in the AMCARE Manual was blank. The OMRs are providing medical care without supervision. (p. 12)

The review also recommended several critical actions by Amazon to fix these serious problems:

- consult New Jersey State law regarding medical practice
- contract with a local Board Certified Occupational Medicine physician who can ... re-evaluate the AMCARE program at Robbinsville and make recommendations for appropriate staffing, structure, supervision and quality assurance... [and] provide on-going training for the AMCARE staff, regularly review their medical records, be available to provide guidance for the staff and oversee practice ... [including] earlier referral when symptoms are not improving (p. 13)

Finally the Medical Review also identified the pattern of Musculoskeletal Disorders (“MSDs”) which accounted for a large number of the injuries known to Amazon managers and revealed in the company’s various injury records (though dozens were missing from the records required by OSHA):

“... it was impossible not to notice the many back and upper extremity / shoulder pain cases seen in AMCARE.” (p. 11)

Due to this pattern, the Review also identified numerous hazards from dangerous designs of the equipment, materials, packages and assigned tasks created by Amazon’s engineers and managers – typically known as “ergonomic” hazards.

In response to this Review, OSHA took additional actions concerning the dangers and Amazon’s potentially illegal practices in Robbinsville uncovered by the investigation:

- It wrote to CEO Jeff Bezos on Jan. 6, 2016 (improperly dated 2015), informing him of the details of the medical mismanagement findings/conclusions and recommendations, and requesting that Bezos take those actions as well as providing OSHA with written documentation of Amazon’s responses to this request. It also informed that OSHA “will not issue a citation for providing medical care beyond first aid, which is an issue that would be addressed under the General Duty Clause of the Occupational Safety and Health Act of 1970.”
- It wrote to Kyle Sullivan, Senior Manager of Environmental, Health and Governance for Amazon NAFC, also at corporate headquarters in Seattle, on Dec. 21, 2015, informing him of the evident ergonomic hazards for several specific jobs and tasks, including Picking and Water Spider, identifying feasible methods to reduce or eliminate those hazards, requesting that Amazon take those actions (including “Implement the ergonomic policy and procedures manual developed by the company” and “Consider providing employees with an extra break throughout the [10-hour] shift to allow employees to rest,”) and informing Amazon that OSHA did not “feel it is appropriate to issue a citation.”

b. In 2019, OSHA issued another hazard letter to Amazon citing the same hazard identified 4 years earlier at the same warehouse. What recommendations from the 2015 letter, if any, had been implemented by Amazon during this period?

Following its 2015 inspection and citation of the Amazon facility in Robbinsville, NJ, multiple OSHA inspections have documented Amazon's failure to implement OSHA's recommendations. 2017 Florence inspection and investigation

In 2017, the same OSHA office responded to a worker complaint at the nearby fulfillment center in Florence, NJ, on Oct. 2017, and identified many of the same problems. Attached is a copy of the Medical Review document from the 2017, which notes:

Amazon has not instituted any of the medical management recommendations made in OSHA's 2015 inspection at Amazon's Robbinsville, NJ facility. (p. 1)

The Florence investigation reviewed 16,275 pages from 59 separate medical and workers compensation files, covering a total of 131 separate worker injuries. Strain/sprain cases accounted for 49% of all cases, with lifting accounting for 39% of all cases. (p. 6)

The review states that the investigation was "hampered by ... the extensive missing information including both AMCARE records and outside medical treatment records" (p. 7). It found:

Four cases were identified for medical mismanagement (Table 3), and nine cases are potential medical mismanagement cases (Table 4). All four medical mismanagement cases resulted from poor decision-making by the OMR, specifically not referring the employee to a higher-level provider for definitive evaluation and treatment. In addition, the OMR did not follow AMCARE first aid treatment protocols, standard first aid practices and/or EMT practices for these injuries. All cases resulted in the employee being off work for a prolonged period.

An additional table (Table 5) lists nine cases where managers' behavior / interference led to poor medical care. These cases include incidents where managers made inappropriate medical disposition decisions or obstructed an employee's access to appropriate medical care, for instance by pressuring an employee to take voluntary time off (VTO) rather than send the employee for outside medical evaluation. (p. 7)

The 2017 Florence, NJ inspection concluded that Amazon was continuing to provide potentially illegal medical services due to the lack of medical supervision of the EMTs.

OOMN's review of medical records pertaining to this case shows that Amcare is using EMTs outside of their licensure and scope of practice. Although Amazon claims, and the EMTs understand, that they are not working under their licenses, the situation is confusing to the EMTs, and likely also to the workers and facility management. Human Resources relies on the EMTs to make professional decisions on disposition. The

interviewed EMTs admit to having little background or training in the type of care they are providing. One EMT hoped that the new doctor would provide more guidance. No healthcare professional is reviewing the OMR/EMT care to make sure they are following protocols and providing appropriate care...

While all OMRs are required to maintain current EMT certification and licensing, the program for which they are educated, certified, and licensed does not approximate the complexity of decision-making performed in Amcare. Even then, the core competencies for which they are trained can only be done under the guidance and supervision of a medical director. We have been unable to identify any licensed physician performing sufficient guidance and supervision to suggest that the OMRs are adequately educated, certified, licensed, or credentialed beyond the general scope of practice of an EMT-Basic.

By both OSHA and American Red Cross definitions, Amcare OMRs are practicing medical care beyond first aid. Amcare OMRs routinely schedule follow-up appointments with employees, offer medical advice, and serve as a gateway for referral to medical care.

Additionally, there are documented instances of Amazon Safety Managers making determinations on the appropriateness of referral to outside medical care (Table 5). (p. 14)

The Medical Review recommended again that Amazon fix these longstanding failures of medical supervision:

Amazon should institute the recommendations made in the 2015 HAL for the Robbinsville case, including obtaining consultation from a physician Board Certified in Occupational Medicine.

Amazon should provide medical oversight of EMTs to ensure they are not providing medical treatment beyond first aid. (p. 14)

2019 Robbinsville Followup inspection

OSHA's 2019 findings repeated many of the same stark findings from the 2015 inspection. Following the inspection, OSHA sent a letter on Aug. 19, 2019 to a senior manager, identifying the company's continuing failures to properly supervise the medical services in Robbinsville – fully 4 years after OSHA notified the corporate headquarters of these issues.

Worse, OSHA's 2019 letter to Amazon identified 6 cases within a 3-month period in which Amazon EMT and/or supervisors intervened or failed to act such that workers who needed medical treatment failed to receive that treatment.

Attached is a copy of the OSHA Aug. 19, 2019 letter to Amazon Senior Regional Health and Safety Manager Andrew Ming.

Among the key findings were:

- Referring to the company medical policies which in 2018 replaced those in effect in 2015, OSHA told Amazon that “[redacted] a physician who is not licensed to practice in New Jersey, reviewed and signed these protocols on Oct. 3, 2018. The updated protocols allow AMCARE to provide care for up to 21 days before referring a worker to a physician. A delay of physician-supervised treatment of duration is not consistent with the standard of medical care expected at a health care facility... workers in TN obtain a referral in less than half the wait time compared to workers in New Jersey ... [which] violates the principle that the standards of medical care should be the same for workers everywhere.

- “Additionally..., at AMCARE there is no on-site physician. A physician to verify whether AMCARE follow the written protocols did not review clinic notes. ...

“OSHA reviewed AMCARE documents and identified [6 cases over a 3-month period] in which EMT’s ... did not follow the [current protocols] approved by Dr. Jones..., [including]:

- o On March 30, 2019, a worker reported [redacted] pain due to repetitive motions... which increased greatly over the following days. The worker asked to see a physician several times, including on March 31 and April 13. Each time an AMCARE EMT convinced him not to go to a physician ... [which] disregarded the instruction in the [Amazon] Protocol.
- o On May 4, a worker suffered a [redacted] injury. The worker asked to go to a hospital to see a physician. ... AMCARE again dissuaded him from going to see a doctor. AMCARE violated the written Conservative Care Protocols page 6, which mandate immediate referrals to a physician on request.”...

“In summary. Amazon has not adequately addressed the issues that OSHA identified in the prior inspection. In fact, the increase in maximum treatment duration prior to physician referral from 14 days to 21 days represents a less protective policy.”

OSHA then repeated the same recommendations from the 2015 Medical Review and letter:

- Ensure adequate physician supervision of AMCARE EMT’s....
- Ensure that EMT’s follow all relevant protocols.
- Do not discourage Associates from seeking medical care from a physician when requested.
- Reduce the duration of care by AMCARE staff prior to physician referral....

This succession of failures by Jeff Bezos, other Amazon headquarters executives and senior managers, over a 4-year period in the face of an extraordinary OSHA investigation and explicit recommendations, reveal a high degree of dysfunction and plain indifference by the company’s leadership on the critical components of a legitimate workers safety and health program.

See also the attached articles by The Intercept and Reveal in December 2019 and September 2020, including the interview with then-retired OSHA physician Kathleen Fagan who authored the medical reviews in Florence and Robbinsville, NJ further illustrate the company's willingness to improperly influence the provision of medical treatment.

2. In March, 2022, the Washington State Department of Labor and Industries issued a citation to Amazon for willful violations of state health and safety laws at a warehouse in Kent, Washington. While Amazon appeals the citation, it is also suing the state over its policy requiring employers to address the hazards before the citation is finally adjudicated, alleging it violates the company's right to due process.

a. In your view, what does this indicate about Amazon's commitment to safety?

Amazon's challenge to the WA State OSHA law is a good example of the company's longstanding resistance to compliance with the OSHAct. That resistance is revealed first and foremost by the growing crisis of high injury rates among Amazon workers, due to the improper and dangerous design of Amazon's own facilities. It is revealed by the fact that Amazon did not direct its own internal ergonomics staff to visit the Dupont warehouse – a stone's throw from the Seattle headquarters, with the highest injury rate in the nation – until OSHA itself opened its first investigation of ergonomic hazards.

It is also revealed by the multiple investigations themselves initiated by WA State OSHA in Dupont and Kent, including WA OSHA's decision to classify the Kent violations as "Willful."

Finally, Amazon's resistance to compliance with the OSHAct is revealed by the explicit actions by CEO's Jeff Bezos and Andy Jassy to mislead Amazon workers, their communities, investors, the media and OSHA investigators about the severity of the injury crisis. See SOC's July 7, 2022 Complaint the Securities and Exchange Commission concerning Amazon's false and misleading health and safety disclosures.¹

We are not aware of any corporatwide actions or policies which demonstrate what in our view would be a serious commitment to worker safety.

¹ <https://thesoc.org/what-we-do/soc-request-for-sec-investigation-of-amazon-com-inc-s-false-and-misleading-health-and-safety-disclosures/>

Table 1
Rate(1) of nonfatal occupational injuries and illnesses by selected industry, All U.S., private industry and General Warehousing, 2014 - 2021

Characteristic	General warehousing and storage (1)									
	2021	2014	2015	2016	2017	2018	2019	2020	2021	Rate
Injuries and Illnesses										
Total cases	2.7	5.2	5	5	5.2	5.2	4.9	5	5.6	
*DART** Cases: days away from work, job transfer, or restriction	1.7	3.7	3.7	3.7	3.9	4	3.7	4	4.7	
Cases with days away from work(4)	1.1	1.7	1.7	1.7	1.9	2.2	2	2.1	2.3	
Cases with job transfer or restriction	0.6	1.9	2.1	2	2	1.8	1.7	1.9	2.4	
Other recordable cases	1	1.6	1.3	1.3	1.4	1.3	1.2	0.9	0.9	
Injuries										
Total cases	2.3	5.1	4.9	5	5.2	5.1	4.8	4.7	5.1	
Illnesses										
Total cases	37.7	15.1	11.3	8.8	8.3	11.1	11.4	25.5	50	
Illness categories										
Skin disorders	1.2	1.1	1.3	1.4	1	1.7	1	1.3	0.7	
Respiratory conditions	27.8	-	1	0.7	0.4	0.7	0.9	10.4	36	
Poisoning	0.1	-	-	-	-	-	-	-	0.1	
Hearing loss	1.2	0.5	0.6	0.3	0.3	0.7	0.2	0.3	0.2	
All other illness cases	7.3	12.5	8.1	6.3	6.5	8	9.3	13.4	13.1	

Footnotes:
(1) Incidence rates represent the number of injuries and illnesses per 100 full-time workers (10,000 full-time workers for illness rates) and were calculated as: (N / EH) X 200,000 (20,000,000 for illness rates) where, N= number of injuries and illnesses, EH= total hours worked by all employees during the calendar year, 200,000= base for 100 full-time equivalent workers (working

(2) Data are coded using the North American Industry Classification System (NAICS).

(3) Excludes farms with fewer than 11 employees.

(4) Days-away-from-work cases include those that result in days away from work with or without job transfer or restriction.

NOTE: Dashes indicate data that do not meet publication guidelines.

SOURCE: Bureau of Labor Statistics, U.S. Department of Labor, Dec 8, 2022

Table 2
Warehouse industry injuries/Illnesses, 2021, reported to OSHA/ITA, per establishment

Total warehouse employers reporting data	1,110.0
Total warehouse establishments 20+ employees	4,492.0
Total employees covered	1,153,131.0
BLS Estimated all private industry injury/illness rate	2.7/100 FTE's
OSHA ITA-reported injury/illness - Median rate	3.5/100 FTE's
ITA-reported establishment-specific injury/illness rate	
0 injuries	2,874
Total case rate > BLS all-industry average 2.	2,613
Total case rate > BLS industry average 3.5 r	1,452
Total case rate > 2x BLS industry average 3.	532
	64%
	58%
	32%
	12%

Occupational Safety and Health Administration (OSHA)
Directorate of Technical Services and Emergency Management (DTSEM)
Office of Occupational Medicine and Nursing (OOMN)
Medical Review
Inspection # 1074833

This report is in response to a request from the Marlton Area Office to assist in the inspection of Amazon Fulfillment Services in Robbinsville, NJ. The Office of Occupational Medicine and Nursing (OOMN) was asked to assess for recordkeeping violations through review of OSHA 300 logs, first aid and medical records, and employee interviews. In addition, OOMN was asked to review the medical management practices of the in-plant medical unit.

SUMMARY AND CONCLUSIONS:

OSHA's inspection of Amazon Fulfillment Services Center in Robbinsville, NJ identified multiple worker injuries not documented in the OSHA 300 logs. A review of the medical records and 29 CFR 1904.5(a) indicate that, within a reasonable degree of medical certainty, 26 injury cases since 01 July 2015 are work-related. Furthermore, these 26 cases received treatment and/or work restrictions that meet recordkeeping criteria and should have been recorded on the OSHA 300 logs.

Many musculoskeletal disorders, particularly back, shoulder and other upper extremity injuries, were noted during review of Amazon workers' medical records. Amazon warehouse workers are exposed to a number of ergonomic hazards. Amazon should consider forming a labor-management ergonomics team to investigate ergonomic hazards and institute ergonomic solutions to prevent musculoskeletal symptoms and injuries.

Although Amazon claims to provide only first aid treatment at their in-plant medical unit ("AMCARE"), Amazon training materials clearly document training on how staff should deliver medical care by providing information on descriptions and mechanisms of injuries and illnesses, listing treatment options, detailing physical examination elements, and emphasizing important information to obtain in the patient histories. The AMCARE staff are performing medical care whenever they take a patient history, perform a physical examination, make a clinical assessment and form an injury or illness management plan. AMCARE's structure, staffing, and supervision are inappropriate for the level of medical care being provided. This puts the workers receiving inappropriate care at risk and the AMCARE staff at risk of working outside the scope of their license.

