

THE WAGES OF BLOOD

By
Vanessa Hemenway*

“The sheer amount of killing and blood can really get to you after awhile, especially if you can’t just shut down all emotion completely and turn into a robot zombie of death. You feel like part of a big death machine. Pretty much treated that way as well. Sometimes weird thoughts will enter your head. It’s just you and the dying chickens. The surreal feelings grow into such a horror of the barbaric nature of your behavior. . . . An issue not even thought about by most people, even many of those in the fight for animal rights, is the effects on the minds of those people who do the actual slaughter of the chickens.”

—Virgil Butler, former Tyson employee
turned animal-rights activist/blogger¹

Slaughterhouse workers are largely overlooked by both the animal law community as well as the legal protections supplied by statutes addressing the humane treatment of animals. Like the traumatic ordeals of war, slaughterhouse workers undergo physical, psychological, and emotional injuries akin to soldiers on the front line. The few statutes that cover workers’ injuries in the exercise of their position at the slaughterhouse focus mostly on the physical. While slaughterhouse workers have one of the highest injury rates of any job, the state workers’ compensation statutes fail to address the debilitating and desensitizing emotional effect of animal slaughter. Nonetheless, the law has progressed in such a way as to provide slaughterhouse workers with numerous legal remedies to address the emotional injuries that are an inherent result of the bloody career. This Note seeks to identify the various legal avenues slaughterhouse workers may utilize in remedying the emotional trauma caused by their work.

This Note first addresses the physical, emotional, and psychological toll that slaughterhouse workers undergo within the United States based on the annual number of animals slaughtered and first-hand accounts by slaughterhouse workers. This examination further illustrates the similarity between slaughterhouse workers’ day-to-day experiences and those who develop Post-Traumatic Stress Disorder (PTSD) from violent events. Next, the Note discusses the potential legal remedies supplied to slaughterhouse workers for their emotional injuries. It identifies how states like Arkansas, Minnesota, and Nebraska require any claim for emotional injury to be connected to a physical injury for it to be compensable under each state’s workers’ compensation statutes. However, states like California and Colorado

* © The City University of New York School of Law J.D. 2017. Court Attorney in Bronx Family Court. Vegan. vanessa.hemenway@live.law.cuny.edu.

¹ Virgil Butler, *Inside the Mind of a Killer*, CYBERACTIVIST (Aug. 31, 2003, 7:49 AM), <http://cyberactivist.blogspot.com/2003/08/inside-mind-of-killer.html> [<https://perma.cc/DP62-ENX4>] (accessed July 29, 2018).

have allowed emotional injuries to be compensable even when unaccompanied with a physical injury. Lastly, the Note speaks to the possibility of Perpetration-Induced Stress Disorder, a stress disorder like PTSD developed in perpetrators who inflict violence on others, potentially providing slaughterhouse workers with legal remedies in the future.

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I. INTRODUCTION

Work consumes most of an average adult's waking life. It provides meaning and the means of survival. Work is one of the ways we measure our self-worth.² Work also is an emotional issue. Furthermore, "[e]motions are a central element to the notion of self and are strongly linked to motivation, behavior, and psychological health."³ Legal frameworks, however, mostly ignore emotions. Contract and tort law ask us to consider what a 'reasonable' person would do under the same or similar circumstances.⁴ The Fair Labor Standards Act⁵ considers the "general well-being of workers"⁶ in the context of the uninterrupted flow of commerce. The National Labor Relations Act⁷ seeks to protect the rights of workers to organize because it "safeguards commerce from injury, impairment, or interruption."⁸

Yet, despite the legal system's attempt to reside in a world of logic and reasoning, legal issues spring from people, and people are, for the

² See, e.g., Susan Cartwright & Nicola Holmes, *The Meaning of Work: The Challenge of Regaining Employee Engagement and Reducing Cynicism*, 16 HUM. RESOURCE MGMT. REV. 199, 202 (2006) (stating that work satisfies three human needs including self-worth, efficacy, and a sense of purpose).

³ *Id.*

⁴ Compare 13 WILLISTON ON CONTRACTS § 38:22 (4th ed. 2017) (describing the reasonable person standard in contract law), with 57 AM. JUR. 2D NEGLIGENCE § 7 (2d ed. 2018) (describing the reasonable person standard in tort law).

