

# **THE DISPOSABLE WORKFORCE:**

*A Worker's Perspective*

A DOCUMENTATION STUDY CONDUCTED BY THE  
**PUBLIC JUSTICE CENTER**  
OF WORKING CONDITIONS IN DELMARVA POULTRY PROCESSING  
PLANTS

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*This report represents the independent investigation and evaluation of the Public  
Justice Center, which has sole responsibility for its contents and conclusions.*

## **I. INTRODUCTION**

### ***A. Background and Purpose of Delmarva Poultry Worker Study***

This report summarizes a six-month documentation study conducted by the Public Justice Center, Inc. (“PJC”) of work-related needs expressed by workers in the poultry processing industry on the Delmarva peninsula, a narrow strip of land 200 miles long, between the Chesapeake and Delaware Bays, consisting of the State of Delaware and 11 Eastern Shore counties of Maryland and Virginia. The Delmarva peninsula is the fifth largest broiler production area in the United States and is credited with being the birthplace of the commercial broiler industry.

The Public Justice Center is a Maryland-based non-profit legal organization dedicated to protecting the legal rights of underrepresented and indigent populations in the areas of civil rights, families’ and children’s rights, community reinvestment, and workers’ rights. In 1996, the PJC established the Latino Legal Assistance Project (“LLAP”), an initiative aimed at addressing the legal needs of Latinos throughout Maryland. While conducting educational outreach to migrant and seasonal workers on the Eastern Shore, the PJC learned of concerns regarding the working conditions of Latino workers in Maryland’s poultry processing plants. The allegations ranged from health and safety issues to potential violations of labor laws. While service providers who work closely with poultry workers were aware of and willing to speak about problems experienced in poultry processing plants, many poultry workers were reluctant to complain about work-related problems, out of a stated fear of job loss or other forms of employer retaliation.

As a result of these complaints and the need for comprehensive information from the poultry workers perspective, the PJC designed a needs assessment strategy to investigate, survey and document the working conditions of poultry workers on the Delmarva. This report is designed to accurately represent and summarize first-hand information provided by Delmarva poultry workers and service providers.

## **B. Overview of the Poultry Industry**

### **1. The Recent Poultry Boom**

In the United States, President Herbert Hoover's promise of a "chicken in every pot"<sup>1</sup> has taken on new meaning over the past several decades as American consumption of poultry has steadily increased. In 1975, per capita consumption of chicken was approximately 40 pounds; by 1996, it was 71.6 pounds and is projected to reach 81 pounds in three years.<sup>2</sup> In 1992, per capita consumption of chicken surpassed that of beef for the first time.<sup>3</sup> In addition to an increasing demand by the American public for white chicken meat, the opening of new international markets within the past decade has further increased the boom in poultry production. The two largest importers of US broilers include Russia, where consumers prefer dark meat<sup>4</sup> and China, where chicken feet have become a delicacy.<sup>5</sup> In sum, poultry processing, although a relatively young industry<sup>6</sup>, has become one of the most profitable industries in the nation.<sup>7</sup>

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<sup>1</sup>"In the 1928 presidential election, the Republican party's promise for national prosperity was 'a chicken in every pot' (borrowed from France's Henri IV, who in 1590 had announced 'I want no peasant in my kingdom so poor he is unable to have a chicken in his pot every Sunday')." Donald R. Morris, *Where Do Chickens Come From?* BALTIMORE SUN (Sept. 26, 1996), at 23A.

<sup>2</sup>Ted Shelsby, *No Business for Chickens*, BALTIMORE SUN (May 18, 1997), at 1E.

<sup>3</sup>U.S. DEP'T OF AGRIC., *THE U.S. BROILER INDUSTRY*, Report No. 591 (1988).

<sup>4</sup>See Clara Germani, *Russians Feast on US Poultry*, BALTIMORE SUN (Oct. 1, 1995), at 1A. Sales of "Bush legs," the nickname for the American chicken quarters that began flooding onto the Russian market as a form of foreign aid when George Bush was president, increased from \$83 million in 1993 to \$400 million in 1995. *Id.* See also Ted Shelsby, *No Business for Chickens*, BALTIMORE SUN, (May 18, 1997), at 1E ("Russia is the biggest new international market for [Perdue], and like other overseas buyers, consumers there prefer dark meat.").

<sup>5</sup>See Ted Shelsby, *No Business for Chickens; Perdue: Salisbury-Based Perdue Farms, the World's No. 2 Poultry Processor, is Charting its Growth in New Domestic and Foreign Markets to Compete in a Thin-Margin Industry*, BALTIMORE SUN (May 18, 1997), at 1 E (quoting August Schumacher, Jr., head of the U. S. Department of Agriculture's export office: "Perdue chicken feet are a delicacy in China. I've seen them selling for 80 cents a pound in Beijing.").

<sup>6</sup>As recently as the late 1920s, "chicken was the most expensive dish you could order in a

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## 2. *Delmarva: Birthplace of an Industry*

The Delmarva peninsula is the fifth largest broiler production area in the United States and the birthplace of the commercial broiler industry.<sup>8</sup> Today, Delmarva's broiler industry consists of

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restaurant; it cost more than lobster or filet mignon. Well-to-do families ate it only on Sundays or served it to special guests (and when you picked it up at the butcher's, it was 'New York dressed' -- plucked, but complete with head, feet and innards)." Donald R. Morris, *Where Do Chickens Come From?* BALT. SUN (Sept. 26, 1996), at 23A.

<sup>7</sup>Most poultry companies, with the exception of Tyson Foods, are privately held and do not disclose financial figures. Tyson Foods, however, has been consistently ranked among the Fortune 500's largest industrial firms in total return to investors. Tyson was the number one ranked Fortune 500 firm in terms of growth rate in total return to investors from 1976-1986. *The Fortune 500*, FORTUNE (Apr. 2, 198), at 359-414. For the decade ending 1993, Tyson ranked fourth in total return to investors and seventh in growth in earnings per share. TYSON FOODS, INC., 1994 ANNUAL REPORT (1994); *The Fortune 500*, FORTUNE (Apr. 18, 1994), at 209-313.

<sup>8</sup>DELMARVA POULTRY INDUSTRY, INC., DELMARVA'S POULTRY INDUSTRY: FACTS, FIGURES, AND OTHER MATERIAL ABOUT DELMARVA'S POULTRY INDUSTRY (March 1996).

approximately “2,800 contract growers, 10 feed mills, 15 hatcheries, 12 processing plants operated by six integrated companies, plus two independently operated further-processing plants.”<sup>9</sup> Sussex County, Delaware is the top broiler county in the United States, with an annual production of more than 200 million chickens.<sup>10</sup> Several Maryland counties rank nationally for broiler production as well. Although the Delmarva region continues to be a leader in poultry production, Arkansas, Georgia, Alabama and North Carolina rank as the top four states for poultry production.<sup>11</sup>

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<sup>9</sup>DELMARVA POULTRY INDUSTRY, *supra* note 9.

<sup>10</sup>*Id.*

<sup>11</sup>See Peter Applebome, *Worker Injuries Rise in Poultry Industry as Business Booms*, N.Y. TIMES (Nov. 6, 1989), at A1: “Poultry is the South’s largest agricultural product, bigger than tobacco in North Carolina, bigger than peanuts in Georgia, bigger than cotton in Mississippi, bigger than all crops combined in Alabama.”

As the poultry industry grew, the total number of chicken processors declined and concentrated into a few companies. Presently, approximately fifty chicken processors exist nationwide -- “down from 125 in 1985, and 360 in 1960.”<sup>12</sup> Five companies control more than half (55%) of the annual broiler production in the poultry processing industry.<sup>13</sup> Most poultry companies, with the significant exception of Tyson Foods, are privately held companies in which family ownership and control is still common and financial figures and employee demographics are not required to be publicly disclosed.

According to the Delmarva Poultry Industry, there are eleven poultry plants, each employing 500 or more workers, on the Delmarva. Six companies own these plants:

COMPANY	HEADQUARTERS	NUMBER OF PLANTS	NUMBER OF WORKERS
Perdue	Salisbury, Maryland	4 plants	5,900 workers
Allen Family Foods	Seaford, Delaware	3 plants	1,875 workers
Townsend, Inc.	Millsboro, Delaware	1 plant	1,800 workers

<sup>12</sup>Ted Shelsby, *No Business for Chickens*, BALT. SUN (May 18, 1997), at 1E. According to William P. Roenigk, senior vice president of the National Broiler Council, the industry expects further contraction of the number of processors, by 40 or 45, by 2005. *Id.*

<sup>13</sup>These companies include: Tyson (27%), Gold Kist (9%), Perdue (8%), ConAgra (6%), and Pilgrim’s (5%).

COMPANY	HEADQUARTERS	NUMBER OF PLANTS	NUMBER OF WORKERS
Mountaire Farms	Selbyville, Delaware	1 plant	920 workers
Tyson Foods	n/a	1 plant	800 workers
Hudson Foods <sup>14</sup>	n/a	1 plant	600 workers

### 3. *Vertical Integration*

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<sup>14</sup>In September 1997, Tyson Foods received federal antitrust approval for a \$642.4 million purchase of rival food processor Hudson Foods. Sharon Walsh, *Tyson Foods to Buy Competitor Hudson*, WASH. POST (Sept. 5, 1997), at G1. This study describes Tyson and Hudson Foods separately because they had not merged during the time of our investigation.