Sources of Information:

- OSHA 300 logs dated 01 January 2014 through 01 November 2015
- AMCARE Associate Care Manual Updated and Reviewed December 2012
- Associate Care Policy- Sections 1 and 2, Dated 28 April 2015.
- Amazon OSHA Recordkeeping Program Overview (various revision dates- 18 December 2014, 6 July 2015)

- Amazon Site Injury and Illness Records Reconciliation Process, 3.0 Work Instructions (various revision dates: 23 June 2015, 6 July 2015, 14 June 2015)
- AMCARE first aid progress notes dated October 2014 through June 2015
- Injury Reports dated June 2015 through October 2015
- Request for medical information forms dated July 2015 through October 2015
- Employee medical records dated August 2014 through October 2015
- Work Accommodation Analyses dated January 2014 through October 2015
- Fulfillment Associate – EWR4 Job Description
- Amazon Training slideshows and videos provided for the AMCARE staff on ergonomics, anatomy, musculoskeletal injuries and disorders, and first aid practices
- Telephone interviews with Occupational Medicine Representatives (), EMT, (), EMT on 12 November 2015
- Telephone interview with Safety Manager () on 17 November 2015
- Telephone interview with employees on 20 November 2015 and 03 December 2015
- Telephone interview with physician consultant to Amazon () on 23 November 2015
- Telephone interview of physicians at Robert Wood Johnson's Occupational Health Clinic in Hamilton, NJ on 11 December 2015
- Discussions with the Marlton Area Office Compliance Safety and Health Officer (CSHO) on this inspection.

Background and Reason for Inspection

Amazon.com, Inc. is the largest internet-based retailer in the United States with fulfillment centers located in 29 states (Amazon Fulfillment Careers, accessed 2015). Fulfillment centers house inventory and pack products for shipment. Although some operations are automated, employees do perform manual work with and without assistance. According to the description of an Amazon fulfillment associate, the worker must be able to lift up to 49 pounds, stand/walk for up to 10-12 hours, able to frequently push, pull, squat, bend and reach, safely climb and descend stairs, and operate powered equipment (e.g., forklifts, pallet jacks, cherry pickers, etc.) among other tasks.

The Robbinsville, NJ location began operations in July 2014. At this location, Amazon employs approximately 3700 employees, some of whom are temporary employees hired through a staffing agency called Integrity. The plant is in operation 24/7 with two shifts. An in-plant medical unit, called "AMCARE", is available for employees to access on all shifts. Seven Emergency Medical Technicians (EMTs) staff the medical unit with one to two EMTs in the unit at any one time. The EMTs are referred to as On-Site Medical Representatives (OMRs).

OSHA received complaints regarding Lockout/Tagout, issues with injury recordkeeping, back injuries in the Pick area, and medical management issues. The Marlton Area Office opened an inspection on 01 July 2015.

Summary of Medical Records Reviews and Worker Interviews

First aid logs from the on-site first aid station, occupational health clinic medical records, and other associated injury forms were reviewed to identify work-related injuries and OSHA recordable cases. Work-relatedness was determined per 29 CFR 1904.5 based on available

Table 1. Amazon injury cases that should have been recorded on the OSHA 300 log

Case Code	DOI	Mechanism	Diagnosis	WR	RS	PTX	RS	IN	Comments
2	7/215 + 7/1615	Bending to pick up item	Muscle spasm of back	Yes	No	No	No	No	ED patient states "cannot file W.C. because no direct injury"
3	7/1515	Rolling down from top shelf	Wrist sprain L. shoulder sprain Hand sprain	Yes	Yes	Yes	No	No	Human spine splint
4	7/1915	Lifting heavy box	L. shoulder sprain L. thumb sprain	Yes	Yes	Yes	No	No	
5	8/1215	Repetitive motion, lifting heavy case	Thoracic Spine Pain L. thumb sprain	Yes	Yes	Yes	?	Yes	Back brace, Records from family doctor unavailable
6	8/1215	Lifting heavy heavy box	L. thumb sprain	Yes	Yes	Yes	No	No	
7	8/1515	Repetitive motion, lifting heavy boxes	L. thumb sprain Lumbar Spine strain	Yes	Yes	Yes	No	Yes	
8	8/1515	Repetitive lifting of heavy boxes	Lumbar Spine strain	Yes	Yes	No	No	No	
9	8/1715	Stepped down off fork lift	R. ankle sprain	Yes	Yes	Yes	Yes	Yes	Air cast and shoe
10	8/2415	Lifting box then tried catching falling product	Shoulder pain Lumbar sprain/strain	Yes	Yes	Yes	No	No	
11	9/3115 or 9/1115	hit wall while carrying box that was slipping	Shoulder contusion, Chest strain Trapezius strain	Yes	Yes	Yes	No	Yes	Aware: "not fig. "refuser" re, returns to work"
12	9/3115	hit wall while carrying box that was slipping	Shoulder contusion, Chest strain Trapezius strain	Yes	Yes	Yes	No	No	
13	9/1115	Packing boxes lunched over	Cervical spine strain Trapezius strain	Yes	Yes	Yes	No	No	Aware: "damaged story, no idea what is going on"
14	9/1515	Repetitive lifting	Lumbar strain	No	Yes	No	No	No	No ED records where she was prescribed meds
15	9/2515	pulling, lifting, moving	L. lateral epicondylitis R. knee strain	Yes	Yes	Yes	No	Yes	Terms elbow brace
16	10/815	Pushing tote tank on the floor and knee buckled	R. knee strain	Yes	Yes	Yes	Yes	No	Knee immobilizer
17	7/1615	Unloading boxes, box slid on floor in face	Facial contusion L. shoulder strain Cervical strain	Yes	Yes	Yes	No	Yes	Don't have ED records, hang on to initial concussion
18	8/915	Unloading conveyor or pain	Cervical strain	Yes	Yes	Yes	No	Yes	
19	9/2515	Rolling a case of water	R. shoulder strain / lumbar strain	Yes	Yes	Yes	No	Yes	
20	9/1615	Pushing cart, caught in floor jammie R. shoulder	Trapezius SpRAIN; R. Shoulder Pain	Yes	Yes	Yes	No	No	Abnormal MRI, referred to specialist
21	8/2815	Lifting box, twisted left	R. Knee Pain	Yes	Yes	No	No	No	Off work, Abnormal MRI, referred to specialist
22	8/2415	Lifting box, twisted left	R. Knee Pain	Yes	Yes	No	No	No	Off work, Abnormal MRI, referred to specialist
23	8/1815	Lifting/packing boxes	Rk wrist L. shoulder pain / pain in joint, shoulder region	Yes	No	Yes	No	Yes	
24	7/2715	Lifting heavy items	L. Knee Strain Tennis elbow	Yes	Yes	Yes	No	No	Referred to specialist
25	9/815	Lifting 65lb box, pain L. wrist	L. Knee Strain Tennis elbow	Yes	Yes	Yes	No	No	Abnormal MRI, referred to specialist.
27	7/1815	Loading heavy item on low shelf, pop pain L. head, LOC	L. Knee Strain Concussion; Head strain; Lumbar pain	Yes	Yes	Yes	No	No	Was taken off work x 2 days
28	7/1415	Tipped over cart, fell, hit head, LOC	Concussion; Head strain; Lumbar pain	Yes	Yes	Yes	No	No	Was taken off work x 2 days

DOI=Date of Injury; IN=Intervened; LOC=Loss of Consciousness; RS=Rigid Splint; RS=Prescription medication or restriction dose of over-the-counter medication; WR=Work Restrictions; PTX=Physical Therapy or Home Exercises

descriptions for the mechanism of injury from medical records and interviews, and OSHA recordable criteria were based on 29 CFR 1904.7.

- In addition, the following definition is used by OOMN to identify musculoskeletal disorders due to ergonomic hazards in the workplace:
- There must be a sign and/or symptom reported in the medical treatment records that is consistent with a work-related musculoskeletal disorder;
 - There must be a health care provider diagnosis of a work-related musculoskeletal disorder in the medical treatment record; and
 - There must be a work-related mechanism of injury described in either the medical treatment record or other records.

Cases that were identified as work-related and OSHA recordable were cross-referenced with the OSHA 300 log. OOMN selected 29 injury cases that both occurred since the OSHA inspection opened and were not recorded on the OSHA 300 log for further evaluation. OOMN reviewed all available medical treatment records and first aid logs on these 29 cases and interviewed 13 of these employees by telephone. Of these 29 cases, OOMN determined that 26 cases (or 90%) met criteria for recordability.

Table 1 lists the 26 cases that should have been reported on the 300 log. All 26 cases were prescribed medication (either non-prescription medication at prescription strength or prescription only medications). Twenty five (25) employees had significant work restrictions, and 9 of the interviewed employees noted that their restrictions placed them into duties that they were not performing at least once per week previous to the injury. Eighteen (18) of the 26 cases received either home exercises from the treating physician or were prescribed physical therapy as part of the treatment for the injury. Three of the 26 were given a rigid splint or brace. In a fourth case, we were unable to determine whether or not a back brace provided to an injured worker was rigid. Finally, in two cases, medical treatment records clearly noted a diagnosis of concussion. In a third case, the worker stated that the Emergency Department (ED) told him he may have a mild concussion; however, the ED records were unavailable for review.

A number of injuries from the first aid progress notes as well as the OSHA 300 logs were consistent with exposures to ergonomic hazards in the workplace. Workers may be required to lift items weighing up to 40 pounds, perform elevated reaches to access items from upper bin areas, or reach down below the waist for an extended period of time. In addition, many workers are required to stand up to 10 hours a day, four days a week with only two 15 minute breaks and a 30 minute lunch break. Potential hazards associated with engaging in these types of work activities include upper extremity, lower extremity and back injuries. Most cases from Table 1 were upper extremity and back injuries mostly from lifting and bending. Four employees had lower extremity injuries from acute trauma. The mechanisms of injury for Table 1 injuries were exertion, repetition and or work in awkward posture in 60% of cases, indicating that these were musculoskeletal disorders due to ergonomic hazards. On review of the cases listed on the OSHA 300 logs for 2014 and 2015, over half appeared to be musculoskeletal disorders (sprains and strains). Interestingly, in 2014, 78% of the cases listed on the 300 log were sprain/strains, whereas in 2015 only 38% were sprain/strains.

Medical Management

Telephone interviews were conducted with two of the On-site Medical Representatives (OMRs) who work in the Robinsville AMCARE unit, the Safety Manager, the consultant physician for Amazon, and two local physicians.

Interview of On-site Medical Representatives (OMRs)

Both OMRs stated that they are Emergency Medical Technicians (EMTs), licensed in the State of New Jersey. Neither had previous experience working in an in-plant medical unit or seeing workers for work-related injuries. When they started, they were provided one month of training, consisting of videos or webinars and a training manual, by Amazon. One began working in the AmCare medical unit (First Aid Station) in May of 2014 and the other in July of 2015. Although they are aware that Amazon has a corporate medical director in Seattle, Dr. [REDACTED], they have never met or talked with Dr. [REDACTED]. They do not believe Dr. [REDACTED] has visited the facility. Their supervisor is the Safety Manager, [REDACTED]. They describe the process and procedures in AMCARE as follows:

- The worker alerts his/her supervisor that he/she wants to be seen or has an injury or complaint and is escorted to AMCARE.
- The OMR talks with the worker to identify the complaint, injury, and mechanism of injury.
- The OMR follows the protocol, including examination, described in the AMCARE Manual, depending on the complaint or injury.
- Treatment in AMCARE is first aid only, such as ice packs. Over-the-counter (OTC) medications is available to workers in a self-serve dispenser outside AMCARE. OTC medications include ibuprofen, acetaminophen, aspirin and Pepto-Bismol. The medications are approved by the corporate doctor.
- The OMRs state that they do not recommend medication. If asked, they tell the worker to follow the instructions on the packet.
- The OMRs are able to place a worker on work restrictions for the rest of the shift, if they feel it is necessary. They are not allowed to place a worker on restrictions for greater lengths of time.
- They let the worker decide if he/she needs to be on a one-day restriction. There is a list of jobs that could be considered for light duty. The manager will assign the light duty job.
- The worker may be told to follow up in AMCARE, depending on the protocol in the AMCARE Manual. Workers are required to report to AMCARE if they go to see their own doctor. If a worker asks to see a doctor, they are referred to a doctor identified by Amazon's Workers Compensation department. The OMRs may help with making an appointment.
- The worker decides whether the injury is work-related. The OMRs are not involved in that decision. In addition, they are not involved in the decision regarding whether or not an injury is recordable on the OSHA 300 log. The safety manager makes that decision. There is no guidance regarding how to document a worker visit to AMCARE. OMRs rely on their experience as EMTs to chart (document) appropriately.
- If a worker's pain or symptoms resolve completely but then the worker comes back with the same or similar complaints, the visit is considered a new injury.

- There is a "help line" available by a third party company regarding problem or "escalating" cases. Neither OMR has used the help line. They will call "911" for emergency situations.
- If they are seeing a worker who does not speak English, they can obtain a translator through Human Resources or may use an in-house translator.
- They treat the temporary workers from Integrity the same way they would treat an Amazon worker. However, Integrity has its own Workers Compensation department and will arrange for physician referrals.

The OMRs reported that there are audits of their first aid documentation, which are checked against the AMCARE Associate Care Manual. The OMRs were unsure who performs these audits. No audit records were available for review. If corrective action is deemed necessary based on the audits, the OMRs receive corrective feedback. Neither OMR has received corrective feedback during their employment at Amazon.

Interview of Safety Manager

The safety manager has worked for Amazon at this warehouse since September of 2014. He received a B.S. in occupational health and safety from Columbia Southern University and has worked in this field for ten years. He is responsible for the safety and health programs at the warehouse, including ergonomics, safety issues such as machine guarding, and environmental concerns. There is no local ergonomics team at the warehouse. He and his safety team will review the first aid encounters and injury logs and take "corrective actions" regarding safety issues. The safety team includes three safety representatives and AMCARE representatives.

His understanding of the process and procedures in AMCARE are as follows:

- If a worker is injured or has a complaint, the supervisor notifies AMCARE, safety or a senior manager.
- AMCARE staff treat the worker with first aid treatments.
- AMCARE makes the decision concerning referral to a physician if necessary. AMCARE will use a panel of providers and make appointments for workers.

The safety manager decides work-relatedness of an injury/illness by reviewing first aid records but also forms, called Request for Medical Information, filled out by the physician after every visit. He may also review video footage of the worker during the time that the injury occurred. He stated that the facility has video cameras throughout and video is running 24/7. He will also coordinate with the Workers Compensation department. He and his safety team review injury/illness reports daily to ensure proper recording on the OSHA 300 log. His safety team, regional safety manager, and human resources manager reconcile injury/illness recordability on the OSHA 300 log on a monthly basis.

The safety manager stated that audits of AMCARE and of Amazon's recordkeeping are done by outside vendors. He believes there has been one external audit and one internal audit since the warehouse opened. He states these are viewed at a high level. He has not seen the audits. Further, the safety manager states that he does not train the AMCARE staff. They are trained through the Red Cross, and there is an outside vendor that provides webinars and video training.

- A worker thought that the AMCARE staff were doctors.
- One worker with a head injury with symptoms of headache and dizziness was not referred to the Emergency Department
- Some workers were seen repeatedly in AMCARE over 2-3 weeks for symptoms that were not improving without referral to a physician.
- Workers were not advised about adverse effects of NSAIDs. One worker was advised to take OTC NSAID at prescription dose.
- A supervisor was not providing job duties within work restrictions recommended by physicians.