⁵ Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219 (1974).

⁶ *Id.* § 202.

⁷ National Labor Relations Act of 1935, 29 U.S.C. §§ 151–169 (2018).

⁸ *Id.* § 151.

most part, emotional creatures. How have the courts and legislatures addressed the emotional, mental, and psychological struggles, trauma, and injuries that workers face on the job? What if the very nature of the work is psychologically traumatic?

This Article uses slaughterhouse workers as a lens through which to examine the legal system's reaction, denial, and relationship to emotional injuries as causes of action, primarily through workers' compensation laws, as that is the main avenue for workers seeking relief for on-the-job injuries. Slaughterhouse work is one of the most violent kinds of work, calling upon workers to kill thousands of live animals every day. In the United States in 2015, 28.8 million cows, 452,600 calves, 115.4 million hogs, and 2.22 million sheep and lambs were slaughtered.⁹ According to the U.S. Department of Agriculture (USDA), 760,363 chickens were slaughtered in January 2017 alone.¹⁰ The passive voice hides the fact that there are people doing this slaughtering as work. Furthermore, "[s]laughterhouse workers have the highest injury rate of any job—27 percent annually—and receive low pay to kill as many as 2,050 cattle a shift."¹¹

As meat production has increased, wages have dropped.¹² Meatpacking was once a unionized industry that provided a decent living.¹³ By 1990, "slaughterhouse wages, which had once been the highest of manufacturing industries, dropped to 20% below general manufacturing work."¹⁴ The racial and ethnic composition of slaughterhouse workers has changed over time. In the Stock Yard era (from approximately the 1860s until the 1960s) slaughterhouse workers were mostly "immigrants, racial/ethnic minorities, and women."¹⁵ As unions grew in strength, white men began to make up a larger percentage of slaughterhouse workers.¹⁶ Today minorities again comprise the majority of slaughterhouse workers—about 12% of slaughterhouse

⁹ NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., LIVESTOCK SLAUGHTER 2015 SUMMARY 6 (Apr. 2016).

¹⁰ NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., POULTRY SLAUGHTER 2 (Feb. 2017).

¹¹ JONATHAN SAFRAN FOER, EATING ANIMALS 231 (1st ed. 2009).

¹² See Amy J. Fitzgerald, *A Social History of the Slaughterhouse: From Inception to Contemporary Implications*, 17.1 HUM. ECOLOGY REV. 58, 62–63 (2010) (stating that the demand for meat has grown, while wages have dropped).

¹³ See *id.* at 61 (reporting that meatpacking was one of the best-paid industrial occupations when more than 95% of the slaughterhouse employees outside of southern states were unionized).

¹⁴ *Id.* at 63.

¹⁵ *Id.* at 61.

¹⁶ See *id.* ("During the first two-thirds of the twentieth century, labor unions became increasingly powerful in slaughterhouses There was a subsequent shift in the workforce composition and by the mid-20th century the majority of slaughterhouse workers were white men.").

workers are African-American, over 40% are Latino/a,¹⁷ and about 38%¹⁸ were born outside the United States.

There are many possibilities for legal action for slaughterhouse workers, such as unfair labor practices, unsafe working conditions, interference with organizing, lack of adequate wage compensation, and compensation for physical injuries. This Note seeks out possible legal remedies for the emotional injuries and trauma experienced by slaughterhouse workers—mostly young, immigrant, and poor—who must bear the trauma of violence to bring home their paychecks and to provide consumers with the meat products for which they seem to have an increasing appetite. In this Note, I explore how and whether a slaughterhouse worker could bring a cause of action for emotional injury under workers' compensation laws. In doing so, I also hope to assert the emotional content of work which the law should consider and suggest how workers in other industries that cause mental and emotional trauma might use some of these ideas as part of their legal toolkit.