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The poultry companies operate through vertical integration, whereby a single entity controls the production, processing and distribution of the product. The processor or “integrator” owns the hatcheries, feed mills, processing plants, and distribution centers, and contracts with small farmers or growers to raise the chickens until ready for processing. Under the vertical integration system, contract poultry growers provide the land, buildings, equipment, utilities and labor in raising the birds to a marketable age, while the poultry processors supply the chicken, feed and medication. Under this contract system, the integrators avoid much of the investment cost, and the farmers’ income often sinks below the equivalent of minimum wage. According to the National Contract Poultry Growers Association, “a typical poultry grower with two chicken houses nets less than \$10,000 a year.”<sup>15</sup>

### ***C. The Poultry Workforce***

#### ***1. The Industry’s Backbone: Growth of the Workforce***

Technology in poultry processing has come a long way, from “mom-and-pop” barnyard operations to fast-moving, labor-intensive assembly line processes.<sup>16</sup> Despite modern advances, poultry processing is not fully automated and therefore employs large numbers of low-skill, low-

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<sup>15</sup>*Poultry Growers Squawk Over System*, BALT. SUN (Nov. 16, 1997), at 4A. This study focuses on issues related to workers in the poultry plants, not the concerns of contract poultry growers.

<sup>16</sup>Please see appendix 2 for an outline of a standard poultry assembly line process and poultry plant organizational charts.

wage workers at all stages of production. Indeed, as the demand for consumption and production of broilers has increased, the industry has experienced a sharp increase in employment: the number of production workers has grown from 19,000 in 1947 to 200,000 in 1994.<sup>17</sup> On the Delmarva

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<sup>17</sup>National Commission on Food Marketing, *Organization and Competition in the Poultry and Egg Industries*. U.S. Gov't Printing Office (1966); U.S. Bureau of Labor Statistics, *Employment and Earnings in the United States, 1909-72*. Bulletin No. 1312-9. U.S. Gov't Printing Office (1973); *Employment and Earnings* (Jan. 1995).

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peninsula, the poultry industry provides direct employment for more than 21,000 people, approximately 14,000 of whom work in the processing plants.<sup>18</sup>

## 2. Work for “Inhuman” Hands

The work involved in poultry processing is demanding, repetitive and often dangerous. Perhaps the most difficult and labor intensive job is held by live hangers, “who shackle by the legs 25 birds/minute while the chickens ‘scratch, peck and defecate all over them.’”<sup>19</sup> The workers on the assembly line must keep pace with fast-moving conveyor belts while they use knives, scissors and their bare hands to split chickens open, scoop out their innards (called “evisceration”), and remove the meat from the bone (called “deboning”).<sup>20</sup> One author captures the grueling nature of poultry processing work as follows:

*... only inhuman hands could withstand the pain caused by as many as 40,000 daily repetitions of a single defined movement, such as the same knife or scissors cut to slit open carcasses from anus to breast or the same twist of the hand to yank out viscera at a grueling pace, set by a relentless conveyor belt and reinforced by circulating foremen, while the workers are standing in pools of water and grease in temperatures that range from freezing to 95 degrees and being pelted by flying fat*

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<sup>18</sup>DELMARVA POULTRY INDUSTRY, INC., DELMARVA’S POULTRY INDUSTRY: FACTS, FIGURES, AND OTHER MATERIAL ABOUT DELMARVA’S POULTRY INDUSTRY (March 1996).

<sup>19</sup>Marc Linder, *Playing Chicken with People: The Occupational Safety and Health Consequences of Throughput Uber Alles*, 25 INT’L J. OF HEALTH SERVICES 633, 639 (1995).

<sup>20</sup>Linder, at 649; See also Peter Applebome, *Worker Injuries Rise in Poultry Industry as Business Booms*, N.Y. TIMES (Nov. 6, 1989), at A1.

*globules or dripping blood.*<sup>21</sup>

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<sup>21</sup>Linder, at 634.

The increasing demand for poultry products has caused the “line speeds” for the production process to increase dramatically. Poultry plants are rated and ranked based on the pounds of chicken produced per week.<sup>22</sup> Faster “line speeds” for the production process means more pounds per hour, and greater profits for the company. This results in tremendous pressure on workers to perform at break-neck speeds, with little to no time for breaks or job rotation.<sup>23</sup>

The repetitive motions and speed of the production line in poultry processing has led to high incidences of occupational injuries and illnesses. Many poultry workers have had to undergo corrective surgery or live with daily pain and suffering, unable to perform simple tasks such as raising their hands over their heads or lifting their own children.<sup>24</sup> The latest statistics from the Bureau of Labor Statistics indicate that the poultry industry recorded the fifth highest rate of cumulative trauma disorders -- 535 per 10,000 workers (the average rate for the private sector was 33.5 cases per 10,000 workers). A health hazard evaluation of a large Perdue Farms processing plant in North Carolina by the National Institute for Occupational Safety and Health (NIOSH)

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<sup>22</sup>For example, *Broiler Industry* reports that Tyson Foods produced “a staggering 117.20 pounds weekly!” in 1995. *Broiler Industry* (Jan. 1996), at 26B.

<sup>23</sup>Linder, at 648-650; 656.

<sup>24</sup>Linder, at 634-35 (“The painful damage to tendons and nerves that can permanently cripple fingers, hands, wrists, arms, and shoulders, and has required thousands of poultry workers to undergo corrective surgery, makes it difficult or impossible for them to perform such simple motions or tasks as raising their arms above their heads, holding things, sweeping, washing dishes, or removing clothes from a washing machine.”); Peter Applebome, *Worker Injuries Rise in Poultry Industry As Business Booms*, N.Y. TIMES (Nov. 6, 1966), at A1.

illustrates these dangers:

*Thirty-six percent of the employees had had work-related cumulative trauma disorders during the previous year, while 20 percent had current work-related disorders. Those working in high-exposure departments such as eviscerating and deboning were four times as likely to have experienced disorders as those in low-exposure jobs such as maintenance, sanitation, and clerical. More than 99 percent of the participants in high-exposure*

*positions were black and 86 percent women, compared with 44 percent and 63 percent, respectively, of the low-exposure participants.*<sup>25</sup>

### **3. Worker Demographics and Compensation**

On the Delmarva peninsula white American poultry workers have been gradually replaced by African Americans who, in turn, have been partially replaced by Latino immigrant workers. Many local Americans find work in the poultry plants to be unpleasant and unhealthy, and do not want to work under such deplorable conditions for low wages.<sup>26</sup> The number of Latinos on the Delmarva

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<sup>25</sup>Linder, at 634; National Institute for Occupational Safety and Health, Health Hazard

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<sup>26</sup>Dail Willis, *Many Shun Work that Immigrants Will Accept*, BALT. SUN (Oct. 13, 1996), at 26A. As stated by one Another American former worker at Allen Family Foods, Inc., who lost his job after he hurt his back, reports he'd "like to go back, but it's so cold in [the poultry plants]. . . . [Y]our feet get cold, even in those work boots." *Id.*

peninsula skyrocketed during the 1990s, and many Latinos come seeking jobs in poultry plants.<sup>27</sup> Perdue, for example, has reported that nearly one-fifth of its work force is Latino.<sup>28</sup> Indeed, industry management often prefers Latino workers because they are willing to work very hard without complaint.<sup>29</sup>

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<sup>27</sup>The Census Bureau estimated 7,000 Hispanics on Maryland's Eastern Shore and Delaware's Eastern Shore. James Bock and Dail Willis, *Changing Face of the Shore*, BALT. SUN (Oct. 13, 1996), at 1A. Kent and Sussex

<sup>28</sup>*Id.*

<sup>29</sup>Bill Satterfield, Delmarva Poultry Industry's Executive Director, has stated that Latinos are "essential to the appreciate all the workers, especially the Hispanics. Your willingness to work and enthusiasm is better than others." D.R. Stewart, *Hispanics Told INS Coming: 100 Flee Tyson*, ARKANSAS DEMOCRAT & GAZETTE (Nov. 3, 1994), at 1A.

There has been little growth in the average hourly wages of poultry workers, who earned a little more than \$7 an hour in 1995, which is 60 percent less than the average wage for manufacturing workers.<sup>30</sup> A tremendous gap exists between the growth in the industry's productivity and the growth in hourly wages. While the value of production in the poultry industry between 1985 and 1995 doubled from \$5.8 billion to \$11.6 billion, average hourly earnings rose less than half the growth in the value of production, and the real average hourly earnings for poultry workers have actually dropped since 1985 from \$5.92/hour to \$5.73/hour in 1995.<sup>31</sup>

In recent years, much attention has been paid to the booming poultry industry and its ramifications on the public at large: the safety of its products for consumers<sup>32</sup> and the impact of its production on the environment.<sup>33</sup> Less public attention has been focused on the plight of the thousands of workers who toil long hours, often to the detriment of their own health, to bring poultry to our dinner tables. This report summarizes comments, opinions and indications of working conditions gathered from approximately 100 study participants, including poultry workers and

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<sup>30</sup>Source: Employment and Earnings, Bureau of Labor Statistics.