Review of Associate Care Policy

We reviewed Sections 1 and 2 of Amazon's Associate Care Policy (Policy). Section 1 is the Introduction and explains that the policy provides "guidance and Standard of Work for the AMCARE program. The medical care (First Aid) will be provided by an Onsite Medical Representative (OMR)...". OMRs report to the local site's Safety Manager. Section 2 describes the OMRs qualifications and Standard of Work. OMRs must be certified Emergency Medical Technicians (EMTs), licensed practical nurses (LPNs) or licensed registered nurses (RNs). Although the OMRs are required to maintain their licenses/certifications, the Policy states that "Amazon.com is not licensed by the Department of Health, therefore OMRs are not able to function under the full capacity of their licensure/certification."

The following are the primary OMR responsibilities listed in sections 1 and 2:

- Provide care to employees "when medical need arises"; complete encounter logs daily;
- Perform drug testing as needed;
- Maintain Professional Office Environment;
- Reconcile OHM database daily; complete AMCARE metrics weekly; develop a statistical analysis of injuries quarterly;
- Complete Safety Job Analyses and Work Accommodations Analyses for each applicable injury/illness, in coordination with Safety. "The OMR provides only an opinion. The final determination whether restrictions can/will be accommodated is the responsibility of the safety manager and human resources."
- Participate in case management meetings with Workers Compensation.
- Perform training of new OMRs; perform first aid/CPR/AED training of designated employees on all shifts; participate in orientation of new managers and OMRs;
- Attend daily safety stand-ups; attend safety committee meetings;
- Monthly audit of AMCARE, conducted with safety manager; quarterly peer review and self audit;
- Annually meet with the Occupational Medical Provider and arrange for the provider to tour the facility.

Review of Amazon Medical Care Protocols

The AMCARE Associate Care Manual (Manual) is described as a "user-friendly manual of medical conditions that are most often seen in the workplace". Ailments include sprains, strains and pain, lacerations, head injuries, heat stroke, chest pain, hyperglycemia and stroke, among

Interview of Corporate Medical Director
The corporate medical director, Dr. [REDACTED], is board certified in Occupational and Environmental Medicine, and practices in Seattle, WA. He states that he provides only medical consulting services to Amazon. He became a consultant for Amazon approximately 5-6 years ago when his occupational health practice began seeing workers from Amazon's nearby "Fresh" warehouse. He has visited that warehouse but has not visited the Robbinsville warehouse.

As part of the consulting services, Dr. [REDACTED] reviews, updates and signs off on the AMCARE Associate Care Manual annually. He reports that he was not the original author of the manual and does not know who wrote the manual. His practice also provides telephonic medical consultation for the OMRs (the "help line"). He does not know if the Robbinsville-AMCARE staff have consulted the help line. His company provides Amazon with an annual summary of calls from all Amazon locations.

Dr. [REDACTED] does not supervise or provide oversight for the AMCARE staff. He does not review first aid logs or provide any training for the AMCARE staff. He has no responsibility for the actual care provided in AMCARE. His impression is that Amazon has gotten better at injury care, at least in part to save on workers compensation costs. He believes they use too much over-the-counter (OTC) nonsteroidal anti-inflammatory medication (NSAIDs). "They give them out like candy". He worries about the adverse gastrointestinal and cardiovascular health effects of the use of NSAIDs. He also feels that the "14-day" rule regarding referral to a physician for MSD symptoms is too long. He would prefer to decrease the time to referral from 14 days to 3-4 days.

Interview of Local Physicians

Two local physicians from Robert Wood Johnson Occupational Health Clinic in Hamilton, NJ were interviewed. These physicians see many of the workers from the Robbinsville warehouse. They have visited the plant twice and have reviewed the job descriptions. They provide injury ("workers comp") care and drug screening services. Amazon does not provide them with any specific policies or procedures for care of their workers. They note that the Amazon Human Resources team is new. When referring a worker to be seen, Amazon will provide the clinic with the worker's job duties, a description of what happened and what treatment was performed at AMCARE. The physicians state that they generally rely on the worker's description of the injury, but this does not happen often. Occasionally a worker will complain that work restrictions are not being followed. The physicians feel comfortable calling Amazon's Human Resources department regarding these issues. The physicians provide no oversight of the AMCARE staff. They noted some concern about treatment in AMCARE. In particular they mentioned infections from lacerations, including a case of cellulitis.

Interviews of Workers

In general, the care provided in AMCARE, as described by the workers, was first aid. Ice therapy was often offered and provided for musculoskeletal injuries, and workers were referred to a medication dispenser located outside the clinic for OTC medication. No employee indicated receiving work restrictions from the AMCARE staff beyond the date of injury. During worker interviews, the following information related to injuries and medical management was obtained:

information, department, shift, location of injury and task details are also noted. A field entitled "Work Related?" is answered yes or no. "Incident type" appears to be the mechanism of injury, as entries included "repetition" or "forced exertion/pushing/pulling" or "struck by". Injury type appears to be the diagnosis, as entries include "strain" or "muscle or tendon strain" or "contusion, bruise".

Documentation of the clinical history and mechanism of injury was generally detailed, although certain types of information were frequently missing. For example, the Manual specifically requires that, when examining a worker with back pain (page 37: Lumbar Sprain/Strain or Sciatica), the OMR should "palpate areas of discomfort and document left or right, Document any radiation up or down leg (how far down leg). Inquire about bowel or bladder problems." Many records were reviewed regarding workers presenting to AMCARE with back pain, and this information was frequently missing. This information is important in the evaluation of low back pain. For instance, loss of bowel or bladder function in the setting of low back pain may indicate the need for immediate referral for potentially urgent emergent conditions such as cauda equina syndrome (compression of nerves at the base of the spinal column).

Documentation of physical examination findings in the AMCARE records was minimal or non-existent. If any exam documentation existed, it usually referred to range of motion or negative visual findings, such as no swelling or bruising. We did not see any charts that documented a thorough examination as described in the video training. Both the Manual and the video training stress the importance of a full physical examination of the injury. From review of the AMCARE records, it is unclear whether or not a full physical examination is being performed. To paraphrase one of the OMRs interviewed, "if it wasn't documented, it didn't happen." In addition, inappropriate documentation of findings was identified. Range of motion was noted to be "positive", which could be interpreted as abnormal or normal. Thus, deficiencies in documentation of necessary components specified in the AMCARE Manual raises concerns regarding appropriate evaluation and treatment of worker injuries/illnesses by OMRs.

Discussion

Table 1 identifies 26 injury cases from Amazon's Robbinsville warehouse since 01 July 2015 that should have been recorded on the OSHA 300 logs but were not. A number of these injuries were musculoskeletal disorders due to ergonomic hazards. These workers were seen in the in-plant AMCARE First Aid Station before being seen by an outside health care provider. A review of scientific studies regarding musculoskeletal disorders is presented below. Also presented below is a discussion of the medical management issues raised during this OSHA investigation. Finally, recommendations regarding medical management at the Amazon Robbinsville warehouse are made.

Work-related Musculoskeletal Disorders

Over half of cases in Table 1 were injuries involving the back. Low back pain (LBP) is one of the most common musculoskeletal disorders (MSDs) among the working population. Although approximately 90 percent of people will experience at least one episode of LBP in their lifetime,

others. For each ailment, there is a description, mechanism, exam findings, first aid treatment, when to refer to "medical", when to call 911 and preventive tips. The Manual states "if you have any questions, contact your local medical provider for direction. This first aid manual is a guide to be used in conjunction with your facilities occupational medicine provider." The Manual also advises that, if a worker's condition is deteriorating or beyond the OMR's comfort level, the OMR should either call 911 or the help line. There is a contact list for phone numbers for ambulance, fire department, hospital, health care provider, and poison control. The manual provided to us had no one and no phone numbers listed for any of these. The interviewed OMRs were not able to tell us who the occupational health provider is.

The Manual has a section entitled "Length of Treatment Standards", which notes that "the OMR may provide non-emergent care in the AMCARE office for up to 14 calendar days providing improvement is being made in the associate's condition". It further states that, if an associate's progress "plateaus or is not continually improving", it is the responsibility of the OMR to stop providing care and advise the safety manager that "outside medical care is necessary". Further, if the OMR feels that modified duty is necessary beyond the first day of care, the OMR must advise the safety manager of this opinion. The Manual does not state what happens from there. The Manual also notes that, if a worker request referral to a physician, the OMR must immediately stop care and refer the worker to an outside health care provider.

Review of Training Videos

Six training videos (of at least two-hour length each) were reviewed. These videos provide OMRs with training on functional anatomy, ergonomics, ergonomic applications in Amazon warehouses, principles regarding first aid treatment in AMCARE clinics, ergonomic technique assessments and problem-solving, and suggestions on coaching workers regarding ergonomic techniques and problem-solving. The instructor states that a primary purpose of the videos is to provide OMRs with "techniques to treat and prevent soft tissue injuries at Amazon". OMRs are advised to do a "full exam for each new injury". The exam includes:

- taking a thorough history;
- observing for swelling, discoloration or deformity; (The instructor notes that workers should be asked to take clothing off of the body part to be examined; for instance, if the complaint concerns the ankle, take off shoes and sock)
- palpating for tenderness;
- assessing range of motion; and
- performing circulation and neurological assessment.

The instructor notes that the OMRs should be able to do these examination procedures easily. The instructor then reviews first aid treatments, such as ice, biofreeze and home stretches. The instructor mentions a series of pamphlets that can be given to the injured worker on different types of injuries.

Review of AMCARE Medical Records

Many records from employee visits to AMCARE were reviewed. The records are electronic and have a number of fields, including an injury/illness description, incident type, body part, injury type, pain level, vital signs, assessment details, visual appearance of injury/illness, range of motion/motor/sensory, first aid treatment, home care suggestions and disposition. Demographic

the vast majority resolve with minimal intervention within several weeks (Coste-Black et al. 2010; Peigel et al. 2003). Based on the current literature, several occupational factors are associated with increased risk of LBP. A comprehensive review published by the National Institute for Occupational Safety and Health (Bernard 1997) concluded that work factors such as repetitive tasks, lifting/forceful movements, and awkward work posture all contribute to occupational MSDs.

The etiology of LBP is generally multifactorial and may be attributed to work or non-work sources. Given the physical demands of certain occupations, researchers have looked at a variety of risk factors associated with the development of LBP in the occupational environment including, but not limited to, lifting, pushing/pulling, posture, whole body vibration, and employment duration. Several systematic reviews on occupational LBP did not find an association with individual ergonomic factors, specifically lifting (Wai et al. 2010a), pushing or pulling (Rouffey et al. 2010), or carrying (Wai et al. 2010b). However, multiple studies reviewed by NIOSH indicate that the combination of risk factors confers the highest risk (Bernard 1997).

More recent studies have corroborated the finding that combining multiple ergonomic hazards increases the risk of LBP. In a case-control study of over 200 automobile production workers, lumbar shear forces (e.g., pushing/pulling in upright posture) and cumulative lumbar disc compression (e.g., lifting) conferred a statistically significant increased odds of 1.7 and 2.0, respectively, after adjusting for individual characteristics and psychosocial factors (Karr et al. 2001). And, in a prospective cohort study, increased risk was also observed (RR = 2.0-3.2) between absence from work due to LBP and trunk, flexion, trunk rotation and lifting, which are all common maneuvers in warehouse work (Hoogendoorn et al. 2002). Several studies have identified risk factors for musculoskeletal disorders (MSDs) in warehouse and manual material handling operations contributing, particularly, to back and upper extremity injuries (Denis et al. 2006; Kraus et al. 1997).

Similarly, job tasks in warehouse operations can significantly increase risk for upper extremity injuries. In particular, working above shoulder height, repetitive movements, pushing and pulling can all contribute to upper extremity injuries. In a large cross-sectional study of over 10,000 adults in a manual labor industry, there were statistically significant increased odds of neck and upper limb pain associated with repeated lifting (OR = 1.4), prolonged bending of the neck (OR = 2.0), and working with arms at or above shoulder height (OR = 1.5) (Sim et al. 2006). In a review article by Shanahan and colleagues, a study of over 900 participants showed an increase of 80-150 percent of physician-diagnosed shoulder disorders when consistently exposed to a combination of heavy lifting, working in awkward postures, and work involving vibration or repetitive movements (Shanahan et al. 2011).

Although OOMN was not asked to evaluate injury cases with regard to ergonomic hazards, it was impossible not to notice the many back and upper extremity/shoulder pain cases seen in AMCARE. The records did not discuss root causes for injuries. However, it is unclear how this information is being used to introduce interventions to prevent injuries. Evaluation of trends in not only the 300 logs but also the complaints and injuries seen in AMCARE would help to target problem areas and situations and, in turn, can be used to assess interventions. One of the OMRs' responsibilities is evaluation of injury statistics; however, the two interviewed OMRs

and the safety manager could not explain that this was being performed and, if so, how the data is being used. Finally, Amazon should consider forming a labor-management ergonomics team to investigate ergonomic hazards and institute ergonomic solutions to prevent musculoskeletal symptoms and injuries.

Medical Management Issues

The in-plant AMCARE First Aid Station provides immediate medical service to Amazon workers at the Robbinsville warehouse who have an injury or health complaint. The goals of this service include early intervention to either prevent an injury or limit the severity of the injury, referral to an outside health care provider when necessary either in an emergency situation or when first aid treatment is insufficient, and education of workers by the AMCARE staff on ergonomic techniques and problem-solving to prevent injuries. These are all laudable goals. However, there are several issues identified that may limit the achievement of these goals, raise concerns regarding supervision of AMCARE medical practice and may put workers and AMCARE staff at risk.

Although Amazon professes that only first aid care is provided in AMCARE, this is not accurate. Medical (or health) care, consisting of a clinical history, physical examination, assessment and management plan, is being performed by the OMRs in AMCARE. The choice of providing only first aid treatment does not make the care only first aid. First Aid is defined as "emergency care provided for injury or sudden illness before emergency medical treatment is available." (OSHA 2006). Merrim Webster defines first aid as "help given to a sick or injured person until full medical treatment is available" (<http://www.bmg.com/search/4-definition-of-first-aid&src=JE-SearchBox&FORM=EJDSK>, accessed 15 December 2015). Merrim Webster defines health especially by trained and licensed professionals" (<http://www.merriam-webster.com/medical/health%20care>, accessed 15 December 2015). The purpose of AMCARE services, as described in their video training, is "to treat and prevent soft tissue injuries at Amazon". OSHA points out in both the Recordkeeping standard (29 CFR 1904.7(b)(5)(iv)) and Best Practices Guide (OSHA 2006, page 9) that medical treatment may be provided in a first aid care situation and, conversely, first aid treatment may be provided in a medical care situation.

Clearly, the OMRs are providing medical care to Amazon employees. They are performing assessments and making decisions on disposition, whether it is to see a worker back in AMCARE, refer the worker to a physician or send the worker to the Emergency Department for immediate care. They are, in some cases, seeing workers for multiple days to weeks without referral to a healthcare provider for definitive evaluation and treatment. Medical care must be provided or supervised by a healthcare provider licensed to practice independently, per New Jersey State law. EMTs do not practice independently, and Amazon specifically states that the OMRs, although all licensed EMTs, are not practicing under their licenses. The Associate Care Policy indicates that there should be an "Occupational Medical Provider" for the facility but does not explain the occupational medical provider's responsibilities. The interviewed OMRs could not say who the occupational medical provider is, and the space where an occupational medical provider name and phone number was to be listed in the AMCARE Manual was blank. The OMRs are providing medical care without supervision. Two alternative views of this situation

inappropriate care at risk and the AMCARE staff at risk of working outside the scope of their license.

Kathleen M. Fagan, MD, MPH
Medical Officer
Office of Occupational Medicine
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are that the OMRs' supervisor, the safety manager, is practicing medicine without a license or that the OMRs are working outside the scope of their licenses, jeopardizing their ability to practice in their profession.