II. THE PHYSICAL COST OF MEATPACKING

My research establishes that meatpacking is dangerous work; in fact, it is “the most dangerous factory job in America, with injury rates more than twice the national average.”¹⁹ Repetitive movement causes tendonitis and carpal tunnel.²⁰ Sharp knives at fast speeds can slice through human muscle and bone as well as the animals for whose use they are intended.²¹ Further, animals kicking, butting, or thrashing can cause severe injuries.²²

Several factors make slaughterhouse work so dangerous, including line speed, close quarters, heavy lifting, long work hours, little training, and poor work conditions.²³ “Meat and poultry workers interviewed by Human Rights Watch and by other researchers consistently cite the speed of the lines as the main source of danger.”²⁴ According to a beef processing worker interviewed by Human Rights Watch, “[t]he

¹⁷ *Id.*

¹⁸ *Slaughterhouse Workers*, FOOD EMPOWERMENT PROJECT, <http://www.foodispower.org/slaughterhouse-workers/> [<https://perma.cc/TSK9-8AD9>] (accessed July 29, 2018).

¹⁹ *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, HUMAN RIGHTS WATCH, (Jan. 24, 2005), <https://www.hrw.org/report/2005/01/24/blood-sweat-and-fear/workers-rights-us-meat-and-poultry-plants> [<https://perma.cc/UL8B-L94B>] (accessed July 29, 2018) [hereinafter *Blood, Sweat, and Fear*].

²⁰ Jennifer Dillard, *A Slaughterhouse Nightmare: Psychological Harm Suffered by Slaughterhouse Employees and the Possibility of Redress Through Legal Reform*, 15 GEO. J. ON POVERTY L. & POL'Y 391, 393 (2008).

²¹ *Id.*

²² GAIL A. EISNITZ, *SLAUGHTERHOUSE: THE SHOCKING STORY OF GREED, NEGLECT, AND INHUMANE TREATMENT INSIDE THE U.S. MEAT INDUSTRY* 28 (2007).

²³ See *Blood, Sweat, and Fear*, *supra* note 19 (detailing the prevalence of injury due to automated lines that move too fast, work in close quarters, the employees given “little training and . . . not always given . . . safety equipment” and long hours).

²⁴ *Id.*

chain goes so fast that it doesn't give the animals enough time to die."²⁵ Human Rights Watch describes the heavy lifting required by poultry workers who have to hang up bunches of chickens as "sling[ing] [chickens] on to fast-moving metal hooks" where the chickens "fight back by pecking, biting, and scratching the hangers, who wear plastic cones around their forearms to shield off chicken attacks."²⁶ Whether physical injury can be separated from emotional injury is outside of my discipline. However, research into domestic violence suggests that emotional trauma results from physical abuse and can endure for years after physically abusive behavior has ceased.²⁷

III. EMOTIONAL AND PSYCHOLOGICAL EFFECTS OF SLAUGHTERHOUSE WORK

While the physical dangers of slaughterhouse work are obvious, the psychological and emotional trauma from having to kill live animals fighting and struggling for their lives is less so. The hidden violence of slaughterhouse work, combined with the public's increasing appetite for meat,²⁸ may make legal remedies for the emotional suffering of slaughterhouse workers more difficult to attain. Furthermore, "there is actually an unwillingness among the public to think about how their meat is produced, and . . . this has important ethical implications."²⁹ The emotional effects of slaughterhouse work come from having to kill animals who are young, scared, and remind workers of pets; and from having to worry about their own safety, limbs, and sometimes their lives.

The Humane Slaughter Act (HSA) requires that an animal is rendered unconscious before it is shackled and swinging from the line to be cut up,³⁰ but the USDA, which is supposed to enforce the HSA, too often turns a blind eye to infractions because true oversight would cut

²⁵ See *id.* ("Poultry processing is even more frenzied. Line workers make more than 20,000 repetitive hard cuts in a day's work. A Mexican woman poultry worker in Northwest Arkansas said: I came to Arkansas from California in 1994. I started working in chicken lines in 1995. At that time we did thirty-two birds a minute. I took off a year in 1998 when I had a baby. After I came back the line was forty-two birds a minute. People can't take it, always harder, harder, harder [*mas duro, mas duro, mas duro*].").

²⁶ *Id.*

²⁷ See, e.g., Molly Carnes et al., *Long-Term Physical and Mental Health Consequences of Childhood Physical Abuse: Results from a Large Population-Based Sample of Men and Women*, 31 CHILD ABUSE & NEGLECT 517, 528 (2007) (concluding physical abuse can affect physical and mental health "even decades after the abuse").