<sup>31</sup>Source: USDA; Employment and Earnings, Bureau of Labor Statistics.

<sup>32</sup>See, e.g., Ward Sinclair, *Poultry Inspection Flaws Admitted: USDA Says Random-Testing Plan Would Help Protect Public*, WASH. POST (June 3, 1987), at A3.; Ward Sinclair, *Poultry Contamination Undetected, Report Says: Millions of Food Poisoning Cases Cited*, WASH. POST (May 13, 1987), at A3.

<sup>33</sup>See, e.g., Eric Lipton, *Poultry Poses Growing Potomac Hazard: Chicken Production Employs Many but May Taint Water for Many More*, WASH. POST (June 1, 1997), at A1.



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service providers (clergy, doctors, nurses, paralegals, physical therapists, law enforcement officers, and others) who work closely with poultry workers. Due to a stated fear of losing their jobs or employer retaliation, the workers requested anonymity as a condition of participating in the survey.

## II. METHODOLOGY

In June 1997, the Public Justice Center began an exploratory study of legal, health and other work-related needs facing workers in Delmarva poultry-processing plants. The goal of the study was to explore and document, through quantitative and qualitative research, the problems faced by employees of the Delmarva poultry industry. Specifically, the study focused on documenting the daily lives of workers in the plants, from their own perspective. It was determined that the study would be industry-wide, as opposed to company-specific, and that study sites would be selected based upon the geographic distribution of workers as opposed to company size or location.

### A. *Site Selection and Informal Interviews*

In order to obtain broad and accurate data, the researchers integrated both quantitative and qualitative methods and techniques. The first step involved data gathering and factual research regarding the Delmarva poultry worker's composition, geographic distribution, and other general demographic information of the region. This information was then used to inform the selection of study sites. Upon selecting the general geographic concentrations of poultry workers (Georgetown, Delaware; Salisbury, Maryland; and Accomac, Virginia), informal, open-ended interviews were conducted with several workers and service providers who had knowledge of the issues facing poultry workers. Utilizing an open-ended interview technique, the researchers were able to solicit broad-based responses from these initial study participants. Through these informal interviews, the study's major themes and issues were identified, and the study researchers were provided with contacts to additional service providers and workers who served as participants for more formal interviews.

### ***B. Formal Poultry Worker and Service Provider Interviews***

Based upon the responses from the informal interviews, structured interview guidelines were developed for both service providers and poultry workers.<sup>34</sup> These guidelines were designed to solicit detailed descriptions of the problems faced by workers in the workplace. Through more than seventy formal interviews,<sup>35</sup> themes and patterns were identified and used to inform the development of the survey instrument.

### ***C. Poultry Worker Surveys***

Lastly, a poultry worker survey was designed to assess, quantitatively, the potential violations and abuses that emerged as primary themes from the formal interviews.<sup>36</sup> Based upon the feedback provided by both service providers and poultry workers, the survey questions were designed to elicit information concerning occupational health and safety, equal employment opportunity, wage and hour, and worker injuries. The survey instrument was reviewed by attorneys, researchers, and other relevant experts and was also translated into Spanish. The survey was administered by study researchers and service provider participants to poultry plant workers throughout the Delmarva

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<sup>34</sup>Please see appendices 3 and 4 for service provider and poultry worker interview guidelines.

<sup>35</sup>Please see appendix 5 for a chart detailing the geographic distribution of formal poultry worker and service provider interviews.

<sup>36</sup>Please see appendices 6 and 7 for survey instruments in English and Spanish.

region. Results of the survey were quantified and analyzed using the Statistical Program for the Social Sciences (“SPSS”).

In lieu of the random sampling technique, the PJC employed what is referred to by social scientists as the "snowball" technique for conducting the poultry worker survey. Using this technique, the PJC contacted a small number of workers and service providers who led us to other workers and providers to obtain survey participants. While representative, the completed surveys constitute less than a standard statistical sampling.<sup>37</sup> The workers’ stated fear of employer retaliation was a tremendous impediment to obtaining greater poultry worker participation.

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<sup>37</sup>Please see appendix 8 for a demographic breakdown of survey participants.



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### III. MAJOR FINDINGS: WORKER AND SERVICE PROVIDER INTERVIEWS

#### A. *Health, Safety, and Disability Issues*

##### 1. *Poultry Workers: A “Disposable” Workforce*

*“Now that I am getting older I am told that I work too slow and that maybe they will need to move me somewhere else or I should start looking for a job that isn’t such hard work. I still produce just as fast as before, and I don’t talk as much as others do. I think because my hair is starting to turn grey, they think it’s time to get rid of me.”*

Poultry worker,  
Virginia

The problems identified most frequently by service providers and poultry workers alike related to health, safety, and disability issues. Most service providers and workers characterized poultry workers in the processing plants as a “disposable workforce”; meaning that if workers become sick, disabled or elderly, company management “disposes” of them without regard to legal protections to which the workers may be entitled. Most service providers and workers interviewed indicated that when workers become ill or injured, they face the risk of being fired by the company.<sup>38</sup> As described by a poultry worker in Delaware, injured workers at his plant experienced the following:

*When there is an accident or an injury [and the worker becomes disabled], the*

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<sup>38</sup>45.3% of the workers surveyed responded that they had been injured on the job. Of those workers, 90% received no compensation (workers compensation, sick leave, or other compensation) while they were injured and off work, and 70% were not given light duty while injured. Of those who were given a light duty assignment, 80% did not remain on light duty as long as had been recommended by a physician.

*management runs them out. At first they will give them a rest. If they get better, they will let them work sometimes, but [typically], if someone has an accident, they are run off.*

A physical therapist reported:

*It is common knowledge that [a named poultry processing plant] will use you until you are simply not physically capable of doing the job anymore. The older or injured employees are fired and replaced with the steady stream of new, young employees. It's a dispensable workforce.*

Likewise, a former poultry worker from Virginia stated: "There are no disabled employees [in the plant]. You can count on getting fired if you become disabled. And you will not be hired if you already are."

## **2. Work- Related Health Problems**

*"I've told workers flat out. . .you quit or you'll be crippled. . .and they say they can't afford to."*

Medical Doctor,  
Virginia

### **a. Repetitive Motion Disorders**

Providers and workers reported that the most common work-related health problems experienced by poultry workers were repetitive motion injuries, including carpal tunnel syndrome and tendonitis.<sup>39</sup> A medical doctor in Virginia who has treated and continues to treat hundreds of poultry workers in his medical practice, reported:

*The most common ailment for women is repetitive motion injuries [in the hands and*

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<sup>39</sup>Of the 71 workers surveyed the following percentages of workers identified having the following work related soreness: 47% sore fingers, 56% sore hands, 43% sore wrists, 26% sore elbows, 38% sore shoulders, 33% back pain, 29% sore legs, and 21% numb hands.

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*arms] while for men it's typically shoulder problems from hanging the chickens and back problems from lifting. And with pregnancy, the higher the estrogen level, the more susceptible a woman is to repetitive motion disorders.*

Many of the workers interviewed and/or surveyed in the study also identified repetitive motion disorders or carpal tunnel syndrome as the major work-related health problem stemming from work in the plants. A worker from Delaware opined: “The worst abuse that we face as workers is being forced to work continually in the same repeated motion.” Another worker from Virginia reported that the repetitive motion required by his job caused him extreme pain in his elbows and shoulders, to the point where he lost the ability to pick up his children.

A physical therapist and ergonomic consultant to a poultry company on the Delmarva, also identified carpal tunnel syndrome, tendonitis and other repetitive motion disorders as the most common work-related health problems experienced by poultry workers. In his role as an ergonomic consultant, this participant carefully examined the workplace of a major poultry processing company on the Delmarva and made numerous recommendations. Chief among his recommendations was the need to rotate job functions to alleviate the effects of the repeated motions made by the workers in the course of performing their jobs.<sup>40</sup>

While some of the workers interviewed were of the opinion that job rotation during the course of the day might relieve the effects of the repetitive motion disorders, few workers reported a

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<sup>40</sup> “Using Job Rotation: use with caution and as a preventative measure, not as a response to symptoms. The principle of job rotation is to alleviate physical fatigue and stress of a particular set of muscles and tendons by rotating employees among other jobs that use different muscle-tendon groups. If rotation is utilized, the job analyses must be reviewed by a qualified person to ensure that the same muscle-tendon groups are not used” (OSHA’s Ergonomic Guidelines on the Meat Industry).

company adherence to any job rotation policy. A Delaware worker revealed: “We are supposed to have a rotation of jobs every two hours, but it usually does not happen.” Another Delaware worker stated that she had developed carpal tunnel syndrome in her wrists and attributed it to the lack of job rotation during the course of the day at the plant in which she worked.