Recommendations

- Amazon should consult New Jersey State law regarding medical practice to determine the appropriate health care providers and supervisory structure for the care being provided in AMCARE.
- AMCARE should contract with a local Board Certified Occupational Medicine physician who can become familiar with the Robbinsville warehouse operations, job hazards and injuries. This physician can re-evaluate the AMCARE program at Robbinsville and make recommendations for appropriate staffing, structure, supervision and quality assurance.
- An occupational medicine physician can also provide on-going training for the AMCARE staff, regularly review their medical records, be available to provide guidance for the staff and oversee practice, review trends in symptoms and injuries with the safety manager and safety team, and support the ergonomics program.
- Specific issues to be addressed in AMCARE include documentation, earlier referral when symptoms are not improving, and decision-making in specific cases.

Summary and Conclusions

OSHA's inspection of Amazon Fulfillment Services Center in Robbinsville, NJ identified multiple worker injuries not documented in the OSHA 300 logs. A review of the medical records and 29 CFR 1904.5(a) indicate that, within a reasonable degree of medical certainty, 26 injury cases since 01 July 2015 are work-related. Furthermore, these 26 cases received treatment and/or work restrictions that meet recordkeeping criteria and should have been recorded on the OSHA 300 logs.

Many musculoskeletal disorders, particularly back, shoulder and other upper extremity injuries, were noted during review of Amazon workers' medical records. Amazon warehouse workers are exposed to a number of ergonomic hazards. Amazon should consider forming a labor-management ergonomics team to investigate ergonomic hazards and institute ergonomic solutions to prevent musculoskeletal symptoms and injuries.

Although Amazon claims to provide only first aid treatment at their in-plant medical unit ("AMCARE"), Amazon training materials clearly document training on how staff should deliver medical care by providing information on descriptions and mechanisms of injuries and illnesses, listing treatment options, detailing physical examination elements, and emphasizing important information to obtain in the patient histories. The AMCARE staff are performing medical care whenever they take a patient history, perform a physical examination, make a clinical assessment and form an injury or illness management plan. AMCARE's structure, staffing, and supervision are inappropriate for the level of medical care being provided. This puts the workers receiving

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U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1074833
Inspection Date(s): 07/01/2015 – 12/07/2015
Issuance Date: 12/21/2015



Citation and Notification of Penalty

Company Name: Amazon Fulfillment Services
Inspection Site: 50 New Canton Way, Robbinsville, NJ 08691

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

29 CFR 1904.4(a): The employer did not record each work-related fatality, injury or illness case that resulted in the general recording criteria on the OSHA Form 300 or equivalent.

Throughout facility: On or about 7/1/15 until 11/1/15 the employer did not record the following workplace injuries or illnesses on the OSHA Form 300 or equivalent for the calendar year 2015:

- a) Pick to consolidate: On 8/9/15 an employee removed a full tote from the pick conveyor and developed pain in the left shoulder and neck. The employee was placed on light duty/work restriction, prescribed home exercises and prescribed medication.
- b) B-mod southside VMC: On 9/16/15 an employee suffered right shoulder pain after pushing a juice cart onto an elevator that had gotten stuck on the floor space. The employee was placed on light duty/work restriction and prescribed home exercises and medication.
- c) Pack singles: On 9/11/15 an employee developed pain in the neck and upper back after packing boxes in a restricted space. The employee was placed on light duty/work restriction, prescribed medication and prescribed home exercises.
- d) Gift wrap center: On 7/14/15 an employee tripped over a cart and hit her head on the floor. The employee was prescribed medication, missed two days of work and was placed on light duty/work restriction for five days.
- e) Pick area: On 7/15/15 an employee was lifting a box and felt pain in her left wrist. The employee was placed on light duty/work restriction and assigned physical therapy treatment.
- f) Warehouse: On 7/16/15 an employee was unloading a trailer and was hit in the nose with a box weighing approximately 15-20 pounds. The employee was placed on light duty/work restriction for three days, prescribed home exercises and had his wound glued closed.
- g) EWR4: On 7/18/15 an employee was loading a heavy item on a low cart and felt his knee pop. The employee was placed on light duty/work restriction from 7/27/15 until 9/1/15 when he was placed out

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

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1074833
Inspection Date(s): 07/01/2015 – 12/07/2015
Issuance Date: 12/21/2015



Citation and Notification of Penalty

Company Name: Amazon Fulfillment Services
Inspection Site: 50 New Canton Way, Robbinsville, NJ 08691

of work.

h) Induct AFE1: On 7/19/15 an employee was lifting a box and felt a pulling sensation in her left shoulder. The employee was given a prescription, placed on light duty/work restriction, prescribed physical therapy and placed out of work on 8/13/15.

i) Stow 3102 a-module: On 7/2/15 an employee developed lower back pain after stowing items onto a juice cart. The employee was placed on light duty/work restriction and prescribed medications.

j) B3 pick station 300 side: On 8/12/15 an employee was lifting an item out of a bin and developed back pain. The employee was placed on light duty/work restriction, prescribed medications and prescribed home exercises.

k) Pick: On 8/19/15 an employee was lifting a box and got pain in his left wrist. The employee was placed on light duty/work restriction, was given a prescription and prescribed occupational therapy.

l) On 8/24/15 an employee was lifting a box and turned and felt a pop in the right knee. The employee was given a prescription and was placed on light duty/work restriction for 14 days and then placed out of work on a medical leave of absence.

m) AFE to Pick: On 8/24/15 an employee was lifting a box and it began to fall. While trying to catch the box the employee felt a pull and heard a pop in the left shoulder that created pain that led into the left arm. The employee was placed on light duty/work restriction for 56 days, was given a prescription and was prescribed physical therapy.

n) Warehouse: On 9/3/15 an employee was carrying a box and ran into a wall hitting her right chest and shoulder. The employee was placed on light duty/job restriction, had lost work time and was prescribed physical therapy.

o) Pick: On 9/25/15 an employee sustained a left elbow injury after pulling, pushing and lifting totes. The employee was placed on light duty/work restriction for five days, placed on home exercises and prescribed medication.

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- p) On 10/8/15 an employee was pushing a cart and felt a pop in his knee which later gave out. The employee was placed on light duty/work restriction and was prescribed physical therapy.
- q) Pack singles: On 9/25/15 an employee was unpacking a tote and developed pain in her shoulder and back. The employee was placed on light duty/work restriction and was prescribed physical therapy.
- r) Scan Verify AFE: On 8/28/15 an employee was struck in the head by a package. The employee was placed on light duty/work restriction for 19 days.
- s) RSR: On 8/17/15 an employee was stepping off of an order picker and sprained her right ankle. The employee was placed on light duty/work restriction for approximately one month, prescribed physical therapy and prescribed medication.
- t) Chuting/Scan Verify AFE: On 8/18/15 an employee was taking items out of a chute and felt pain in her right hand that resulted in swelling in her right hand and arm. The employee was placed on light duty/work restriction for approximately three weeks.
- u) Induct: On 8/12/15 an employee was lifting a heavy box out of a tote and developed back pain. The employee was placed out of work, placed on light duty/work restriction for approximately one month and prescribed physical therapy.
- v) Shipping dock: On 8/14/15 an employee picked up a heavy box to carry it to a pallet and developed back pain. The employee was prescribed medication, placed on light duty/work restriction for approximately one month, prescribed home exercises and placed out of work for 15 days.
- w) Pick: On 7/27/15 an employee was picking pods and developed pain in the left shoulder. The employee was placed on light duty/work restriction, prescribed medication and physical therapy.
- x) B-mod south 2nd floor: On 9/6/15 an employee was performing Water Spider duties and developed lower back pain. The employee was prescribed medications.
- y) Pick: On 8/31/15 an employee developed back pain after catching a falling case of water. The

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employee was placed on light duty/work restriction for approximately two months and prescribed home exercises, physical therapy and medication.

z) AFE 1 packing wall 61: On 8/25/15 an employee developed lower back and groin pain. The employee was placed on light duty/work restriction and was prescribed medication.

NOTE: IN ADDITION TO ABATEMENT CERTIFICATION, THE EMPLOYER IS REQUIRED TO SUBMIT ABATEMENT DOCUMENTATION FOR THIS ITEM. FAILURE TO COMPLY WILL RESULT IN AN ADDITIONAL PENALTY OF \$1,000 IN ACCORDANCE WITH 29 CFR 1903.19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

01/13/2016
\$7000.00



Paula Dixon-Roderick
Area Director

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

U.S. Department of Labor

Occupational Safety and Health Administration
Marlton Area Office
Marlton Executive Park – Bldg. 2, Suite 120
701 Route 73 South
Marlton, NJ 08053
Phone: (856) 596-5200 Fax: (856) 596-5201
OSHA Website Address: <http://www.osha.gov>



January 6, 2015

Mr. Jeff Bezos, President & CEO
Amazon Headquarters
410 Terry Avenue
North Seattle, Washington, 98109

Dear Mr. Bezos,

An inspection of the workplace at Amazon Fulfillment Center at 50 New Canton Way Robbinsville, New Jersey was performed on or about July 1, 2015. The AMCARE in-plant medical unit was reviewed as part of the inspection. AMCARE provides immediate medical service and primarily first aid treatment to Amazon workers at the Robbinsville warehouse who have an injury or health complaints. The goals of this service include early intervention to prevent an injury or limit the severity of the injury, provide referrals to an outside health care provider when necessary either in an emergency situations or when first aid treatment is insufficient, and to educate workers on ergonomic techniques and problem-solving to prevent injuries. OSHA's investigation identified the following hazard:

After reviewing relevant facts pertaining to this case, it has been determined that AMCARE is providing medical care beyond first aid. First Aid is defined as "emergency care provided for injury or sudden illness before emergency medical treatment is available" (OSHA 2006). Medical (or health) care, consisting of a clinical history, physical examination, assessment and management plan, is being performed by the Onsite Medical Representatives (OMRs) in AMCARE. Medical care must be provided or supervised by a healthcare provider licensed to practice independently, per New Jersey State law. EMTs do not practice independently, and Amazon specifically states that the OMRs, although all licensed EMTs, are not practicing under their licenses. Review of the "Amazon Associate Care Policy" states that the OMRs are required to maintain their EMT licenses/certifications, but also states that "Amazon.com is not licensed by the Department of Health, therefore OMRs are not able to function under the full capacity of their licensure/certification." AMCARE personnel were providing medical care beyond what is allowed by their licensing and certification without the supervision of a board certified qualified medical professional licensed to practice independently.

At this time the Occupational Safety and Health Administration will not issue a citation for providing medical care beyond first aid, which is an issue that would be addressed under the General Duty Clause of the Occupational Safety and Health Act of 1970.

However, in the interest of workplace safety and health, I recommend you voluntarily take reasonable steps in addressing this issue. The following recommendations are actions which could be taken to enhance the safety of your employees.

- Amazon should consult New Jersey State law regarding medical practice to determine the appropriate health care providers and supervisory structure for the care being provided in AMCARE.
- AMCARE should contract with a local Board Certified Occupational Medicine physician who can become familiar with the Robbinsville warehouse operations, job hazards and injuries. This physician can re-evaluate the AMCARE program at Robbinsville and make recommendations for appropriate staffing, structure, supervision and quality assurance.
- An occupational medical physician can also provide on-going training for the AMCARE staff, regularly review their medical records, be available to provide guidance for the staff, review trends in symptoms and injuries, and be involved in the ergonomics program.
- Specific issues to be addressed in AMCARE include documentation, earlier referral when symptoms are not improving, and decision-making in specific cases.

To evaluate your progress in addressing these hazards, please send me a letter detailing the actions you have taken or plan to take to address our concerns by Friday February 19, 2016. The Marlton Area Office will follow up at a later date to evaluate any newly implemented or enhanced engineering controls, administrative controls, policies, procedures, training or other measures taken to address the hazards identified above.

We appreciate your attention to these areas of concern. If you have any questions, please feel free to contact Kristine Logue, Assistant Area Director, at (856)596-5237.

Respectfully,



Paula Dixon-Roderick
Area Director

U.S. Department of Labor

Occupational Safety and Health Administration
 Marlon Area Office
 Marlon Executive Park – Bldg. 2, Suite 120
 701 Route 73 South
 Marlon, NJ 08053
 Phone: (856) 596-5200 Fax: (856) 596-5201



OSHA Website Address: <http://www.osha.gov>

Kyle Sullivan
 Senior Manager of Environmental, Health and Safety Governance
 Amazon NAFC
 345 Boren Ave North
 Seattle Washington, 98109

Dear Mr. Sullivan,

An inspection of the workplace at Amazon Fulfillment Center 50 New Canton Way Robbinsville, NJ 08619 was performed on or about July, 2015 in the pick area. A review of your OSHA 300 logs for the years 2014 and 2015 and the first aid notes and logs shows a number of injuries or illnesses that are consistent with exposure to ergonomic risk factors. Observations were made and interviews were taken over the course of several days. Video documentation was obtained and reviewed and several potential hazardous situations were identified.

In the interest of workplace safety and health, I recommend you voluntarily take reasonable steps to address and reduce or eliminate the issue of ergonomic stressors to which your employees are exposed. The following recommendations are actions which could be taken to enhance the safety of your employees.

Hazards identified during the visit in addition to some potential solutions to those hazards are discussed in greater detail in the sections below:

Task Description

- This warehouse uses picking stations where employees select items from pods that are 80 inches in height when full and 54 inches in height when filled half way. Items on the top of the pod compartments are not to exceed 10 pounds and those on the lower levels can weigh up to 29 pounds. Products are placed into one of several totes that can extend up to 96 inches from the location of the pod.



Wide band retaining straps are used to keep products from falling out of the pod compartments.

- Employees also pick items that are stacked on pallets. The pallets are 24 inches above the ground level and products are placed into bins that extend up to 96 inches from the pallet. Product weight does not exceed 29 pounds. Employees sometimes have to reach across the pallets to retrieve items.
- Employees performing water spider activities collect the bins from the picking station, stack them onto tote limos and unload them onto an automatic conveyor system. The totes are located on a conveyor that is 30 ½ inches above the ground level and the tote limo is 8 inches above the ground. The limo is not height adjustable. Totes can weigh up to a maximum of 40 pounds and can be stacked up to the top of the limo handle, which is 52 ½ inches from the base of the cart. The length of the cart is 99 inches.



Potential Hazards

- These activities described above force employees to reach down to access items from low areas and to perform elevated reaches to access items from upper bin areas for four or more hours per day. Repeated bending at the waist to access loads at low locations is stressful even if there is not load in the hand as this forces the worker to bend at the waist and to support the weight of the upper body. Bending over also forces the load away from the body especially if the knees are bent and the farther the load is away from the body the more the stress on the low back is increased. Reaching overhead is often a problem for the shoulder since the arms are in a weaker posture and there is an increased chance of imbalance of the load which could result in items falling and striking the employee.
- Employees are required to stand during the entire work shift, which is up to 10 hours four days a week and sometimes includes mandatory overtime shifts. Employees receive only two 15 minute breaks and a 30 minute lunch. Prolonged standing causes blood to pool in the feet and legs causing increased pressure and increasing the rate of fatigue. Anti-fatigue mats are provided at the pick stations, but do not cover the entire work area.
- Manipulating the retaining straps on the individual compartments in the pods require forceful repeated exertions. This can lead to increased muscle fatigue and injury. The bones of the hands and arms are connected by ligaments, tendons and muscles and as a result the repeated forceful movements of the fingers can lead to injuries of the hand as well.

At this time, we do not feel that it is appropriate to issue a citation but in the interest of workplace

safety and health, I recommend that you voluntarily take the necessary steps to materially reduce or eliminate your employees' exposure to the conditions listed above.