²⁸ See, e.g., *Availability and Changes in Consumption of Animal Products*, WORLD HEALTH ORG., http://www.who.int/nutrition/topics/3_foodconsumption/en/index4.html [<https://perma.cc/BL2R-PGZL>] (accessed July 29, 2018) (providing statistics showing a worldwide increase in meat consumption).

²⁹ Fitzgerald, *supra* note 12, at 59.

³⁰ 7 U.S.C. § 1902 (2012).

into the bottom line.³¹ The Findings and Declarations of Policy section of the HSA states, “[t]he Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry;” and increases the flow of commerce.³² However, I could not find a definition for *humane* in the statute. The emphasis on preventing suffering focuses on the animals—a noble goal—but again ignores the psychological and emotional suffering and trauma of the people required to kill those animals.

Ideally, according to federal law, cattle are killed by first being stunned by a “stun operator” or “knocker” who “shoots each animal in the forehead with . . . a steel bolt.”³³ This is supposed to kill or render the cow unconscious.³⁴ Next a “shackler” “wraps a chain around one of the stunned cow’s hind legs,”³⁵ which then lifts the cow so it dangles upside down. Next the “sticker” cuts the cow’s throat.³⁶ The cow bleeds out for several minutes.³⁷ Then workers skin the head while other workers cut off the legs, skin the rest of its body, pull out its organs, and cut it in half.³⁸

In another example of how the HSA requirements are ignored, a hog sticker reported “sticking” 900 hogs an hour, most of which were alive and conscious.³⁹ He also reported that hogs would be dropped into scalding water while still alive and conscious.⁴⁰ The sticker said:

And then it gets to a point where you’re at a daydream stage. Where you can think about everything else and still do your job. You become emotionally dead. And you get just as sadistic as the company itself. When I was sticking down there, I was a sadistic person.⁴¹

A young slaughterhouse worker said:

In the morning, the big holdup was the calves. . . . To get done with them faster, we’d put eight or nine of them in the knocking box at a time. As soon as they start going in, you start shooting You don’t know which ones got shot and which ones didn’t get shot at all They’re hung anyway,

³¹ See EISNITZ, *supra* note 22, at 24 (stating the Act requires “that all animals be rendered unconscious . . . before being shackled and hoisted up on the line”); *Id.* at 46 (stating that one meatpacking supervisor Eisnitz interviewed told her, “[a]nother thing—the USDA is supposed to check the animals and mark on the ticket if any cattle are suspect. I’ve seen inspectors walk in and sign half a day’s worth of tickets without even looking at the animals, then go off and have a cup of coffee.”).

³² 7 U.S.C. § 1901 (2012).

³³ EISNITZ, *supra* note 22, at 20.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 29.

³⁸ *Id.*

³⁹ *Id.* at 67.

⁴⁰ *Id.* at 71.

⁴¹ *Id.* at 75.

and down the line they go, wriggling and yelling. The baby ones—two, three weeks old—I felt bad killing them so I just let them walk past.⁴²

These are just some of the statements made by slaughterhouse workers that illustrate the emotional toll of slaughterhouse work. These, and more voices, need to be heard by legislators, consumers, and the public at large. These voices not only declare the extent of the trauma, but can be used by lawyers when making claims for workers' compensation based on emotional distress.

One of the few (if only) law review articles that addresses the psychological effects of slaughterhouse work is Jennifer Dillard's *A Slaughterhouse Nightmare: Psychological Harm Suffered by Slaughterhouse Employees and the Possibility of Redress Through Legal Reform*.⁴³ The article opens with a slaughterhouse worker's words that succinctly and bitterly sum up the psychological and emotional trauma of slaughterhouse work: "The worst thing, worse than the physical danger, is the emotional toll . . . Pigs down on the kill floor have come up and nuzzled me like a puppy. Two minutes later I had to kill them—beat them to death with a pipe. I can't care."⁴⁴ Dr. Temple Grandin, Professor of Animal Science at Colorado State University, speaks and writes about autism and animal behavior.⁴⁵ She has attempted to design livestock handling equipment that takes into consideration the welfare of the animals.⁴⁶ Dr. Grandin "has argued that ordinary people can become sadistic from the dehumanizing work of constant slaughter."⁴⁷

I cannot think of another job that requires workers to kill all day long, every day. This is not to minimize the trauma and violence that workers face in other industries. It is now common knowledge that soldiers returning from battle may suffer from Post-Traumatic Stress Disorder (PTSD).⁴⁸ Research suggests that slaughterhouse workers may suffer from "Perpetration-Induced Traumatic Stress ("PITS") as a form of post-traumatic stress disorder" which occurs in situations where the perpetrator inflicts violence that causes PTSD in his victims.⁴⁹ PITS sufferers include "people such as combat veterans, execu-

⁴² *Id.* at 43.