Workers also complained that dull knives and equipment heightened the effects of repetitive motion disorders. A second physical therapist in Virginia, who has numerous poultry worker patients, described the damaging effects that the use of dull knives and other equipment have on repetitive motion disorders:

*Employees in the cut-up and deboning departments are issued knives and scissors; but when those are dull they are not given new pairs. This contributes greatly to the extra effort and intensity required to do their jobs, which in turn leads to injury from strain.*

Several poultry workers reported that supervisors routinely denied requests for sharper knives. When one Virginia worker complained of difficulty in using a dull knife, she reported that a company supervisor told her: “That’s your problem.” The same worker reported that she constantly experienced soreness in her wrists, hands, elbows and back. A Maryland service provider, who places workers in area poultry plants, stated that “workers must cut chickens with very dull knives, and because of the frigid temperatures they cannot feel their fingers.”

**b. Bathroom Breaks**

*“I have heard ...of workers urinating on themselves while working on the line and I have had to write doctor’s notes saying that certain patients must be allowed to use the rest room when they need to.”*

Medical Doctor,  
Virginia

Workers and service providers criticized the poultry companies’ stringent rules which prevent poultry workers from taking bathroom breaks as needed.<sup>41</sup> For example, study participants

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<sup>41</sup>72.5% of the workers surveyed reported that they are not consistently allowed to use the

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complained about the insufficiency of the scheduled ten minute bathroom breaks that companies provide.<sup>42</sup> Only one of the service providers interviewed, a Virginia Medical Doctor minimized the health effects of not being allowed to take bathroom breaks as needed, stating: “The bathroom break issue is a problem, but I don’t feel that any substantial medical problems are caused by a lack of breaks.” However, another medical doctor of Virginia, had a very different opinion about the long-term effects of not being allowed to use the bathroom as needed: “I see a very high occurrence of bladder infection [among poultry worker patients] and the accompanying stories of not being allowed to take a break to go to the bathroom”.

Even scheduled bathroom breaks are not guaranteed. Long lines and uniform and equipment removal hinder workers’ ability to use the bathroom within the prescribed ten minute time limitation. We learned that workers are “written up” when they exceed the ten minute limit, which can lead to termination. The results are that workers do not always get to use the bathroom even at scheduled breaks.

Often, a large group of workers are scheduled to take a bathroom break at the same time, which creates long lines. As described by a nurse and former poultry worker from Virginia: “Only ten minutes are allowed to remove all of their equipment, go to the bathroom, . . . , [and] put their equipment back on. Over 100 workers are sent on break at the same time so the lines for the restroom are very long.” A nurse and nun who provides various services to poultry workers, stated: “the workers cannot go to the bathroom.... On break time a lot of people get break at the same time. There are not enough bathrooms, long lines and not enough time.”

Poultry worker participants described a similar scenario. A Virginia poultry worker reviewed

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restroom as needed.

<sup>42</sup>While most survey participants (59.7%) were given two ten minute breaks, an alarming 37.1% of the workers reported receiving only one break during the workday.

the bathroom break policy of the plant she worked for:

*The only time you are allowed to go to the bathroom is on the rotating break schedule. One person per line has the job of letting workers go for their ten minute breaks. If you are at the end of the line, your break will be just a few minutes before the group lunch break - which means that you [would have] worked for almost four hours without being able to leave the line.*

Workers and service providers related that in desperation, some workers urinated while working on the line; while others went without fluids to control for the infrequent and insufficient bathroom breaks. Pregnancy was said to further exacerbate the effects of the severe restrictions on bathroom breaks, and companies reportedly do not give pregnant women any special consideration regarding bathroom breaks. As described by a Delaware nun, whose clients are children and pregnant women (some of whom are poultry workers): “Personnel policies regarding absences and bathroom breaks, especially as they affect pregnant women, are harsh and unyielding.... Pregnant women are required to produce a clinic note to go to the bathroom as needed.” A former poultry worker in Virginia stated: “bathroom breaks are particularly bad with pregnant women. One time when my wife was pregnant [and working at a poultry plant] she had to urinate [while working] on the line.”

***c. Other Work-Related Health Risks***

Many conditions at poultry processing plants lead to various types of job-related injuries, especially where the poultry companies fail to take necessary measures to ensure worker safety. Plant floors are made slippery with chemical cleaning agents, waste-ridden standing water and fat globules; the potentially toxic chemicals used in the plants create various health risks to workers; and the machinery used to process chickens in combination with the tremendous processing speed of the conveyor belts cause injuries ranging from cuts to dismemberment.

***i. Chemicals***

The storage and use of caustic and potentially toxic chemicals such as ammonia and chlorine create a major health risk to workers in poultry processing plants. Caustic cleansing agents are used in the plant for various purposes throughout the day to reduce the risk of exposure to contaminants in the poultry. Health risks to workers also stem from the release of toxic fumes caused by the leakage of stored chemicals, the fumes from heavily chlorinated water used to decontaminate the poultry, and from bodily injuries caused by contact with caustic chemicals.<sup>43</sup> One Delaware worker reported participating in two full-plant evacuations due to the leakage of toxic fumes. A former poultry worker in Virginia revealed that she and the other workers in her department were forced to work in a room filling with fumes from an ammonia leak until they were vomiting and too sick to continue working. The same worker complained that while supervisors are evacuated from rooms that have been contaminated with ammonia, the workers are required to continue working.

A poultry worker in Maryland reported that he received chemical burns to his right eye when a hose used to spray cleaning agents burst and made contact with his eye. Another worker from Maryland claimed that an accident with chemicals on the job burned a hole in his leg. According to these study participants, neither worker received sick-leave pay nor other compensation for time out of work, but both workers stated that their companies did pay all related medical bills.

*ii. Falls, Dismemberment and Other Injuries*

Slippery floors and other physical plant work hazards also lead to worker injuries. A former Virginia poultry worker reported that the plant she worked in instituted a policy requiring workers to wear rubber-soled boots with traction as a result of the numerous accidents resulting from falls on the slippery plant floor. She added that the workers must pay for the boots themselves. A worker in Maryland reported falling and becoming severely disabled from a concussion he received from the

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<sup>43</sup>100% of the workers surveyed reported exposure to chemicals while at work. 21% reported exposure to ammonia, 50% reported exposure to chlorine. 45% of the workers reported experiencing eye irritation at work, 28% reported experiencing headaches and skin problems, and 26% reported skin irritation, which they attributed to exposure to chemicals in the plant.

fall. Another worker in Maryland fell backward into a hole in the plant floor and sustained a severe cut to her leg. The worker reported that her repeated complaints to the company nurse about the pain and swelling caused by standing on her leg subsequent to the fall went virtually ignored, and further stated that the company did not refer her to a doctor or hospital.

Workers shared numerous stories of co-workers losing fingers, hands, and in one extreme and recent case, even a leg, to the poultry processing machinery. One worker gave a first hand account of recently losing a finger in a poultry processing machine for which \$6,000 in compensation was received from the company. However, the company required the worker to come to work the next day and the worker therefore received neither sick pay nor worker's compensation for the injury. After a few weeks of "light duty," the worker was returned to the evisceration department. Currently, this worker believes that the loss of the finger has aggravated a previous neck injury which has slowed his/her production speed on the line. The same worker reported now living in constant fear of being fired for slowing down.

### *iii. Cuts and Scratches*

Several types of workers are at risk of receiving cuts and scratches to hands and arms throughout the workday and subsequent exposure to infection and salmonella poisoning. For example, live hangers and slaughterers are pecked and scratched during their entire shift by live chickens they hang and kill; while workers in the evisceration, deboning, and cut-up departments risk slicing themselves with their own instruments, due in large measure to the rate of speed at which they must perform their repeated cutting tasks. Several of the workers interviewed were covered in cuts and scratches over their hands and arms. One hanger reported that he received a deep scratch from a chicken. He related that the wound later became infected because his supervisor would not permit him to leave his position to treat the wound during his shift.

### *iv. Company Doctors and Nurses*

Poultry workers identified company nurses and doctors as aggravating their health problems through improper treatments or lack of medical attention and referrals.<sup>44</sup> Company nurses were reported to routinely treat various types of pain and soreness with aspirin or Tylenol and were said to quickly return workers to the line to continue their tasks. A worker in Delaware stated: “I developed a carpal tunnel problem in my wrist but the nurse never did anything about it and would never send me to the doctor.” A Virginia worker who stated that he lost the ability to pick up his children due to carpal tunnel disease, was told by the company nurse that the pain he was experiencing was not work-related. A Maryland worker reported that the company nurse ignored her complaints of severe leg pain stemming from a blood clot that the worker believes she acquired from the long hours spent standing on the line.

### 3. *Safety Equipment Issues*

In many instances, proper training on and the actual use of protective equipment could greatly reduce the risks of work-related injuries in poultry plants. Workers reported several impediments to the proper use of safety equipment while performing their jobs in the plants.<sup>45</sup> Several workers cited their inability to keep up with the line speeds while wearing protective gear. As explained by one Virginia worker:

*We are supposed to wear gloves, but most workers don't because they cannot keep up with [the required line speed with] their gloves on. We are all covered in scratches and scars from the chickens. Maybe if they had trained us how to work fast and wear the gloves we could work faster that way.*

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<sup>44</sup>45.3% of the workers surveyed reported being injured at work. Of those, 53% responded that they did not receive quality medical care within a reasonable period of time and 55% reported that they were treated only by the company nurse or doctor on duty.