Potential Solutions

- Stock frequently picked products on the pods between 30 to 50 inches above ground level to reduce bending and reaching above shoulder height.
- Utilize smaller retaining straps to reduce the amount of force that has to be used to access products stored in the compartments of the pods.
- Consider providing a choice of shoe inserts for employees who stand for long periods of time.
- Consider providing shoe inserts to employees conducting water spider duties.
- Attempt to keep all loads at a height of between 30 and 50 inches to reduce the number of deep torso flexions and reaches above shoulder height. This can be accomplished for Water Spider activities by providing a height adjustable cart. This can also be accomplished for pallet pickers by limiting the height of the products on the pallet or providing adjustable height work stations.
- Rotate employees through jobs throughout the day. Tasks should allow employees to use different body positions and motions to reduce concentrated repetitive movements.
- Consider providing an extra break throughout the shift to allow employees to rest.
- Provide chairs at work stations to allow employees to rest during breaks rather than walking to the break room, which can take several minutes and reduce the period of rest.
- Reduce reaches at the pallet picking stations. Provide and require the use of hooks, pick sticks or other devices to pull products closer to the body. Design the Kiva system to rotate at the pallet pick station to place items in front of employees.
- Implement the ergonomic policy and procedures manual developed by the company including, performing biomechanical screening assessments and ergonomic risk assessments to measure ergonomic risk to workers and analyze safety incident data for jobs or processes that would require further assessments to measure ergonomic risk.
- Conduct a trend analysis using the number of first aid visits to Amcare involving musculoskeletal disorders. Use this information to determine what job functions require an ergonomic intervention. Measure the success of these interventions to determine their effectiveness
- Form a labor-management ergonomics team to investigate ergonomic hazards and institute ergonomic solutions to prevent musculoskeletal symptoms and injuries.

Your OSHA-300 records confirmed that employees have experienced injuries and illnesses to the back, shoulder, and lower extremities that are consistent with ergonomic risk factors observed in your facility.

You may voluntarily provide OSHA with progress reports on your efforts to address these conditions. Under OSHA's current protocol, we may return to your worksite in approximately one year to further examine the conditions noted above.

In the interest of workplace safety and health, I would like you to consider the recommendations we

are making and to voluntarily increase your current efforts to materially reduce or eliminate your employees' exposure to the hazards listed above. While some hazards may be materially reduced or eliminated by implementing a single means of abatement, in most cases a process using the well-established elements of a safety and health program, will provide the most effective method of addressing these ergonomic risk factors. These components include accurate injury and illness recognition and record keeping, work place analysis of jobs and tasks sufficient to assess the hazards and propose steps for their abatement, development of engineering, administrative and work practice controls or actions to materially reduce the hazards, and education and training of workers and management such that they can recognize and report hazards at their earliest stages, and fully understand and comply with proposed work practices and abatement techniques. Additionally, the commitment of both management and employees are important to the success of a program, as is a process to continually evaluate the effectiveness of your interventions.

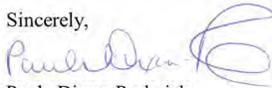
Attached is a list of available resources that may be of assistance to you in preventing work-related injuries and illnesses in your workplace.

- OSHA's Internet web page on ergonomics.
- OSHA's Safety and Health Program Guidelines
- Free consultation, including onsite visits, from OSHA's 24(d) on site consultation
- Free publications on ergonomics from the National Institute Of Occupational Safety and Health (1-800-35-NIOSH or <http://www.cdc.gov/niosh/homepage.html>); Elements of Ergonomics Programs (Pub #97-117)
- California-OSHA's free publication: *Easy Ergonomics* (1-800-963-9424 or www.dir.ca.gov)
- Universities/colleges with industrial engineering and/or ergonomics programs
- Your trade association

In addition, loss control services from your insurance carrier may be available.

If you have any questions, please feel free to call Paula Dixon-Roderick at (856) 596-5200.

Sincerely,



Paula Dixon-Roderick
Area Director

Occupational Safety and Health Administration (OSHA)
Directorate of Technical Support and Emergency Management (DTSEM)
Office of Occupational Medicine and Nursing (OOMN)
Medical Review

Inspection # 1272166

This report is in response to a request from the Marlton Area Office to review medical records from Amazon Fulfillment Center in Florence, NJ for the purpose of evaluating the employer's medical management program for work-related injuries and illnesses. The specific questions to be addressed are: Does the onsite workplace clinic, Amcare, provide more than first aid treatment, resulting in recordkeeping violations? And is medical mismanagement occurring, resulting in worse outcomes for workers?

SUMMARY AND CONCLUSIONS

OOMN's review of work-related injuries of employees from Amazon Fulfillment Center in Florence, NJ identified three recordkeeping cases (two from Amazon's onsite records and one from offsite records) and four medical mismanagement cases with dates of injury from 09/20/2017 to 10/31/2017. OOMN identified several more potential recordkeeping and medical mismanagement cases where more information, such as medical records and employee interviews, would be helpful in the determination.

Although Amazon claims to provide only first aid treatment at their in-plant medical unit ("Amcare"), first aid care is intended to be temporary and immediate. By developing clinical assessments, forming injury management plans, scheduling employees for follow-up, providing medical advice, and making referral decisions, Amcare staff are providing medical care beyond the scope of first aid. Further, the Amcare staff are providing this care without appropriate medical oversight by a physician or other appropriately licensed provider. This practice puts the workers receiving inappropriate care at risk and the Amcare staff at risk of working outside the scope of their licenses. Amazon has not instituted any of the medical management recommendations made in OSHA's 2015 inspection at Amazon's Robbinsville, NJ facility.

Sources of Information

- Medical records provided by Amazon – see description below;
- Medical records from several outside providers, including Concentra and Robert Wood Johnson University Hospital;
- OSHA 300 logs and 301's for 2016 and 2017;
- Whistleblower statement.

- Interviews of Amazon employees and management obtained by the Compliance Safety and Health Officer (CSHO);
- Phone interviews with two Amcare employees from the Florence facility;
- Review of the Amcare Associate Care Manual and Associate Care Policy from OSHA's 2015 Robbinsville Amazon inspection;
- Discussions with the Marlton Area Office staff involved in this inspection.

Background

Amazon.com, Inc. is the largest internet-based retailer in the United States with 80 fulfillment centers (warehouses) worldwide (https://www.amazon.jobs/en/business_categories/fulfillment-operations). Fulfillment centers house inventory and pack products for shipment. Although some operations are automated, employees do perform manual work with and without assistance. According to the job description of an Amazon fulfillment associate, the worker must be able to lift up to 49 pounds, stand/walk for up to 10-12 hours, able to frequently push, pull, squat, bend and reach, and safety climb and descend stairs, and operate powered equipment (e.g., forklifts, pallet jacks, cherry pickers, etc.) among other tasks.

The Florence, NJ location began operations in September, 2016. This location is called a "cross dock" as it receives products from manufacturers and fills orders and ships to other Amazon warehouses that then fill and ship orders to consumers. The Florence facility employees approximately 1600 Amazon employees, called Amazon associates (AA), and 700 temporary employees from Integrity, called Integrity associates (IA). There are day shifts from 7am-4:30pm and night shifts from 7:30pm-4:30am. Employees work four days per week in three different schedules: Sunday through Wednesday is called "front half"; Wednesday through Saturday is called "back half"; and Monday-Tuesday-Thursday-Friday is called "tonut schedule".

There is a site safety manager, a daytime safety supervisor, and a recently-hired night safety supervisor. There are 4-5 safety specialists who investigate workplace injuries and incidents. An onsite medical unit, called "Amcare", is available for employees to access on all shifts. Five Emergency Medical Technicians (EMTs) staff the medical unit so that at least one EMT is available during a shift. The EMTs are referred to as On-Site Medical Representatives (OMRs).

OSHA received a complaint about medical mismanagement through a whistleblower at the facility. An inspection was opened on October 24, 2017.

Previous OSHA Inspection at another Amazon warehouse in New Jersey

OSHA inspected the Amazon warehouse in Robbinsville, NJ in July of 2015. The onsite Amcare medical unit operated in much the same fashion as described above. In fact, some of the EMTs from the Robbinsville facility transferred to the Florence facility when it opened. In the 2015 Robbinsville inspection, Amazon was cited for recordkeeping

violations and received two Hazard Alert Letters (HALs)—one on ergonomic hazards and the other on medical mismanagement. The medical mismanagement HAL noted that EMTs were working outside their scopes of practice, providing medical care, without supervision. OSHA made the following recommendations:

- Amazon should consult New Jersey State law regarding medical practice to determine the appropriate health care providers and supervisory structure for the care being provided in Amcare.
- Amcare should contract with a local Board Certified Occupational Medicine physician who can become familiar with the Robbinsville warehouse operations, job hazards and injuries. This physician can re-evaluate the Amcare program at Robbinsville and make recommendations for appropriate staffing, structure, supervision and quality assurance.
- An occupational medicine physician can also provide on-going training for the Amcare staff; regularly review their medical records, be available to provide guidance for the staff; review trends in symptoms and injuries, and be involved in the ergonomics program.
- Specific issues to be addressed in Amcare include documentation, earlier referral when symptoms are not improving, and decision-making in specific cases.

Interviews and Statements

Whistleblower Statement

The whistleblower statement described several incidents and stated that management is not reporting or recording injuries. In fact, one incident occurred during a visit by a corporate investigative team doing an audit of the Florence facility. An IA suffered a cut to the head, and there was an attempt by supervisors to hide the injured worker from the audit team by prohibiting the IA from being seen in Amcare. However, the IA was eventually seen in Amcare for a “golf ball size hematoma and laceration” and referred to an outside clinic. The IA said that he was told not to report the injury because a supervisor would be mad and there is a quota of “no injuries”. Several other incidents, including several head injuries, are noted where workers are discouraged by supervisors from reporting injuries and not brought to Amcare for evaluation and treatment. One case is described where a worker was initially prevented from getting a tetanus shot for a puncture wound from a nail (eventually this worker did get outside treatment and a tetanus shot). Another incident is described where work restrictions from the worker’s doctor were not being followed. Finally, the statement notes that “there is no doctor that oversees Amcare”, although there is a phone service (US Health Force) that the OMR can call for advice.

CSHO Interviews

Review of handwritten notes of interviews by the CSHO on October 24 and 25, 2017 revealed the following. An incentive program relies on productivity and attendance metrics. Workers can go to Amcare and get band-aids and over-the-counter (OTC) medication. Workers can contact OMRs by radio for assistance. Workers have been discouraged from reporting injuries, particularly since the “FAIR scorecard” was introduced. The acronym “FAIR” stands for First Aid Incident Rate and supports rate comparison among different areas or departments. A number of people have access to the “Gensuite” computerized injury records and make changes or deletions. The following are some of the specific incidents noted in the interviews:

- Supervisor told associate “can’t send you to Amcare because [manager] wants to hit quota”.
- Supervisors tell associates they have pre-existing conditions [implying that their symptoms are not work-related];
- Employee ran over another employee’s foot with a pallet jack and was told by the supervisor not to report the incident;
- Manager argued that an injury was not work-related and “can delete witness statements”;
- An email said that there are missing files in Gensuite and that new files must be created;
- Employees are being harassed and were refused ability to see OMR for follow-up;
- A supervisor was screaming at two [injured] associates and threatening them with their jobs;
- An OMR was threatened by management for calling an ambulance for a worker who was having a nosebleed and anxiety attack due to an injury;
- Employee injured when boxes fell on head; was not taken to Amcare until re-enacted injury; employee felt harassed;
- Supervisors pressure workers to say work-related injury happened at home;
- Safety manager has said not to enter certain cases [in Gensuite] as work-related;
- Rather than sending a worker to Amcare, some supervisors will get OTC medication from the dispenser at Amcare and give to injured worker;
- Worker with eye injury was talked out of reporting it by the supervisor;
- Manager wanted to record an injury as a near miss;
- Manager wanted to change injury dates in Gensuite.

OMN Interviews of Two EMTs

On March 8, 2018, Dr. Fagan and CSHO Jessica McKinnon interviewed one of the Florence EMTs by phone. He has been working with Amazon for two and one half years. Before working at Amazon, he worked for an ambulance service. He has had no formalized occupational health training. His supervisor at Amazon is the safety manager, who has no clinical training. He was confused and could not answer when Dr. Fagan asked if he was working under a physician’s license. He follows the Amcare policies on

treating employees. He believes this policy was written by the Amcare doctor, but he doesn't know who that is and has never met him/her. He has called the Physician Health Line (PHL) a couple times for an allergic reaction so that he could be given an order to provide someone with an anti-histamine. He has not called the PHL for any other reason.

For musculoskeletal disorders, such as back pain, he will see someone up to two weeks and provide first aid treatments, such as heat, cold and non-steroidal anti-inflammatory medication (NSAIDs). If the pain level is three or higher, he will ask if they want to file workers compensation (comp). If not, he will see them for one more week (21 days total) and again ask if they want to file workers comp. If not, the case will be closed and he will advise the employee that he can no longer see them. Employees make their own decisions about whether or not to take the over-the-counter medication offered. They also make their own decisions about referrals to the emergency department or doctor. The EMTs record the visit first on paper and then enter the information into GenSuite, including the exam and treatment. If the visit is work-related, a First Report of Injury form is filled out. For non-work-related visits, a different form is filled out. He does not have the authority to write work restrictions but will talk to a supervisor if he thinks work is causing the worker's symptoms.

The telephone interview of the second EMT was performed on March 16, 2018. She has worked at Amazon since November of 2015, first at the Robbinsville facility and then at Florence when it opened. She also works at the [REDACTED], where she works under a physician's license. However, since she is not working under her EMT license at Amazon, there is no physician oversight. She does believe a physician has been hired to review their protocols. She thinks the protocols haven't been reviewed since 2014. She doesn't know the name of the new physician. Regarding training, she was not formally trained by Amazon when she was hired but has done online training on a regular basis. Her EMT training and continuing education covers very little musculoskeletal care, other than "wrap and go". She said the work at Amazon is very different from her EMT training, and she wonders why they require EMTs for the job.

Her supervisor is the safety manager, who has no clinical training. The safety manager relies on the EMT to determine if the worker should go to the ED or see a doctor through workers comp. The EMT said she will advise the worker if she thinks they should go to the ED or a doctor, but it is the worker's choice. She has only used the PHL once for an allergic reaction so she could get approval to give a worker Benadryl. She said managers and supervisors are trained to use the PHL when an Amcare EMT is not onsite. Audits are done annually regarding policies. No one evaluates or audits the clinical care at Amcare. The First Report of Injury forms are filled out by the workers. There is a language line if a worker does not speak English. In the past, some supervisors were preventing workers from going to Amcare or reporting injuries. However, she said this was mainly due to one supervisor, who is now gone. She believes this practice has stopped since that supervisor left. She believes there is some inconsistency among Amcare facilities on what is deemed work-related versus non-work-related. She thinks there should be more consistency and hopes the new medical director will address this.

Medical Records Review

Amazon provided 59 PDFs of medical records for a total of 16,275 pages of records. The PDFs were divided into two categories – onsite Amazon records and workers comp records. Onsite records included First Report of Injury (FROI) forms and "GenSuite" records. GenSuite (<https://www.gensuite.com/>) is a software program that Amazon uses for several functions, including tracking of injuries and illnesses, safety investigations, OSHA recordkeeping, and documentation of medical and first aid treatment in Amcare. Fifteen onsite PDFs were provided, three of which consisted of pages of handwritten FROI forms and the other 12 of which were copies of the electronic GenSuite records. The 3 FROI PDFs were in no particular order, either chronological or alphabetical, and they were unsearchable. The other 12 PDFs were in chronological order dating from April 2017 through October 2017.