⁴³ Dillard, *supra* note 20, at 391.

⁴⁴ *Id.*

⁴⁵ *About Temple Grandin*, TEMPLE GRANDIN, PH.D., <http://www.templegrandin.com> [<https://perma.cc/9CAD-CWL7>] (accessed July 29, 2018).

⁴⁶ *Id.* I do not buy into the kinder slaughter argument, as it perpetuates the system of animal exploitation, yet Dr. Grandin's work is groundbreaking and has brought issues of agricultural cruelty to animals to the public's attention.

⁴⁷ FOER, *supra* note 11, at 231.

⁴⁸ COMM. ON THE ASSESSMENT OF ONGOING EFFORTS IN THE TREATMENT OF POST-TRAUMATIC STRESS DISORDER, INST. OF MED. OF THE NAT'L ACADS., TREATMENT FOR POSTTRAUMATIC STRESS DISORDER IN MILITARY AND VETERAN POPULATIONS: FINAL ASSESSMENT 13–14 (2014).

⁴⁹ Dillard, *supra* note 20, at 397.

tioners, and Nazis.”⁵⁰ Dillard frames this constant killing as “creating an employment situation ripe for psychological problems.”⁵¹

Furthermore, Dillard contrasts the killing of animals that slaughterhouse workers undertake with society’s overall disdain for cruelty to animals.⁵² She reports that most people would not want to kill animals for their own consumption, and posits that “[b]y habitually violating one’s natural preference against killing, it is likely that the [slaughterhouse] worker is adversely psychologically impacted.”⁵³ From public outrage at NFL player Michael Vick’s treatment and killing of dogs⁵⁴ and over the shooting of Cecil the Lion⁵⁵ to stories of murderers who as children tortured animals,⁵⁶ recent events suggest that people shun and guard against violence against animals. Yet there is scant research into the effects of the violence of slaughterhouse work on the workers who have to engage in it.⁵⁷

Furthermore, although in general people seem to love animals, there is a deep distinction between animals who are companions and animals who are food. Many people consider their pets as part of their families. About 78 million dogs and 85.8 million cats live as pets in the United States.⁵⁸ “Approximately 44% of all households in the United States have a dog, and 35% have a cat.”⁵⁹

Separating spouses fight over ‘custody’ of pets.⁶⁰ The death or injury of a pet may be a traumatic event for its human companions.

⁵⁰ *Id.*

⁵¹ *Id.* at 395.

⁵² *Id.* at 396.

⁵³ *Id.* at 401.

⁵⁴ Lynn Zinser, *Vick Pleads Guilty to Dogfighting Charge*, N.Y. TIMES (Nov. 25, 2008), <http://www.nytimes.com/2008/11/26/sports/football/26vick.html> [<https://perma.cc/F5F7-CC77>] (accessed July 29, 2018). Vick was sentenced to twenty-three months in federal prison for dog-fighting and killing dogs by various methods including “hanging and drowning.” Michael S. Schmidt, *Vick Pleads Guilty in Dog-Fighting Case*, N.Y. TIMES (Aug. 27, 2007), <http://www.nytimes.com/2007/08/27/sports/football/27end-vick.html> [<https://perma.cc/64DP-X6TB>] (accessed July 29, 2018).

⁵⁵ “The death of Cecil, the black-maned lion killed by an American big-game hunter in Zimbabwe, has unleashed a global storm of Internet indignation.” Editorial Bd., *The Death of Cecil the Lion*, N.Y. TIMES (July 31, 2015), <https://nyti.ms/1SmHP5h> [<https://perma.cc/DCH9-AYFB>] (accessed July 29, 2018).