<sup>45</sup>All of the workers surveyed reported using safety equipment at work. 96.9% of the workers surveyed are required to either purchase their own safety equipment or pay for replacements.

A Delaware worker stated: “We are given protective glasses but they don’t work very well; they get damp, and they are hard to use so the people don’t use them when they can’t see well.” A Virginia worker in the hanging department indicated: “In theory, the hangers are required to use gloves but most of them find that it is easier to do the job [as fast as required] without gloves.”

In many instances, financial impediments also prevent the proper use of safety equipment. Most workers reported that companies require them to purchase their own safety gear, which many workers complained they cannot afford. For example, a Delaware worker stated: “We get cuts and scratches because we don’t wear our steel mesh gloves. This usually happens because we are forced to buy our own gloves and we can’t afford it.” A Maryland poultry worker explained the equipment costs he and other workers in his plant incur. In his plant, equipment costs are deducted from workers’ paychecks. A summary of those deductions is listed below:

*Payroll deductions are taken for gloves (\$1.00/wk), aprons (\$1.25/wk), hairnets (\$0.25/wk), and ear plugs (\$1.00/mo). We get our first hard hat, rubber-soled shoes, and gloves for free. But every two months there is an inspection and if they are worn out the employee is expected to purchase a new pair. The shoes are \$21.00 and the [steel mesh] gloves are \$50.00.*

A Delaware poultry worker confirmed: “Yes, I am expected to purchase my equipment and I find that an extremely heavy deduction out of my paycheck, particularly the gloves.” Some workers, however, have accepted the fact that they must purchase their own safety gear. One poultry worker from Delaware, for example, criticized her co-worker’s failure to purchase required equipment:

*I . . . purchased gloves two times a week. The gloves are very thick, but people are not careful and I think this has a lot to do with accidents. They prefer to wait [in purchasing new equipment] and use gloves that are no longer protective. They use them too long rather than purchase new ones.*

An additional impediment to the use of protective equipment stems from the reported lack of

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safety training. Many of workers interviewed indicated that they received very little to no training on equipment usage. A former worker in the evisceration department in a Virginia plant stated that he received five minutes of training on how to handle the knife. Another Virginia worker reported: “There was no training on equipment and little training for the job. I couldn’t afford boots so I slipped and fell. I wasn’t hurt but I was blamed for not buying boots.”

## **B. Employee Relations**

### **1. Language Barrier Issues**

Our field research confirmed that poultry plants on the Delmarva have an increasingly, ethnically and linguistically, diverse work force. African Americans, White Americans, Haitians, Laotians, Russians, Latinos, and other comprised the poultry industry’s multi-cultural, multilingual workforce. Many of the study participants believed that language and cultural differences presented one of the most formidable workplace barriers for non-English speaking poultry workers.<sup>46</sup> Latinos from Mexico, Central America, and South America, formed the largest group of non-English speaking poultry workers in Delmarva plants. Study participants asserted that in most plants, trainings, orientations, written information about benefits, and other plant communications are provided only in English. As summarized by a Spanish-speaking police officer in Maryland who frequently translates for and provides information to Latino poultry workers in his area:

*Workers are afraid to or don’t have the language skills necessary to ask questions. This includes a lack of [job] training in Spanish, or the appropriate language. Most of the information that the workers have regarding their jobs comes from word of mouth.*

A Spanish-speaking paralegal in Maryland believed: “Because of language barriers and unfamiliarity with the laws, most workers are unaware of what benefits they are entitled to.” A Haitian service provider in Maryland, who had previously been a poultry worker, confirmed:

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<sup>46</sup>51.4% of the workers surveyed reported being unable to read or write English fluently.

*At the time I worked..., I was unaware of the existence of worker's compensation. In my opinion, the vast majority of workers are unaware that they are entitled to such compensation when injured on the job. I believe that this is largely due to language barriers.*

A service provider in Delaware also complained about the inadequacy of bilingual services provided to workers in plants that employed bilingual staff:

*Most bilingual workers don't really understand their benefits or how to access them. It is not enough to have one bilingual person in human resources and to briefly explain their benefits orally in the orientation. They need written and visual [videotaped] materials to orient them, and the opportunity to ask questions [in their language] as alternatives present themselves.*

The same service provider further commented:

*In the area of rights and safety, the bilingual supervisors are not really meeting the needs for better communication. There is a lot of turnover among bilingual management. . .they seem afraid to speak on workers' behalf.*

## **2. Disparate Treatment**

*"Everyone is being discriminated against ... because we are poor and because we need a job so badly to support ourselves."*

Poultry Worker  
Virginia

The groups identified as the subjects of discrimination included: Haitians, Russians, African-Americans and Latinos. While reports from workers indicated that many immigrant and minority poultry workers felt discriminated against, there was a high degree of consensus among the study participants that Latinos were the subjects of discrimination far more than any other immigrant or minority group. The discrimination reportedly took the form of verbal abuse and harassment, denial of scheduled bathroom breaks, being assigned the worst and dirtiest jobs, failing to receive



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promotions and other forms of disparate treatment.<sup>47</sup>

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<sup>47</sup>For example:

*Injuries*

- 81% of those workers who indicated that they were injured at work and did not receive quality care within a reasonable period of time were Latino.
- 92% of the workers surveyed who were injured at work and did not have related medical care paid

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for by their employer were Latino.

*Chemical Exposure*

- 88% of the surveyed workers who experienced nausea due to chemical exposure were Latino; 71% who experienced eye irritation were Latino; and 88% who experienced skin irritation were Latino.

*Discrimination / Sexual Harassment*

- 39% of the workers surveyed reported feeling discriminated against. Of those, 86% were Latino.
  - 37% of the workers surveyed reported having experienced degrading comments about their race. Of those, 88% were Latino.
  - 23% of the workers reported having experienced degrading comments regarding nationality, 100% of them were Latino.
  - Six out of a total of seven women who reported unwanted sexual advances from a supervisor while working in a poultry plant were Latina.
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Many persons believed Latinos experienced the worst discriminatory treatment because they are Spanish-speaking. A Latino police officer in Maryland explained:

*Most Latinos feel that the African American workers are treated better and given preference in promotions, breaks, shifts, pay raises, etc. there is tension around being able to talk on the line. The African American workers are allowed to talk, while the Latinos are reprimanded and sometimes fired for talking to each other while working.*

The officer also speculated that Latinos were prohibited from talking because supervisors would not be able to understand them.

A Russian immigrant and former poultry worker in Virginia echoed this sentiment: “When Americans talk among themselves they aren’t reprimanded half as fast as the Latinos. And the managers say the Latinos can talk to each other only if they speak in English.” The same participant reported that “anyone who doesn’t speak English is not treated very well [in poultry plants]” and further stated that “Latinos are treated the worst.” Three Latino poultry workers in Virginia complained that if they stop working on the line for a moment they are reprimanded, but when African American workers talk on the line, they are not reprimanded.

An African American service provider and former poultry worker in Virginia disclosed “I have never been discriminated against -- but the Latinos are treated badly and given harder jobs.” Other reports of discrimination included allegations that Latino workers were paid less than others, assigned to more dangerous and undesirable jobs, not promoted to supervisory positions and denied scheduled breaks while White and African American workers were allowed to take their breaks. Haitian poultry workers also complained of language barrier difficulties and discriminatory treatment toward them in the terms and conditions of employment.

Study participants also discussed discrimination against female employees. One participant reported that women were often paid less than men and that men were more likely to be hired than

women. Another participant reported that women are given the most intricate and dangerous jobs involving knives. Only one of the workers interviewed reported “quid pro quo” sexual harassment in the form of her supervisor requesting sexual favors.<sup>48</sup>

### 3. *Worker Displacement Issues*

*“Immigrants are not taking jobs away from other workers, they are simply doing the work that no one else wants to do.”*

Service Provider  
Maryland

When asked about displacement issues, the participants in this study reported that Latinos are increasingly displacing African American workers. Many believed that poultry management prefers Latino workers over other workers, perhaps because Latino workers are unfamiliar with their legal rights as employees. A police officer from Maryland commented: “the companies are always looking for cheaper, better labor and seem to recruit immigrant Latinos to replace African American workers. The non-documented Latino will work for less money, complain less and is easier to manipulate.” A Latino poultry worker from Delaware reported “there is discrimination against Hispanics. They [company management] put others out of a job because they will not work as hard as Hispanics, but they make Hispanics work harder than every one else.” A Delaware participant agreed that “most poultry industry managers see the Hispanics as great workers.” Similarly, another service provider from Delaware stated: “Every day there are new jobs opening up. Hispanic workers are preferred.”

As mentioned in the disposable workforce section, many study participants reported that

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<sup>48</sup>However, 10% of the workers surveyed reported unwanted sexual advances from a supervisor while working in a poultry plant.

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older and disabled workers are routinely displaced by younger, more able bodied workers.