The 44 workers compensation PDFs, each containing several hundred pages, consisted of workers compensation forms, paperwork, emails, and some medical treatment records (MTR) from emergency departments and physicians' offices. These PDFs were not searchable and were not in any discernable chronological or alphabetical order. No list or table of contents for any of the PDFs was provided.

All 59 PDFs (16,275 pages) of medical records were hand-searched to identify employee injuries with a date of injury (DOI) of September 20, 2017 or later ("late-relevant"). Nine of the 15 onsite Amazon record PDFs contained date-relevant employee injuries, and five of 44 workers compensation record PDFs contained date-relevant information. No PDFs contained employee injuries for DOI's after October 31, 2017.

A master database of employee injuries, with DOI's of September 20, 2017 through October 31, 2017, was created. The database includes the employee name, DOI, type of injury, body part, mechanism of injury, Amcare treatment details, number of Amcare visits, date of first external medical visit, number of days away from work, whether the injury is on the 300 log, number of restricted work days, job transfer, medical treatment details, and if the injury is noted to be a workers compensation case. In a number of cases, information on an injury was found in multiple PDFs. When possible, PDFs were reviewed by two staff members to ensure completeness.

Results of Medical Records Review

One hundred and thirty-one (131) unique employee injuries were identified between September 20, 2017 and October 31, 2017. Nineteen of the 131 employee injuries were recorded on the 300 log, and 112 were not. The most common injuries were minor skin injuries including abrasions, lacerations, and contusions (27%); upper extremity sprains/strains (24%); back pain/strain (15%); and lower extremity sprains/strains (10%). Seven eye injuries and five head injuries also occurred. The majority of injuries occurred during lifting (59%) or being struck by a falling or moving object (15%).

Table 2. Possible Recordkeeping Violations

Case Code	DOI	Injury	Mechanism of Injury	Recordkeeping Issue	Missing M/R
3	9/20/17	Forehead laceration, contusion	Struck by	EE3 sought outside medical treatment; concussion, medication / other treatment	MTR FROI
4	9/22/17	Back pain	Lifting	EE4 sought outside medical treatment; *meds/PJ	MTR
10	10/12/17	Left wrist pain	Lifting	EE10 brought in a rigid splint to wear at work. Unclear from records if OMR advised EE10 to continue wearing splint.	
15	10/24/17	Right Knee Pain, possible aggravation of underlying condition	Lifting	EE15 sought outside medical treatment; *medication or other recordable treatment	FROI MTR
17	10/27/17	Laceration, Thumb	Cut with a safety knife while opening box	Records do not indicate what treatment was provided in Amcare and whether or not EE17 was referred to outside provider; *stitches	FROI ?AR ?MTR
21	10/29/17	R wrist pain and bump (possible ganglion cysts)	Lifting	Records indicate that worker filed workers comp and planned to see outside medical. *medication or other recordable treatment.	FROI MTR

FROI=First report of injury form

Table 3. Medical Mismanagement Cases

Case Code	DOI	Injury	Mechanism of Injury	Medical Management Issue	Missing M/R
9	10/8/17	Epicondylitis Right Elbow; Cervical radiculopathy	Lifting	OMR did not refer to higher level provider and did not call PHL; applied heat to an acute injury. EE9 was off work for prolonged period.	Some MTR
11	10/15/17	Foreign Body and Corneal Abrasion, Right Eye	Dust, wood flew into eye while moving pallets	OMR did not immediately refer worker to eye doctor for a 2-day history of eye pain; EE11 sought treatment on own, had foreign body removed, suffered a corneal abrasion and was off work for	MTR

Employee injuries not documented on the 300 log were reviewed to determine whether or not they met recordkeeping criteria as outlined in 29 CFR 1904. Two cases were identified that should have been entered on the 300 log but were not (Table 1), and six cases are potential recordkeeping cases but more information is needed (Table 2).

Four cases were identified for medical mismanagement (Table 3), and nine cases are potential medical mismanagement cases (Table 4). All four medical mismanagement cases resulted from poor decision-making by the OMR, specifically not referring the employee to a higher level provider for definitive evaluation and treatment. In addition, the OMR did not follow AMCARE first aid treatment protocols, standard first aid practices and/or EMT practices for these injuries. All cases resulted in the employee being off work for a prolonged period.

An additional table (Table 5) lists nine cases where managers' behavior / interference led to poor medical care. These cases include incidents where managers made inappropriate medical disposition decisions or obstructed an employee's access to appropriate medical care, for instance by pressuring an employee to take voluntary time off (VTO) rather than send the employee for outside medical evaluation.

It is important to note that OOMN was hampered in their ability to evaluate these cases because of the extensive missing information, including Amcare records (AR) and outside medical treatment records (MTR). A better understanding of each case would be gained from interviewing the employee involved.

Table 1. Recordkeeping Violations

Case Code	DOI	Injury	Mechanism of Injury	Recordkeeping Issue	Missing M/R
1	10/19/17	Back, R hip strain	Lifting	Work-related injury that results in days away from work; per WC notes "went to the ER...written out of work until 10/27/17"	AR MTR
2	10/22/17	Low back pain	Lifting	Work-related injury requiring medical treatment beyond first aid; per Amcare notes "received 600mg of ibuprofen from their ER visit"	MTR

AR= Amcare records; MTR= medical records; MTR=medical treatment records

19	10/28/17	Foreign body, Left eye with eye irritation	opening box Rock salt dust in eye	EE17 was referred to outside provider or given tetanus shot Records do not indicate treatment provided in Amcare, do not indicate if eye was flushed, do not indicate if referred to eye doctor for evaluation	FROI ?AR ?MTR
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Table 5. Managerial Interference Cases

Case Code	DOI	Injury	Mechanism of Injury	Managerial Interference Issue	Missing MTR
2	10/22/17	Low back pain	Lifting	OMR stated managers pushed to call injury non-work-related	MTR
4	9/22/17	Back pain	Lifting	EE4 received two "warnings" during this time - "discouraging worker from seeking medical treatment"	MTR
9	10/8/17	Epicondylitis Right Elbow, Cervical radiculopathy	Lifting	Management obstructed appropriate care by denying workers comp for 2 wks, leading to prolonged recovery	Some MTR
10	10/12/17	Left wrist pain	Lifting	Possible interference. EE10 took VTO and Amcare notes state "injury resolved", "managerial pressure to take VTO"	
12	10/19/17	Lumbar strain, right hip bursitis, right leg radicular syndrome	Repetitive bending, lifting, squatting	Management obstructed appropriate care by pressuring worker to take VTO rather than sending worker to emergency room	MTR
14	10/24/17	Head / Neck Injury	Struck by	Records suggest that management made inappropriate medical management / disposition decisions on DOI	?MTR
15	10/24/17	Right Knee Pain, possible aggravation of underlying condition	Lifting	OMR not onsite on DOI; management inappropriately making medical management / disposition decisions.	FROI MTR
18	10/27/17	Right wrist pain	Repetitive motion	Management discouraged worker from reporting injury or seeking treatment with Amcare.	
19	10/28/17	Foreign body, Left eye with	Rock salt dust in eye	Records do not indicate treatment provided in Amcare	FROI ?AR

12	10/19/17	Lumbar strain, right hip bursitis, right leg radicular syndrome	Repetitive bending, lifting, squatting	prolonged period. Seen in Amcare 3 times in same shift for worsening pain and tingling. OMR did not refer to higher level provider and did not call PHL. OI work for prolonged period.	MTR
20	10/30/17	Right ankle sprain	Slip on wet floor	EE20 could not walk on DOI; OMR did not refer to higher level provider and did not call PHL. OI work for prolonged period.	MTR

Table 4. Possible Medical Mismanagement Cases

Case Code	DOI	Injury	Mechanism of Injury	Medical Management Issue	Missing MTR
3	9/20/17	Forehead laceration, contusion	Struck by	EE3 sought treatment at Amcare several times over a 2 wk period- never referred for evaluation.	MTR FROI
4	9/22/17	Back pain	Lifting	Never referred to higher level provider despite several Amcare visits over 2 wks.	MTR
6	9/30/17	Radiating low back pain	Lifting	Never referred to higher level provider despite several Amcare visits and continued pain.	FROI
7	10/2/17	Radiating low back pain	Lifting	No documentation in Amcare of treatment or disposition in a case where worker has ongoing low back pain and difficulty walking.	FROI ?MTR
8	10/2/17	Right shoulder, arm sprain	Unknown	No records provided by Amazon. 7 days away on 300 log. What did Amcare do.	FROI AR MTR
14	10/24/17	Head / Neck Injury	Struck by	Records suggest that management made inappropriate medical management / disposition decisions on DOI	?MTR
16	10/26/17	Puncture wound, Right hand	Nail	No documentation that tetanus immunization status was determined or that EE16 was referred for a tetanus shot.	FROI
17	10/27/17	Laceration, Thumb	Cur with a safety knife while	Records do not indicate what treatment was provided in Amcare and whether or not	FROI ?AR ?MTR

	eye irritation	and who provided treatment. If manager provided treatment and did not send worker to eye doctor, this is medical mismanagement.	EMT/ER
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VTO=voluntary time off

Review of Outside Medical Records

Medical records of Amazon employees' medical treatment at outside healthcare facilities, such as Concentra and Robert Wood Johnson University Hospital's occupational health clinics, were reviewed. Records for 73 individuals were provided. Only one (Case #12) of the 73 overlapped with the 131 employees reviewed in the Amcare records described above. One possible recordkeeping case was identified with a date of injury of 11/29/17 for a contusion of the right middle finger. The employee was advised to take over-the-counter Naprosyn at prescription dose levels.

The records for Case #12 indicated that the employee went to the ED on his own for his back and hip pain. He was then referred to a clinic for follow-up. He was diagnosed with several injuries as noted in Table 3. He was treated with prescription medication and physical therapy and was placed on work restriction, which resulted in his being off work for 63 days. The medical mismanagement in this case was poor judgment on the part of the OMR/EMT in not referring him (after the employee presented to Amcare three times in the same day) to the ED or a physician for appropriate medical evaluation and treatment.

Review of Amazon/Amcare Medical Directive

Amazon has not provided OSHA with medical directives or protocols to be followed by the OMRs who staff Amcare. In addition, OOMN has not interviewed the OMRs or the medical director, Dr. [REDACTED]. CSHO interviews with the OMRs determined that the OMRs have not discussed any cases with Dr. [REDACTED] or called Dr. [REDACTED] for advice during the whole time that the Florence facility has been open.

OOMN did review the medical policies and directives for OMRs (Amcare Associate Care Manual and Associate Care Policy) at the Robbinsville, NJ warehouse during OSHA's 2015 inspection of that facility. In addition, OOMN reviewed the training videos for OMRs provided by Amazon in 2015. Appendix B describes OOMN's review of these documents during the 2015 Robbinsville inspection. In regards to the four medical management cases (Table 3), it is important to note the following deviations from the Manual:

- Heat should not be applied for an acute injury (defined as an injury that occurred within 4-7 days). "The effects of heat, particularly its increase in cellular metabolism, and increased superficial circulation, can lead to a host of other

- problems. The principle one being increased inflammation. Uncontrolled inflammation causes secondary pain and injury to local soft tissue."
- For lumbar sprain/strain: "if no improvement or treatment plateaus at any time...refer associate to outside medical provider."
- For ankle sprain: "if the associate is unable to fully weight bear due to pain they must see a doctor for further evaluation."
- For eye injury/chemical abrasion: "Refer to Medical if the object is embedded..."
- In case 11, the records suggest that the OMR missed the embedded foreign object that was later removed in the emergency room. The Manual does not give appropriate guidance to the OMRs regarding how quickly an eye injury should be referred to an eye doctor but does encourage the OMR to call the Physician Health Line (PHL) on any questionable cases.

OOMN did attempt to interview Dr. [REDACTED], but he declined pending a discussion with his attorney and with Amazon. He did, however, state that he has updated the Amcare Associate Care Manual primarily with references (after talking with OOMN during the 2015 Robbinsville case). It is important to note that the manual recommends that OMRs call the PHL if they have any questions or concerns about a case.

Discussion

Medical Management at Amazon: New Jersey State Law and Scope of Practice

OOMN's review of medical records pertaining to this case shows that Amcare is using EMTs outside of their licensure and scope of practice. Although Amazon claims, and the EMTs understand, that they are not working under their licenses, the situation is confusing to the EMTs, and likely also to the workers and facility management. Human Resources relies on the EMTs to make professional decisions on disposition. The interviewed EMTs admit to having little background or training in the type of care they are providing. One EMT hoped that the new doctor would provide more guidance. No healthcare professional is reviewing the OMR/EMT care to make sure they are following protocols and providing appropriate care.

The National Highway Transportation Safety Administration (NHTSA) National EMS Scope of Practice Model states that "an individual may only perform a skill or role for which that person is: educated, certified, licensed, and credentialed" (NHTSA, 2007). While all OMRs are required to maintain current EMT certification and licensing, the program for which they are educated, certified, and licensed does not approximate the complexity of decision-making performed in Amcare. Even then, the core competencies for which they are trained can only be done under the guidance and supervision of a medical director. We have been unable to identify any licensed physician performing sufficient guidance and supervision to suggest that the OMRs are adequately educated, certified, licensed, or credentialed beyond the general scope of practice of an EMT-Basic.

New Jersey Administrative Code 37 N.J. Reg. No. 2 (NJ Code) addresses the scope of practice for EMT-Basics practicing in New Jersey. The NJ Code, the New Jersey EMS

Field Guide (2013), and the NHTSA clearly delineates EMTs' scope of practice and training requirements to be "basic emergency medical care and transportation for critical and emergency patients..." EMTs "function as part of a comprehensive EMS response, under medical oversight" (NHTSA, 2009). The NJ Code lists 13 tasks in the approved scope of practice including *emergency treatment for soft tissue injuries, muscle and bone injuries, and eye injuries*. The list does not address prolonged management of minor injuries, chronic injuries, or non-life threatening injuries commonly seen in a warehouse setting.

The NHTSA recognizes the use of EMTs in nontraditional roles like occupational medicine in its 2007 Scope of Practice Model publication (NHTSA, 2007). It states that "the employers of EMS personnel working in nontraditional roles and settings must also be aware to what extent the person's State EMS license permits or prohibits such activities". Amazon has a responsibility to understand the medical limitations of EMTs prior to employing them in any capacity. Amazon was notified that it was endangering its workers by using EMTs in a capacity that exceeded their licensure by OSHA in the 2015 Hazard Alert Letter.

Medical Management at Amazon: First Aid versus Medical Treatment

OSHA standard 29 CFR 1910.151 states, "The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of plant health"; and "In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid" (OSHA 1998). On several occasions, Amazon's onsite first aid team, Amcare, was not available to provide first aid to injured employees, yet employees were not referred to a clinic or hospital for evaluation. In at least one of these instances, an employee sustained a head injury with potential for serious consequence including concussion, intracranial hemorrhage, and/or death, yet first aid or medical treatment were not offered.

In a letter of interpretation dated January 16, 2007, OSHA clarified, "The basic purpose of these standards [29 CFR 1910.151] is to assure that adequate first aid is available in the critical minutes between the occurrence of an injury and the availability of physician or hospital care for the injured employee" (OSHA 2007). OSHA further defines first aid as "medical attention that is usually administered immediately after the injury occurs and at the location where it occurred. It often consists of a one-time, short-term treatment and requires little technology or training to administer" (OSHA 2018). Additionally, OSHA's recordkeeping standard 29 CFR 1904.7(b)(5)(ii) provides a definitive list of activities that are commonly considered to represent first aid.