#### **4. *Inter-ethnic Tensions***

Language barrier, discrimination and displacement issues are seen as being the catalyst for inter-ethnic tensions, particularly between Latinos and African-Americans. Most participants, particularly in Delaware, acknowledged tensions between the African-American and Latino communities. Many participants posited that this tension manifested in the community rather than within the plants. Several participants in Delaware also complained of African American on Latino crime.

### **C. *Wage and Overtime Issues***

#### **1. *Paid Forced Overtime***

Many workers complained that they were forced to work overtime. In most cases, workers reported that they were paid time-and-a-half for the mandatory overtime but did not know whether they had the right to refuse overtime assignments. A former poultry worker in Virginia reported that she generally worked from 8:00 a.m. to 8:00 p.m. While she was properly compensated for the long hours worked, she did not wish to work overtime. Another worker from Virginia reported that forced overtime put a tremendous strain on the family regarding child care and other domestic responsibilities.

#### **2. *Unpaid Overtime***

Other workers reported that employers required them to work overtime during probationary periods and did not compensate them for the overtime worked.<sup>49</sup> A worker from Virginia stated:

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<sup>49</sup>The survey results show that approximately 20% of the workers surveyed worked overtime during their probationary period; 28.6% of those who worked overtime were not paid for their time at all, and of those who were paid, only 41.2% were paid at the appropriate rate of time-

“We worked overtime during our probation period - weekends and 10 or 12 hour days. We were never paid for that time [overtime].”

A more common complaint among workers was being required to work extra minutes on a regular basis and not being paid for that time.<sup>50</sup> A former poultry worker from Virginia described how she was routinely not compensated for overtime worked:

*[The company] allowed us a seven minute grace period to be in our place on the line at the beginning of our shift. . . they figured they could also work us an extra 6.5 minutes at the end of our shifts regardless of whether any of us had been late that day or not.*

The same worker summarized the result of this policy in the following manner “Everyday I worked there for over 10 years, I worked an extra half-hour a week beyond 40 hours and was never paid for it. . .”

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and-a-half.

<sup>50</sup>The survey results show that 68.2% of those surveyed worked overtime (not during probation, as in footnote 49). 13.6% of those who worked overtime reported that they were not paid for overtime worked at all, while 28.5% reported being paid at their regular hourly rate (rather than the required time-and-a-half).

Workers also reported that employers denied them overtime pay through other subtle means. A Delaware poultry worker stated: “A few minutes here and there is the usual.” A former worker from Delaware agreed: “Yes, I have worked overtime and they did pay me for it. However everyday we work overtime about 10 or 15 minutes but we are never paid for it.” Other workers reported that they were not allowed to punch in at the time of arrival, but by one account, only after the chickens arrived and the conveyor belt started to operate. More commonly, workers were not permitted to punch in until after they put on their gear and performed the necessary preparations for work.<sup>51</sup> One worker reported that the foreman punched the time clock for him. Thus, many workers cited that employers did not compensate them for the extra minutes that were regularly worked, which in some cases added up to additional hours worked beyond the forty hour work week.

### 3. *Deductions*

Workers also expressed confusion over some of the deductions taken from their paychecks.<sup>52</sup> One worker complained that deductions were being taken from her paycheck for dry-cleaning expenses even when she was not turning in any dry-cleaning. As mentioned earlier, other workers were required to purchase equipment through pay check deductions. Another worker stated that monies were deducted for a “defense fund” and the “DPI” but did not know the purpose of these

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<sup>51</sup>41% of the respondents reported working before or after the official workday begins or ends. Of those, 78.1% were not paid for that time.

<sup>52</sup>46% of the workers surveyed did not understand some or all of the deductions taken from their paychecks.

deductions.



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#### IV. SUMMARY OF APPLICABLE LAW

##### A. *Health, Safety and Disability Issues*

###### 1. *Americans with Disabilities Act*

Most study participants identified an industry-wide pattern of workers being treated as a “disposable workforce.” Workers and providers repeatedly stated that when a worker became ill, injured or elderly, they were at risk of being fired and replaced by younger, more able-bodied workers.

Title I of the Americans with Disabilities Act of 1990 (“ADA”)<sup>53</sup> prohibits employers (with fifteen or more employees) from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities or is regarded as having such an impairment.<sup>54</sup> An individual with a disability is qualified for a job if that person, with or without “reasonable accommodation,” can perform the essential functions of the job.<sup>55</sup>

To prove a claim under the ADA, an employee must meet a stringent three-pronged standard: (1) that s/he has a disability as defined by the ADA; (2) that s/he is otherwise qualified -- with or

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<sup>53</sup>42 U.S.C. §§ 122101 *et. seq.*

<sup>54</sup>42 U.S.C. § 12102(2).

<sup>55</sup>42 U.S.C. § 12111(8).

without reasonable accommodation s/he is able to perform the essential functions of the job; and (3) that the employer discriminated against her/him because of her/his disability.

If a poultry worker can prove that s/he has a disability and would be able to perform the essential job functions with reasonable accommodation, the worker may have a claim under the ADA.

## **2. *Occupational Safety and Health Act***

### **a. *General Standards***

The federal and state Occupational Safety and Health Acts (OSH Acts) are relevant to a discussion of the health and safety risks reported by poultry workers. In this study, poultry workers reported numerous conditions which implicate potential violations of these OSH Act standards, including: falls caused by standing waste water on the workroom floors, lacerations and scratches on hands and arms, and exposure to caustic and potentially toxic chemicals. The Federal OSH Act<sup>56</sup> establishes minimum safety and health standards for workers. Under the OSH Act and its implementing regulations, employers must, among other things:

- Furnish to each employee a place of employment which is free from recognized hazards that cause or are likely to cause death or harm;
- Inform workers about potential hazardous substances (such as chemicals, dusts, or metals). Labels on chemicals may not be removed, and employers must ensure that all safety precautions are followed;<sup>57</sup>
- Provide workers with proper protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory

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<sup>56</sup>29 U.S.C. § 651 et seq.

<sup>57</sup>29 U.S.C. § 655; 29 C.F.R. §§ 1910.101-1910.120.

devices, and protective shields;<sup>58</sup>

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<sup>58</sup>29 C.F.R. § 1910.132 et seq.

- Ensure that all places of employment are kept clean, orderly, and in a sanitary condition;<sup>59</sup>
- Ensure that the floor of every workroom is clean, and so far as possible, dry. “Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable; and”<sup>60</sup>
- Select and require employees to use appropriate hand protection when employees’ hands are exposed to hazards such as skin absorption of harmful substances or lacerations.<sup>61</sup>

The implementing regulations for the OSH Act permit employees to refuse to perform work that subjects them “to serious injury or death arising from a hazardous condition,”<sup>62</sup> The regulation provides: “If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination.”<sup>63</sup>

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<sup>59</sup>29 C.F.R. § 1910.22(a)(1).

<sup>60</sup>29 C.F.R. § 1910.22(a)(2).

<sup>61</sup>29 C.F.R. § 1910.138.

<sup>62</sup>29 C.F.R. § 1977.12(b)(2).

<sup>63</sup>Id. This provision was upheld by the Supreme Court in Whirlpool Corp. v. Marshall, 445 U.S. 1 (1980). The condition must be of such a nature that a reasonable person would conclude that there is a real danger of death or injury. In addition, where possible, the employee must also

Employees do not have a private right to sue an employer for unsafe or unhealthy working conditions, but may make a formal written complaint to OSHA.<sup>64</sup> The OSH Act protects workers against retaliation when they file a workplace safety or health complaint.<sup>65</sup>

Of the states in our study, Maryland and Virginia have additional occupational safety and health laws which are similar to the federal OSH Act. Delaware does not have a separate state law, but follows the federal OSH Act.

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have sought from his employer, and been unable to obtain a correction of the dangerous condition.

<sup>64</sup>29 C.F.R. § 1903.11.

<sup>65</sup>29 C.F.R. § 1903.11(d).

In Maryland, each employer must provide each employee “with employment and a place of employment that are: (1) safe and healthful; and (2) free from each recognized hazard that is causing or is likely to cause death or serious physical harm to the employee.”<sup>66</sup> Each employer must keep its employees informed of their protections and duties under Maryland occupational safety and health laws and standards by posting notices in the workplace and using “other appropriate means.”<sup>67</sup>

Virginia law requires every employer to furnish to each employee “safe employment” and “a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm.”<sup>68</sup>

***b. Bathroom Facilities and Breaks***

Workers and service providers criticized the poultry companies’ stringent rules which prevent poultry workers from taking bathroom breaks as needed. Study participants complained about the insufficiency and the infrequency of the scheduled ten minute bathroom breaks. Long lines and uniform and equipment removal hinder workers’ ability to use the bathroom within the prescribed ten minute time limitation. Additionally, several study participants indicated that in desperation, some workers urinated on the line; while others went without fluids to control for the infrequent

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<sup>66</sup>Md. Code Ann., Labor & Empl. § 5-104(a).

<sup>67</sup>Id.

<sup>68</sup>Va. Code Ann. § 40.1-51.1(A).

breaks.