These aforementioned OSHA standards and interpretations make clear that first aid is intended to be the initial, temporary evaluation and stabilization of injured employees with subsequent medical care delivered by physicians or other licensed healthcare professionals or requiring no follow-up. Such follow-up implies clinical evaluation and judgment. Although Amcare OMRs are licensed EMTs, Amazon's manual states they

administer first aid based on American Red Cross training rather than EMT licensure. Yet the American Red Cross first aid definition is consistent with OSHA's – first aid certification is designed to "help non-medical professionals provide assistance in times of crisis" and intended to "help you care for people in crisis as they wait for medical professionals to arrive" (American Red Cross 2018).

By both OSHA and American Red Cross definitions, Amcare OMRs are practicing medical care beyond first aid. Amcare OMRs routinely schedule follow-up appointments with employees, offer medical advice, and serve as a gateway for referral to medical care. Additionally, there are documented instances of Amazon Safety Managers making determinations on the appropriateness of referral to outside medical care (Table 5).

Recommendations

- Amazon should ensure availability of first aid services to employees at all times. When Amcare staff are not on-site, there should be staff trained in first aid to provide first aid care (per 29 CFR 1910.151). Employees should be referred to nearby clinics or hospitals as appropriate for care beyond first aid.
- Amazon should institute the recommendations made in the 2015 HAL for the Robbinsville case, including obtaining consultation from a physician Board Certified in Occupational Medicine.
- Amazon should provide medical oversight of EMTs to ensure they are not providing medical treatment beyond first aid.
- Amazon should review New Jersey administrative code to clarify that EMTs are practicing within the scope of their licensure.
- Amazon should properly document all work-related injuries. The Gensuite program is not designed for use as a medical record (see their website: <https://www.gensuite.com/>). Amazon should re-evaluate their documentation protocols for Amcare in consultation with their occupational medicine consultant.

Summary and Conclusions

OOMN's review of work-related injuries of employees from Amazon Fulfillment Center in Florence, NJ identified three recordkeeping cases (two from Amazon's onsite records and one from offsite records) and four medical mismanagement cases with dates of injury from 09/20/2017 to 10/31/2017. OOMN identified several more potential recordkeeping and medical mismanagement cases where more information, such as medical records and employee interviews, would be helpful in the determination.

Although Amazon claims to provide only first aid treatment at their in-plant medical unit ("Amcare"), first aid care is intended to be temporary and immediate. By developing clinical assessments, forming injury management plans, scheduling employees for follow-up, providing medical advice, and making referral decisions, Amcare staff are providing medical care beyond the scope of first aid. Further, the Amcare staff are providing this care without appropriate medical oversight by a physician or other

appropriately licensed provider. This practice puts the workers receiving inappropriate care at risk and the Amcare staff at risk of working outside the scope of their licenses. Amazon has not instituted any of the medical management recommendations made in OSHA's 2015 inspection at Amazon's Robbinsville, NJ facility.

Kathleen M. Fagan, MD, MPH
Medical Officer
Office of Occupational Medicine and Nursing

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APPENDIX A – Case Summaries

Employee 1 (EE1) is an unknown-age male who presented to AMCARE on 10/19/17 with complaint of radiating pain from right hip back down right leg. No FROI form or internal AMCARE records were available for review. According to a summary paragraph in workers compensation documents, pain developed during manual pallet sorting. EE1 was treated in AMCARE (treatment unknown), went to the emergency room on DOI, and was placed off work until 10/27/17. EE1 was also referred to Concentra Cherry Hill for further evaluation. No medical treatment records from the emergency room or from Concentra were available for review.

Employee 2 (EE2) is an unknown-age male who developed low back pain while lifting and unloading heavy parcel from a truck during overtime on 10/22/17. Pain progressed until 10/24/17 when EE2 sought care at the emergency room on his day off. AMCARE records state that he was treated with prescription strength ibuprofen 600mg (emergency room records not available). On 10/25/17, when EE2 returned to work, he was evaluated in AMCARE, but declined further treatment. AMCARE records detail possible managerial interference in medical care. For example, EE2 stated to AMCARE OMR that "they don't want any issues". AMCARE records further document "AM [manager] and Ops Manager were giving a lot of push back on the case and became hostile after advising them the issue was being reported as work related. Prior to the AM coming in, they made every attempt to pre-diagnose the AA and state it was NWR from home."

Employee 3 (EE3) is an unknown-age male who struck his forehead on a stack of totes on 9/20/17. AMCARE records indicate that EE1 had a small laceration and bump on his head. He was treated with ice, bacitracin and a bandage. No physical examination in regards to a concussion is documented. EE1 was not referred for outside evaluation or a tetanus shot. Later AMCARE notes (09/25/17) make reference to a medical evaluation, but no medical treatment records are provided.

Employee 4 (EE4) is a 21-year-old female who developed mid-back pain while lifting boxes on 9/22/17. EE4 reported to AMCARE but the OMR was off-site for lunch, so EE4's manager treated her with an ice pack. When the OMR returned, EE4 was evaluated and noted to be in visible discomfort with point tenderness on exam. EE4 described a pain level of 7.5/10 with aggravation of the pain when standing. The OMR provided additional treatment with ice and over-the-counter ibuprofen. Although EE4's pain did not improve, she was sent back to work.

On the DOI, EE4 also received a First Written Warning for job performance and attendance; timing of the warning is unclear. On 09/28/17, EE4 was absent from work and sought medical treatment for continued back pain. No medical treatment records were provided. On 09/29/17, EE4 returned to AMCARE for follow-up evaluation. She reported continued pain that she was treating at home with ice and declined first aid with AMCARE. On 09/30/17, EE4 sought treatment at AMCARE twice during the shift. She was again noted to be in visible discomfort with point tenderness and increased pain when standing. The OMR again treated her with ice, returned her to work, and did not

a right elbow sprain, prescribed medication, and placed off work until 10/18/17. On 10/17/17, internal AMCARE notes indicate that workers compensation was denied, and AMCARE closed the case.

On 10/20/17, EE9 sought medical treatment from an Internal Medicine physician at Cooper University Hospital. He was diagnosed with medial epicondylitis of the right elbow, referred to orthopedic surgery, and prescribed physical therapy and medication. Subsequent AMCARE notes indicate that EE9 contested the workers compensation denial and won. He was then sent to Concentra for further medical evaluation on 10/28/17. At Concentra, EE9 reported continued radiating pain in right upper extremity (upper arm/forearm/wrist/hand) with associated numbness, paresthesia, and decreased range of motion. Concentra notes indicate that EE9 saw two orthopedic surgeons prior to this appointment; medical treatment records were not provided for these visits. Physical exam at Concentra was notable for decreased strength in the right upper extremity in addition to limited range of motion and decreased muscle tone in the cervical spine. EE9 was diagnosed with acute cervical radiculopathy and right elbow tendinitis. He was prescribed medication including steroids, referred for further physical therapy (PT), and received work restrictions. Additional AMCARE notes indicate that EE9 had follow-up appointments with Concentra and/or PT in early November. Medical treatment records for these appointments were not provided. The OSHA 300 log indicates that EE9 was away from work for 55 days.

Employee 10 (EE10) is a 22-year-old male who experienced left wrist pain while lifting boxes on 10/12/17. He thought the pain would resolve, but when it did not, he sought evaluation at AMCARE on 10/19/17. The OMR noted no visual abnormalities and stated that EE10 was wearing a rigid wrist splint that he had brought in from home. EE10 was treated with heat and sent back to work. There is no indication whether or not the OMR advised EE10 to continue wearing the splint. On 10/20/17 EE10 was again seen in AMCARE and treated with heat. The OMR noted tenderness of the wrist on exam. On 10/21/17, AMCARE notes indicate that EE10 took voluntary time off per management and the "injury resolved". However, it is unclear how the OMR determined that the injury had resolved.

Employee 11 (EE11) is a 24-year-old female who was moving pallets with a pallet jack on 10/15/17. During this task, dust and debris, including a small piece of wood, flew into EE11's right eye. It is unclear as to when EE11 reported the incident to management, either at time of injury or end of shift, but EE11 was not taken to AMCARE by her manager. At home, EE11 attempted unsuccessfully to remove the dust/wood from her eye with Q-tip. She took voluntary time off for the next shift due to continued eye pain. On 10/16/17, she reported to AMCARE with continued right eye pain. The OMR flushed her eye with water and closed the case. The OMR did not refer her to an eye doctor for evaluation.

On 10/18/17, EE11 saw a Family Medicine physician who referred her to an optometrist for right eye injury. Medical treatment records were not provided. On 10/19/17, EE11 went to Virtua Memorial Emergency Department. Full medical treatment records were

refer her to a higher level provider for evaluation. The OMR also did not seek advice from the Physician Health Line (PHL). EE4 was absent on 10/04/17 and 10/05/17. On 10/06/17, workers compensation was initiated. Records also indicate that EE4 received a Second Written Warning for job performance and attendance.

Employee 6 (EE6) is an unknown-age female who developed low back pain and spasms while lifting boxes during overnight shift on 09/30/17 – 10/01/17 while working overtime. Three days later, on 10/04/17, EE6 reported to AMCARE for an initial evaluation due to continued pain, particularly when bending, and was treated with heat. She was offered follow-up care but declined and the case was closed. Approximately two weeks later, on 10/20/17, EE6 returned to AMCARE complaining of continued pain with bending since DOJ and requested treatment with heat. Pain was unimproved after heat, but OMR sent EE6 back to work, did not refer EE6 to a higher level provider for evaluation, and did not access the PHL for advice. On 10/20/17 and 10/21/17, AMCARE made attempts to evaluate EE6 but she did not report to AMCARE. On 10/21/17, management brought EE6 to AMCARE. EE6 declined further treatment, and case was closed.

Employee 7 (EE7) is an unknown-age female who experienced low back pain radiating down her leg while lifting on 10/02/17. AMCARE records state that EE7 was having difficulty walking. There is no documentation of care provided in AMCARE, whether or not the worker was referred to a higher level provider for evaluation, or whether or not the worker was sent back to work. The case was closed on 10/14/17.

Employee 8 (EE8) is an unknown-age female who is listed on the OSHA 300 log with right shoulder/arm sprain on 10/02/17 that resulted in 77 days away from work. No records of any kind, including no AMCARE records, medical treatment records, or workers compensation records, were found in the PDFs provided by Amazon. In addition, no 301 was provided. The OSHA 300 log notes that there was an initial injury 11 years ago.

Employee 9 (EE9) is a 55-year-old male, hired approximately one month before his work injury. On 10/08/17, EE9 was lowering a box onto a pallet and experienced a sharp pain in right elbow. Over the course of the day, he noted numbness from his elbow down his arm to his right hand and fingers. On 10/11/17, he reported his symptoms to AMCARE. The OMR did not note any abnormalities on visual inspection of EE9's arm and treated him with heat. EE9 then chose to go home for the rest of the day. The OMR did not refer EE9 to a higher level provider for evaluation and did not call the PHL for advice.

On 10/12/17 workers compensation was initiated, and internal Amazon emails reflect that EE9 called to inquire about medical treatment referral. Internal Amazon emails state that workers compensation was on hold due to "red flags" such as "unsure of where injury occurred"; "late report"; "no objective findings"; and "AA has a pending write up for productivity". On 10/14/17, while workers compensation referral was pending, EE9 sought medical evaluation at an urgent care facility, MedExpress. He was diagnosed with

brought to AMCARE but no OMR was onsite, thus no initial assessment by an OMR was performed. EE12 did not return to work on DOL. On 10/29/17, she was evaluated and treated in AMCARE with ice and over-the-counter medication. The AMCARE records note that EE12 has a long history of right knee problems, including dislocations, and that the last time she had problems with her right knee was one year ago. On 10/31/17, AMCARE records note that outside medical information is pending. No medical treatment records were provided.

Employee 16 (EE16) is an unknown-age male temporary worker who was lifting pallets on 10/26/17 when a nail punctured his right hand. AMCARE documented a minor open wound on his right palm, cleaned the wound, and applying bacitracin and a wound covering. No documentation of tetanus immunization was found, and EE16 was not sent for a tetanus shot.

Employee 17 (EE17) is an unknown-age male who cut his thumb while opening a gox with a safety knife on 10/27/17. AMCARE records do not indicate what treatment was provided in AMCARE, determination of tetanus immunization status, or whether or not EE17 was referred for outside medical evaluation, treatment and a tetanus shot.

Employee 18 (EE18) is an unknown-age female who reported to AMCARE on 10/27/17 complaining of right wrist pain. She initially reported that the injury occurred at home; however, when alone with AMCARE she reported it was work-related from repetitive hand motion (cutting plastic from pallets). EE18 told OMR that she "shouldn't have come down" and that "their manager told them we [AMCARE] would ask a lot of questions". An elastic bandage was applied, and EE18 was returned to work.

Employee 19 (EE19) is an unknown-age male who got rock salt in his left eye on 10/28/17, after dropping a box of rock salt. AMCARE records note the incident but do not detail the evaluation or medical or first aid treatment. There is no indication that the eye was flushed or that an eye wash station was used. The injury type is recorded as eye irritation, and there is a note from someone, possibly a manager, stating "will follow up on Tuesday [3 days later] . . . and make sure that the left eye is no longer irritated.". There are no further records provided.

Employee 20 (EE20) is a 48-year-old male who sprained his right ankle on 10/30/17 when he slipped on a wet floor while carrying a box during an overtime shift. EE20 was unable to walk and required a wheelchair to go to AMCARE for evaluation. The OMR noted "very minimal inflammation on the outside of the right ankle". The FROI noted that AMCARE treatment consisted of ice, bio-freeze, and OTC medication. EE20 was advised to rest at home but was sent back to work. EE20 was absent from his next scheduled shift on 11/02/17 and 11/03/17. He was sent for outside medical evaluation at Concentra on 11/05/17. Medical treatment records were not provided. AMCARE records note that EE20 was placed on work restrictions and that Amazon was unable to accommodate. The OSHA 300 log notes that EE20 was had 47 days away for this injury.

not provided, but discharge instructions indicate that a small foreign body was removed from the eye. She was diagnosed with a corneal abrasion, prescribed medication, and was placed off work until follow-up with an ophthalmologist. The OSHA 300 log indicates that EE11 was away from work for 26 days.

Employee 12 (EE12) is a 26-year-old male who experienced pain in low back and right hip radiating to his right leg on 10/19/17 while sorting pallets. On 10/20/17 at 12:51 AM, he reported to AMCARE due to worsening pain, particularly with bending, and associated tingling. EE12 told the OMR that he had been working for six weeks doing repetitive bending, lifting, and squatting without job rotation to a less strenuous job. No physical examination was documented. EE12 was treated with ice and returned to work. On 10/20/17 at 03:02 AM, two hours after initial AMCARE evaluation, EE12 returned to AMCARE and reported more frequent pain and again reported tingling. No physical examination was documented, and he was again treated with ice. His pain was unchanged after ice, and EE12 returned to work in a different area. Universal Receive, intended to be more stationary. On 10/20/17 at 03:36 AM, 2.5 hours after initial evaluation and 30 minutes after second evaluation, EE12 returned to AMCARE for continued pain. He was offered ice, heat, bio-freeze, and over-the-counter medication. He asked if there was another alternative due to persistent pain and was offered ER referral or voluntary time off (VTO). AMCARE notes state that EE12 did not understand why VTO was an option if he was still in pain and discussed with management his concern with lack of treatment.