The OSH Act requires that a certain number of toilet facilities shall be provided based on the number of employees. OSHA has interpreted this to mean that employers must provide employees with relief from the production line to use the bathroom. For example, OSHA recently cited a Hudson Foods plant for violating regulations regarding toilet facilities. OSHA found that toilet facilities were not provided because “employees were denied necessary use of bathroom facilities.” OSHA stated:

*In isolated areas throughout the production plant, supervisors and/or leads do not allow workers relief from the production line in order to use the toilets, in effect, locking them out of or failing to provide facilities.*

In addition, OSHA cited Hudson for failing to provide enough toilet facilities for the number of its employees. Table J-1 provides a table of the minimum number of water closets per number of employees of that sex<sup>69</sup>:

Number of Employees	Minimum Number of Water Closets
1 to 15 .....	.....1
16 to 35 .....	.....2
36 to 55 .....	.....3
56 to 80 .....	.....4

<sup>69</sup> Where toilet facilities will not be used by women, urinals may be provided instead of water closets, except that the number of water closets in such cases shall not be reduced to less than \_ of the minimum specified.

Number of Employees	Minimum Number of Water Closets
81 to 110 .....	.....5
111 to 150 .....	.....6
Over 150 .....	.....(*)

\* One additional fixture for each additional 40 employees.

### 3. *Worker's Compensation*

The majority of poultry workers interviewed were unaware of their entitlement to workers' compensation when injured on the job. Apparently, many eligible workers remain uncompensated for injuries sustained at work due to their lack of knowledge of workers' compensation laws. Workers' compensation is governed by state law. The states covered in this study, Maryland, Virginia and Delaware, have similar laws which require employers to have workers' compensation coverage for job-related injuries and death.<sup>70</sup> Under all three state laws, workers may receive benefits for physical injuries or occupational diseases arising out of the course of employment, regardless of any negligence or fault which caused the injury.

None of the states in this study have immigration-related eligibility restrictions. In addition, all three states specifically prohibit employers from retaliating against or firing employees who file workers' compensation claims. Employers in all three states must post a notice in the workplace explaining workers' compensation coverage. Employers must also promptly report (within 10 days) all work-related injuries to the agency that administers workers' compensation.

Information regarding application processes and workers' compensation requirements would

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<sup>70</sup>See 19 Del. C. § 2301 *et seq.*, Md. Ann. Code, Labor & Empl. § 10-101 *et seq.*; Va.

Code Ann. § 65.2-100 *et seq.* The workers' compensation laws of Maryland and Delaware apply to employers with one or more employees. Virginia's law applies to employers with three or more employees.



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be greatly beneficial to poultry workers who have suffered job-related injuries or illnesses.

**B. Employee Relations**

**1. Disparate Treatment: Title VII**

While reports from workers indicated that many immigrant and minority poultry workers believed that they were discriminated against, there was a relative consensus among the study participants that Latinos experienced discrimination far more than any other immigrant or minority group in Delmarva poultry processing plants. The discrimination reportedly took the form of verbal abuse and harassment, denial of scheduled bathroom breaks, being assigned the worst and dirtiest jobs, failing to receive promotions and other forms of disparate treatment.

If proven, these acts would be prohibited by Title VII of the Civil Rights Act of 1964, which makes employment discrimination illegal.<sup>71</sup> Title VII prohibits employers with fifteen or more full- or part-time employees from discriminating on the basis of national origin, race, color, religion, or sex.<sup>72</sup> All workers of covered employers, including undocumented immigrants, may claim the protections of Title VII.<sup>73</sup> The actions covered include: hiring, firing, recruitment, promotion, pay and fringe benefits, all other terms and conditions of employment, and retaliation.

**a. National Origin Discrimination<sup>74</sup>**

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<sup>71</sup>42 U.S.C. §§ 2000e et seq.

<sup>72</sup>More specifically, during the current (or the previous) calendar year, the employer must be operating (or have operated) with 15 or more workers each working day for 20 of the year's 52 weeks. 42 U.S.C. § 2000e-(b).

<sup>73</sup>The Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324B, makes it illegal for employers to hire undocumented aliens, but also makes it illegal for employers to discriminate based on national origin or citizenship status.

<sup>74</sup>In addition to Title VII, the Immigration and Nationality Act (INA) prohibits national origin

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discrimination. The INA covers employers with 4-14 employees (whereas Title VII covers employers with 15 or more employees) and the INA also covers seasonal work forces (whereas Title VII covers employees who work at least 20 out of 52 weeks a year). The INA covers hiring, firing, recruitment or referral for a fee, and retaliation (whereas Title VII has broader protections, which also include promotion, pay and fringe benefits, and all other terms and conditions of employment).

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Discriminatory treatment of Latino, Haitian, Russian, and other poultry workers may be classified as national origin discrimination. A “national origin” classification connotes a person’s place of origin (or that of the person’s ancestors) and those features, such as dress, language, or physical appearance, that are identified with the people of that place of origin. According to the Equal Employment Opportunity Commission (EEOC), which adjudicates complaints of discrimination under Title VII, national origin discrimination occurs when an individual is treated differently from others because of “birthplace, ancestry, culture, or linguistic characteristics”<sup>75</sup> common to a specific ethnic group.<sup>76</sup> Moreover, “an ethnic slur or other verbal or physical conduct because of an individual’s nationality constitutes harassment if they create an intimidating, hostile or offensive working environment, unreasonably interfere with work performance or negatively affect an individual’s employment opportunities.”<sup>77</sup>

***b. Sex Discrimination***

There was some discussion by poultry workers about sex discrimination against female employees in poultry plants. One participant reported that women were often paid less than men and

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<sup>75</sup>Specifically, EEOC regulation, 29 C.F.R. 1606.7 states that a rule requiring employees to speak only English at all times is a burdensome term and condition of employment. It may also create an atmosphere of inferiority, isolation, and intimidation based on national origin which could result in a discriminatory working environment.

<sup>76</sup>EEOC, Facts About National Origin Discrimination, EEOC-FS/E1 (1992).

<sup>77</sup>Id.

that men were more likely to be hired than women.<sup>78</sup> Another participant reported that women are given the most intricate and dangerous jobs involving knives. One of the workers interviewed and seven of the workers surveyed (10%) reported “quid pro quo” sexual harassment in the form of a supervisor requesting sexual favors.

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<sup>78</sup>Disparate pay scales for men and women may violate the Equal Pay Act, which makes it illegal to pay male and female employees unequally for “equal work”. “Equal work” is generally defined as those jobs the performance of which require equal skill, effort and responsibility, and which are performed under similar working conditions. 29 U.S.C. § 206(d).

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Title VII, and other state and federal equal employment opportunity laws, prohibit employers from treating workers, both men and women, unfairly based on gender. For example, a rule that is applied only to women (or only to men) violates Title VII.<sup>79</sup> It is unlawful to base employment decisions on sex or sex stereotypes.<sup>80</sup>

Sexual harassment is a form of sex discrimination. There are two types of sexual harassment: “quid pro quo” sexual harassment, where an employer conditions job benefits upon the receipt of sexual favors,<sup>81</sup> and “hostile environment” harassment, which is unwelcome conduct of a sexual nature that “has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

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<sup>79</sup>See, e.g., Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971).

<sup>80</sup>See Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

<sup>81</sup>The EEOC defines “quid pro quo” sexual harassment as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (2) submission to or rejection of such conduct by an individual is used as the bases for employment decisions affecting such individual...

29 C.F.R. § 1604.11(a).

## ***C. Wage and Overtime Issues***

### ***1. Overtime Issues***

Workers complained of paid, forced overtime, unclear paycheck deductions and most troubling, unpaid, forced overtime. Workers alleged that during probation, they were required to work extensive overtime for which they were not compensated. More commonly, workers asserted that they were not compensated for additional time worked before and after they began and ended their work on the line. One worker reported having to wait to punch the time clock until the chickens arrived, although he was required to be at work at an earlier time. Another worker alleged that his supervisor punched the time clock for him.

The federal Fair Labor Standards Act (FLSA) and state wage and hour laws provide that workers must be compensated for all hours worked and must receive overtime pay at 1.5 times the regular pay rate for any hours worked in excess of 40 hours in a work week.<sup>82</sup> This rate of pay would clearly encompass overtime worked during probationary periods. Moreover, the failure to compensate for time worked at the beginning and end of the day may violate the FLSA.

### ***2. Deductions***

The poultry workers interviewed and surveyed indicated confusion over some of the deductions taken from their pay checks. This confusion arose from reported deductions, including those taken for equipment, “DPI” and the “Defense Fund”. Under the FLSA, deductions for certain items, such as equipment or tools, may not be charged against wages if they are primarily for the benefit and convenience of the employer and would make wages fall below minimum wage.<sup>83</sup>

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<sup>82</sup>29 U.S.C. § 207(a).

<sup>83</sup>29 C.F.R. § 531.3(d)(2).

Moreover, under Maryland law, the employer may not take any deductions from an employee's wages without prior written consent from the employee.<sup>84</sup> This is an issue that requires further investigation.

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<sup>84</sup>Md. Ann. Code, Labor & Empl. § 3-503.

## V. RECOMMENDATIONS

This report signals the need for still further inquiry into the issues that face poultry workers on the Delmarva. Our principal recommendation is that such an inquiry proceed in as timely and comprehensive a fashion as possible. In the meantime, the report's findings provide a general direction for basic steps that the management of the Delmarva poultry industry should take to address worker and workplace issues. Community and worker organizations should actively monitor conditions in the industry and advocate for positive reforms for poultry workers. Governmental agencies at the local, state, and federal level can also play a positive role through the rigorous and fair enforcement of laws and regulations affecting workers in the industry. The obligation, however, for compliance with the legal and regulatory structure as well as promoting fair and ethical employment practices lie with the management of the industry. Specifically the industry should:

### A. *Health, Safety, and Disability Issues*

#### 1. *Disposable Workforce Issues*

- Hire appropriate ergonomic and other consultants who specialize in workplace ergonomics to evaluate poultry processing in each plant and develop worker protection strategies .
- Implement recommendations of the above mentioned consultants.
- Clarify and educate workers on company policies related to sick leave and disability issues in the languages spoken by the workforce.
- Develop a uniform policy regarding “light duty” assignments and educate the workforce on this policy.
- Institute “light duty” assignments for injured workers, especially those who incur work-related injuries or illnesses.
- Conduct regular sensitivity trainings aimed at re-educating and training all supervisory, managerial, and medical personnel on the value of the poultry processing workforce.



## **2. Repetitive Motion Disorders**

- Train medical personnel on diagnosis and treatment of carpal tunnel syndrome and other repetitive motion disorders.
- Train and educate poultry workers on preventative measures for reducing the effects of repetitive motion disorders.
- Implement and/or enforce rotation schedules to reduce incidence of repetitive motion disorders.
- Supply workers with sharpened knives and tools upon request.

## **3. Bathroom Breaks**

- Devise and implement a system that will enable employees to use bathrooms as needed.

## **4. Safety Equipment Issues**

- Supply and pay for safety equipment necessary for performing all poultry processing job functions. Examples include but are not limited to rubber-soled boots, steel mesh gloves, face masks, protective eye wear and the like.
- Discontinue paycheck deductions for workers' purchase of safety equipment.
- Routinely inspect supplied safety equipment to ensure proper use.
- Provide appropriate protective guarding equipment to prevent worker injury in the event of accidental start up of poultry processing machines.

## **5. Chemical Use**

- Inspect and ensure safe storage of all cleaning agents and other potentially hazardous chemicals.
- Ensure that workers who handle caustic chemicals are properly trained, in their native language, on proper chemical handling and equipment use.

## **6. *Other Health and Safety Issues***

- Provide extensive training to clearly explain how respective job duties are to be performed, in the languages spoken by the workforce.
- Routinely inspect poultry processing machinery to ensure proper functioning.
- Ensure that medical personnel properly dress and otherwise treat wounds at the time of occurrence to reduce the risks of infection and salmonella poisoning.
- Train medical personnel on appropriate treatment of routine ailments and injuries as well as proper use of referrals to in-house physicians, outside medical specialists, hospitals and the like.

## **B. *Employee Relations***

### **1. *Personnel Issues***

- Develop and distribute a personnel manual which explains personnel policies related to vacation leave, sick leave, leaves of absence, workers' compensation rights, disciplinary policies, and other company benefits and obligations and employee rights and responsibilities.
- Provide training regarding the above policies and procedures.
- Provide all personnel materials and trainings in the languages spoken by the plant employees.
- Provide career growth opportunities for plant workers.

### **2. *Language Barrier Issues***

- Provide bi/multi-lingual translation services for poultry workers.
- Establish bi/multi-lingual employee advocates to represent the concerns of English and non-English speaking poultry workers.

### **3. *Disparate Treatment and Inter-Ethnic Tensions***

- Provide periodic, mandatory diversity training to workers, supervisors, and managers to decrease inter-ethnic tensions in the plant.
- Establish an employee dispute resolution mechanism to handle complaints of discrimination, hazardous or poor working conditions, employee grievances against supervisors or managers, complaints against co-workers, and the like.
- Hire workers on the basis their ability to perform job functions rather than on the basis of national origin or other impermissible criteria.

## **C. *Wage and Overtime Issues***

### **1. *Overtime Issues***

- Discontinue practices which require employees to work overtime during probationary periods without proper compensation.
- Discontinue practices which require employees to perform preparation or clean-up tasks or to otherwise work additional time beyond a forty hour work week without compensation.

### **2. *Deductions/Other***

- Establish a pay-scale review committee to ensure that workers are paid equally without regard to sex, race, national origin and other impermissible criteria.
- Conduct trainings in relevant languages to educate workers on all deductions taken from paychecks - taxes, medical deductions and the like.

## **Glossary of Terms**

*The definitions of the terms below are not intended to be all inclusive, but rather reflective of the terms' usage in the Public Justice Center's documentation study "The Disposable Workforce: A Worker's Perspective."*

**Carpal Tunnel Syndrome** - chronic pain and paresthesia in the hand in the area of distribution of the median nerve caused by compression of the median nerve by fibers of the flexor retinaculum and associated with repetitive motion.

**Cumulative Trauma Disorder**- *see Repetitive Motion Disorder.*

**Cut-Up Worker** - poultry plant worker responsible for cutting poultry parts.

**Deboner / Deboning** - poultry plant worker responsible for removing bones and other debris from poultry; or the process of removing bones from poultry.

**Delmarva / Delmarva Peninsula / Delmarva Region** - the Delmarva peninsula is a narrow strip of land comprised of portions of the states of Delaware, Maryland and Virginia -- and was the primary area of focus for the PJC documentation study.

**Delmarva Poultry Industry** - ("DPI") is an association of poultry processors, growers and other affiliated individuals on the Delmarva peninsula. For more information contact: Delmarva Poultry Industry, Inc. R.D. 6, Box 47, Georgetown, Delaware 19947-9622, (302) 856-9037.

**Documentation Study** - a Public Justice Center study designed to give voice to concerns and issues articulated by an underrepresented class of persons which is investigated, documented, and memorialized in report form.

**Ergonomics** - "an applied science concerned with the characteristics of people that need to be considered in designing and arranging things that they use in order that people and things will interact most effectively and safely" (Websters Dictionary, 9th Edition).

**Eviscerator** - poultry plant worker responsible for removing the internal organs from dead poultry.

**Hanger** - poultry plant worker responsible for hanging live poultry by the feet.

**Job Rotation** - a policy which comes in various forms at different processing plants and involves the rotation of workers from station to station or task to task.

**Line / Poultry Processing Line**- *see Poultry Processing Line.*

**Line Speed** - the speed at which the poultry processing conveyor belt moves, per job, or at any given moment in time.

**Poultry Plant / Poultry Processing Plant (Company, Employer, Plant)** - a facility which is involved in the mass production of poultry or poultry related products.

**Poultry Processing Line / Line** - the moving conveyor line employed in the process of mass producing poultry products. Includes but is not limited to: Live Hanging, Slaughter, Rehousing, Pinning, Evisceration, Giblet Packing, Chilling, Grading / Rehousing, Deboning, Cut-Up, Packing and Shipping.

**Poultry Worker / Worker** - for the purpose of this documentation study, poultry workers are defined as individuals who are employed by poultry processing plants on the Delmarva peninsula and, in a few cases, in or around Harrisonburg, Virginia. Additionally, the workers involved in this study were line workers (including those in the packing and shipping departments) as opposed to front office, personnel, or managerial employees.

**Provider / Service Provider** - *see Service Provider.*

**Repetitive Motion Disorders** - includes Carpal Tunnel Syndrome and Tendonitis and is generally any physical injury, harm, or pain caused by multiple, or unusual repetitions of a particular movement or combination of movements.

**Report / Study** - refers to the product of the poultry industry documentation study conducted by the Public Justice Center on the Delmarva peninsula.

**Service Provider / Provider** - an individual who provides a type(s) of service, advice, guidance, or leadership and has regular contact with poultry workers on the Delmarva. The service providers in this study included: medical doctors, police officers, physical therapists, nurses, social workers, legal service providers, charitable organization workers, ministers, priests and sisters, local community leaders and community organizers.

**“SPSS” (Statistical Program for the Social Sciences)** - computer software designed to statistically process social science research data.

**Study Participants** - includes both service providers and poultry workers.

**Study Researchers** - involved in the “Disposable Workforce” documentation study. Study researchers included an Anthropologist, a Masters student in anthropology, a law student and Public Justice Center staff.

**Tendonitis** -inflammation of a tendon. Pain and tenderness just outside a joint, especially in elbow or shoulder. A minor injury or excessive repetitive use can produce associated tenderness / soreness. Tendonitis is usually caused by a small tear or inflammation of the tendon that links muscle to bone and is most common in elbows and shoulders.

**Worker / Poultry Worker** - *see Poultry Worker.*

The Public **Justice** Center would like to offer special

*Thanks*

to the poultry workers and service providers who shared  
their experiences and concerns  
about work in Delmarva poultry processing plants.

“Now that I am getting older I am told that I work too slow . . . I still produce just as fast as before, and I don’t talk as much as others do. I think because my hair is starting to turn grey, they think it’s time to get rid of me.”

Poultry Worker

Virginia