EE12 took VTO and self-referred to Cooper University Hospital Emergency Department on the morning of 10/20/17. He was diagnosed with right hip bursitis, prescribed medication, and placed on light duty or time away from work until 10/27/17. On the afternoon of 10/20/17, EE12 was also evaluated at Concentra. He was diagnosed with lumbar strain, right hip bursitis, right hip thigh strain, and right knee/leg strain. He was prescribed medication, including steroids, referred to physical therapy, and placed on work restrictions. On 10/21/17, AMCARE notes indicate that Amazon was unable to accommodate his work restrictions. On 10/23/17, EE12 returned to Concentra for follow-up evaluation. Medical treatment records indicate some improvement, but the physician continued to recommend work restrictions. No subsequent medical treatment records were provided. The OSHA 300 log indicates that EE12 was away from work for 63 days.

Employee 14 (EE14) is a 51-year-old male temporary worker who was stacking boxes on 10/24/17 when two walls of boxes collapsed and struck his head and neck. Per the records, an OMR was not on site, and no initial assessment was performed. The FROI filled out by EE14 indicates that first aid was offered and not declined. The GenSuite records note that "after AMCARE treatment, the associate reported a pain level of 4. . . It is unclear who actually saw and treated EE14 in AMCARE. It may have been a manager. This worker should have been sent to the emergency room for evaluation of a head injury. However, the FROI also notes that outside medical treatment was offered and declined. Unclear if worker was seen by an outside medical provider.

Employee 15 (EE15) is an unknown-age female temporary worker who developed right knee pain while lifting boxes on 10/24/17. AMCARE records indicate that she was

Employee 21 (EE21) is an unknown-age female who noted pain in right wrist with some tingling in her wrist and arm after lifting a box on 10/29/17. She was seen in AMCARE on 11/01/17 in AMCARE, and the OMR noted a "ward small bump" on the inside of her wrist. Although it is noted that treatment was provided, the type of treatment was not documented. EE21 returned on 11/04/17 asking for an ace bandage due to continuing wrist pain. The OMR documented point tenderness. EE21 discussed seeing a doctor for her wrist but wasn't sure she wanted to miss work. The OMR provided her with information on workers compensation. On 11/05/17 the record indicates "WC referral...pending outside medical". No further records are provided.

APPENDIX B – Review of Amazon AMCARE policies and training during the 2015 Robbinsville inspection

Review of Associate Care Policy

We reviewed Sections 1 and 2 of Amazon's Associate Care Policy (Policy). Section 1 is the introduction and explains that the policy provides "guidance and Standard of Work for the AMCARE program. The medical care (First Aid) will be provided by an Onsite Medical Representative (OMR)."; OMRs report to the local site's safety manager. Section 2 describes the OMRs qualifications and Standard of Work. OMRs must be certified Emergency Medical Technicians (EMTs), licensed practical nurses (LPNs) or licensed registered nurses (RNs). Although the OMRs are required to maintain their licenses/certifications, the Policy states that "Amazon.com is not licensed by the Department of Health, therefore OMRs are not able to function under the full capacity of their licensure/certification."

The following are the primary OMR responsibilities listed in sections 1 and 2:

- Provide care to employees "when medical need arises"; complete encounter logs daily;
- Perform drug testing as needed;
- Maintain Professional Office Environment;
- Reconcile OHM database daily; complete AMCARE metrics weekly; develop a statistical analysis of injuries quarterly;
- Complete Safety Job Analyses and Work Accommodations Analyses for each applicable injury/illness, in coordination with Safety: "The OMR provides only an opinion. The final determination whether restrictions can/will be accommodated is the responsibility of the safety manager and human resources."
- Participate in case management meetings with Workers Compensation;
- Perform training of new OMRs; perform first aid/CPR/AED training of designated employees on all shifts; participate in orientation of new managers and OMRs;
- Attend daily safety stand-ups; attend safety committee meetings;
- Monthly audit of AMCARE; conducted with safety manager; quarterly peer review and self audit;
- Annually meet with the Occupational Medical Provider and arrange for the provider to tour the facility.

Review of Amazon Medical Care Protocols

The AMCARE Associate Care Manual (Manual) is described as a "user-friendly manual of medical conditions that are most often seen in the workplace". Ailments include sprains, strains and pain, lacerations, head injuries, heat stroke, chest pain, hyperglycemia and stroke, among others. For each ailment, there is a description, mechanism, exam findings, first aid treatment, when to refer to "medical", when to call 911 and preventive tips. The Manual states, "If you have any questions, contact your local medical provider for direction. This first aid manual is a guide to be used in conjunction with your facilities occupational medicine provider." The Manual also advises that, if a worker's

condition is deteriorating or beyond the OMR's comfort level, the OMR should either call 911 or the help line. There is a contact list for phone numbers for ambulance, fire department, hospital, health care provider, and poison control. The manual provided to us had no one and no phone numbers listed for any of these. The interviewed OMRs were not able to tell us who the occupational health provider is.

The Manual has a section entitled "Length of Treatment Standards" which notes that "the OMR may provide non-emergent care in the AMCARE office for up to 14 calendar days providing improvement is being made in the associate's condition". It further states that, if an associate's progress "plateaus or is not continually improving", it is the responsibility of the OMR to stop providing care and advise the safety manager that "outside medical care is necessary". Further, if the OMR feels that modified duty is necessary beyond the first day of care, the OMR must advise the safety manager of this opinion. The Manual does not state what happens from there. The Manual also notes that, if a worker request referral to a physician, the OMR must immediately stop care and refer the worker to an outside health care provider.

Review of Training Videos

Six training videos (of at least two-hour length each) were reviewed. These videos provide OMRs with training on functional anatomy, ergonomics, ergonomic applications in Amazon warehouses, principles regarding first aid treatment in AMCARE clinics, ergonomic technique assessments and problem-solving, and suggestions on coaching workers regarding ergonomic techniques and problem-solving. The instructor states that a primary purpose of the videos is to provide OMRs with "techniques to treat and prevent soft tissue injuries at Amazon". OMRs are advised to do a "full exam for each new injury". The exam includes:

- taking a thorough history;
- observing for swelling, discoloration or deformity; (The instructor notes that workers should be asked to take clothing off of the body part to be examined; for instance, if the complaint concerns the ankle, take off shoes and sock.)
- palpating for tenderness;
- assessing range of motion; and
- performing circulation and neurological assessment.

The instructor notes that the OMRs should be able to do these examination procedures easily. The instructor then reviews first aid treatments, such as ice, biofreeze and home stretches. The instructor mentions a series of pamphlets that can be given to the injured worker on different types of injuries.



COMMITTEE ON
EDUCATION AND LABOR
U. S. HOUSE OF REPRESENTATIVES
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December 1, 2022

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Mr. Sheheryar Kaosji
Executive Director
Warehouse Worker Resource Center
521 N. Euclid Ave.
Ontario, CA 91762

Dear Mr. Kaosji:

I would like to thank you for testifying before the House Committee on Education and Labor, Subcommittee on Workforce Protections hearing entitled "*Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers*" held on Thursday, November 17, 2022, at 10:15 a.m. (Eastern Time).

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Thursday, December 15, 2022, for inclusion in the official hearing record. Your responses should be sent to Clerks of the Committee at E<estimony@mail.house.gov and Robert (Bob) Shull (Robert.Shull@mail.house.gov) of the Committee staff.

I appreciate your time and continued contribution to the work of the Committee

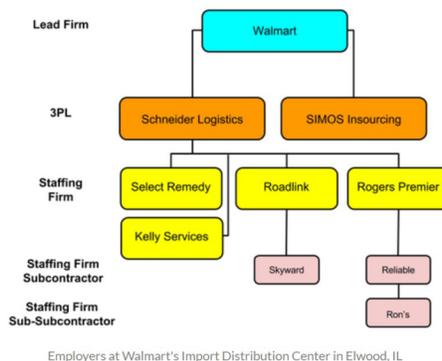
Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Committee on Education and Labor
 Subcommittee on Workforce Protections
“Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers”
 Thursday, November 17, 2022
 10:15 a.m. (Eastern Time)

Chairman Robert “Bobby” Scott (D-VA)

1. During the hearing, Mr. Takano displayed a chart of contractual relationships in a Walmart distribution center in Illinois. The chart shows a lead firm and several chains of contracting and subcontracting, a familiar pattern that academic and former Wage & Hour Administrator David Weil dubbed “the fissured workplace.”¹ You testified that fissured workplaces are, in your experience, common in the warehouse industry.



- a. Generally speaking, to what extent does the lead firm determine safety conditions and other working conditions in warehouses, and how?
- b. To what extent does the fissured work arrangement affect the extent to which lead firms are held accountable for workplace illness and injury or other labor standards violations?
- c. To what extent does the fissured work arrangement affect the extent to which firms or parties other than the lead firm are held accountable for such violations?

¹ DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT (2014).

Representative Pramila Jayapal (D-WA)

1. What are the implications of the Amcare practices identified by OSHA in its 2015 and 2019 inspections of the Robbinsville, New Jersey warehouse for worker health?

Representative Ilhan Omar (D-MN)

1. We have seen substantial increases in union activity across the country this year, especially in my home state of Minnesota.
 - a. Mr. Kaosji, can you describe the relationship between (recent) unionization efforts and the safety crisis in the warehouse industry?
2. One of the safety issues that I want to discuss in more detail is the unsafe pace of work at warehouses due to quotas. Last session, the Minnesota State House advanced legislation to limit and report on work speed quotas at Amazon warehouses. Now under Democratic leadership in both chambers, I am confident that this bill will pass.
 - a. Could you tell us what this kind of worker surveillance actually looks and feels like for warehouse workers?
 - b. How can commonsense legislation, like the quota reform bill in Minnesota, help to protect exploited workers?

Written Supplementary Testimony to House Committee on Employment and Labor- Subcommittee on Workforce Protections hearing entitled “Unsafe and Untenable: Examining Workplace Protections for Warehouse Workers” held on Thursday, November 17, 2022, at 10:15 a.m. (Eastern Time).

Sheheryar Kaosji, Warehouse Worker Resource Center

Questions:

During the hearing, Mr. Takano displayed a chart of contractual relationships in a Walmart distribution center in Illinois. The chart shows a lead firm and several chains of contracting and subcontracting, a familiar pattern that academic and former Wage & Hour Administrator David Weil dubbed “the fissured workplace.”¹ You testified that fissured workplaces are, in your experience, common in the warehouse industry.

- a. **Generally speaking, to what extent does the lead firm determine safety conditions and other working conditions in warehouses, and how?**

There are significant differences between various types of workplaces. In many cases there are a set of conditions that warehouse operators are responsible for, a set that the staffing agency is responsible for and a set that the beneficial owner of goods- the retailers whose goods are being moved and processed – is responsible for. Often we see that the staffing agency is responsible for training and ensuring that injured workers are provided with support and treatment. The warehouse operator is often responsible for equipment, facilities and operations.

The cargo owner is rarely legally held responsible for conditions, but our analysis is that because of the economic power they hold over the warehouse operator and staffing agency, they can set both the pace and kind of work that the facility is responsible for. Some third-party facilities are custom-built, others are built out as needed by an operator. The economic power held by the cargo owner, and the financial controls they exert, directly influence the quality of working conditions ranging from the climate control in the building to the wage rates offered to workers.

- b. **To what extent does the fissured work arrangement affect the extent to which lead firms are held accountable for workplace illness and injury or other labor standards violations?**

A fissured work arrangement confuses the worker as to who is responsible for the conditions and safety a worker experiences. When there are multiple employers on a site a worker often will go to a manager employed by one firm and be told to go to another for treatment or to access leave. This is often discouraging and leads to workers continuing to work injured, and delay or never file a claim.

In a fissured work arrangement, the lead firms often shift to staffing agencies the work of providing workers' compensation coverage, payroll services, and communicating personnel decisions. Thus, when a staffing agency worker is injured, paid incorrectly, or terminated, the staffing agency may take the insurance claim or blame for the violation. Strong joint employer and labor contractor liability laws can help to hold the lead firm accountable, but even where these exist the complexity involved is a deterrent to legal actions and enforcement.

c. To what extent does the fissured work arrangement affect the extent to which firms or parties other than the lead firm are held accountable for such violations

In most cases the retailer whose goods are being moved is not held accountable in any meaningful way. The employer of record which is often a staffing agency is usually held liable, the warehouse operator is sometimes held liable depending on the state where the facility is operating. If the retailer or beneficial cargo owner is a different company, they usually don't have legal responsibility but they are, from our perspective, responsible for the conditions in their workplace.

1. What are the implications of the Amcare practices identified by OSHA in its 2015 and 2019 inspections of the Robbinsville, New Jersey warehouse for worker health?

The key issues OSHA surfaced at Robbinsville applies more broadly to our understanding of how Amcare operates in Amazon warehouses. We know that Amazon is incentivized to minimize reportable injuries in its workplaces, as the statutory employer and holder of workers compensation insurance for its warehouse workers.

Amcare was found in Robbinsville to be employing EMTs and HR staff who provided inadequate care and deterred workers from reporting or seeking additional treatment for workplace injuries. This ranges from dispensing ice and advil to actively discouraging workers from getting treated, especially with injuries that would require reporting to their Workers' Compensation provider. We have seen similar issues at warehouses in Southern California, from a worker with chronic back injuries being given ice daily for weeks instead of being sent for outside treatment to a worker who sustained a broken bone and was sent back to work with advil and no treatment.

As a result, workers report to us widespread lack of confidence in Amcare services, leading to workers avoiding reporting workplace injuries and seeking outside treatment at their own expense for injuries the employer should cover. These outcomes represent victories for Amazon's bottom line, reducing the number of injuries on their books and workers' compensation records and at the same time adding up levels of trauma and pain in our communities.

1. We have seen substantial increases in union activity across the country this year, especially in my home state of Minnesota.

a. Mr. Kaosji, can you describe the relationship between (recent) unionization efforts and the safety crisis in the warehouse industry?

2. One of the safety issues that I want to discuss in more detail is the unsafe pace of work at warehouses due to quotas. Last session, the Minnesota State House advanced legislation to limit and report on work speed quotas at Amazon warehouses. Now under Democratic leadership in both chambers, I am confident that this bill will pass.

The safety issue at Amazon is a key issue for workers who are looking for an opportunity to unionize and also other workers who are organizing around workplace safety conditions outside of unionization because of the variety of ways it impacts the workforce. As Eric Frumin noted in his testimony, Amazon has one of the higher injury rates in the warehousing sector, a sector with a higher injury rate than most industries. This leads to a higher turnover rate at Amazon warehouses and has significant impacts on the community. The organizing at Staten Island (JFK8) started in the context of the COVID pandemic and Amazon's response to the need for protection for workers, safer conditions and testing. Other warehouses across the country similarly had workers come together to speak up on these issues, but Amazon consistently resisted basic safety measures for workers at these sites.

Worker Surveillance

Worker surveillance in the context of warehouses exists in multiple forms. Many facilities track workers' production and activity based on their use of scanners or other tools that both guide and record workers' activities. Many facilities also have cameras focused on workers that management can use to monitor or review workers' activities and to document violations of policy including stopping working, using a phone or making mistakes. These forms of surveillance are consolidated in datasets that include workers' personal demographics that detail the workers' aggregate productivity, likelihood to do things like call out sick or even get injured, resulting in data the company can use to guide its decisions.

This leads to workers having a constant feeling that they are being watched, leads to them working harder but also has an impact on their mental health. A report WWRC produced with Human Impact Partners in 2021 resulted in workers sustaining injuries, feeling stress and resulting in high turnover and injury rates.

A quota reform bill passed in California and is in consideration in New York- its is the kind of commonsense policy that gives workers the right to work at their own pace and not face retaliation when the company deems them to be moving too slow. There are many factors that an employer takes into consideration when establishing a quota, and the safety and capacity of workers should be the most important and central issue in how these are established.

Information collection and sharing including transparency around rates are extremely important as well. When workers and the state know the rates that are being asked it allows for clarity

about the health and safety implications of these rates and clarity for workers about how discipline is allocated.