⁵⁶ See, e.g., Gail F. Melson, *Do Mass Killers Start Out by Harming Pets?* PSYCHOL. TODAY (Feb. 20, 2013), <https://www.psychologytoday.com/blog/why-the-wild-things-are/201302/do-mass-killers-start-out-harming-pets> [<https://perma.cc/PC4T-G4B9>] (accessed July 29, 2018) (showing animal abuse in children is a common and early indicator of mental health issues).

⁵⁷ Ashitha Nagesh, *The Harrowing Psychological Toll of Slaughterhouse Work*, METRO (Dec. 31, 2017, 1:00 PM), <http://metro.co.uk/2017/12/31/how-killing-animals-everyday-leaves-slaughterhouse-workers-traumatized-7175087/> [<https://perma.cc/VK6T-PW2N>] (accessed July 29, 2018).

⁵⁸ *Pet Statistics: Shelter Intake and Surrender*, AM. SOC’Y FOR PREVENTION CRUELTY TO ANIMALS, <https://www.asPCA.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> [<https://perma.cc/9UXN-9KMJ>] (accessed July 29, 2018).

⁵⁹ *Id.*

⁶⁰ See, e.g., *Travis v. Murray*, 977 N.Y.S.2d 621, 622 (Sup. Ct. 2013) (“All too often, onetime happy spouses end up as decidedly unhappy litigants in divorce proceedings.”)

Courts have entered into the fray as well. “[I]n *Burgess v. Taylor*,⁶¹ the court ruled that a finding of intentional infliction of emotional distress or punitive damages is not precluded simply because the facts giving rise to the claim involve an animal.”⁶² The court upheld the owner’s claim for the tort of outrage or the intentional infliction of emotional distress.⁶³

The quality of empathy, which many schools and parents try to instill in their students and children, is a detriment in slaughterhouse work, where workers have to turn off their ability to empathize in order to get the job done.⁶⁴ Research has “found that the characteristic of empathy was difficult to link with the character of a good stockperson because the typical animal production industry will lead a person who empathizes with the animals to act at work quite differently from the way they would like to act.”⁶⁵

Another recent study found that:

[C]ounties with slaughterhouses have higher arrest levels for sex offenses and more frequent reports of murder, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson . . . [and] that the differences are likely to be located in the particularized psychological effect of the slaughterhouse work on the employees.⁶⁶

Tyson Foods, headquartered in Springdale, Arkansas, is the world’s largest processor of chicken, beef, and pork.⁶⁷ Tyson’s website claims they:

view working safely as a ‘value’ and ‘how we do our jobs,’ rather than something we have to do. That’s why we aspire to have zero work-related injuries and illnesses, and continue to improve our culture, impressing upon all team members that all incidents resulting in an injury or illness can be prevented.⁶⁸

While it is heartening (though hard to believe) that Tyson wants to reduce injuries, the onus seems placed on the workers, who need to be “impressed upon” that workplace injuries can be reduced.⁶⁹ Tyson also proudly displays a webpage devoted to ‘transparency,’ which

And when those litigants own a dog, matrimonial judges are called upon more and more to decide what happens to the pet that each of the parties still love and each of them still wants.”)

⁶¹ *Burgess v. Taylor*, 44 S.W.3d 809, 813 (Ky. Ct. App. 2001).

⁶² Jay M. Zitter, Annotation, *Recovery of Damages for Emotional Distress Due to Treatment of Pets and Animals*, 91 A.L.R.5th 545 (2001) (full citation omitted).

⁶³ *Id.* at 812.

⁶⁴ Dillard, *supra* note 20, at 398.

⁶⁵ *Id.* at 399 (internal quotations and punctuation omitted).

⁶⁶ *Id.* at 400.

⁶⁷ *Tyson Foods, Inc.*, ENCYCLOPEDIA.COM, <http://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/tyson-foods-inc> [<https://perma.cc/5GQX-PS92>] (accessed July 29, 2018).

⁶⁸ *Workforce and Culture*, TYSON FOODS, <http://www.tysonustainability.com/workforce-and-culture> [<https://perma.cc/RM83-7D2F>] (accessed July 29, 2018).

⁶⁹ *Id.*

shows pictures of grinning people and cute animals.⁷⁰ Even if the workplace conditions have improved and physical injuries have been drastically reduced—which is difficult, if not impossible, to ascertain, let alone believe—what if the fact of killing thousands of animals a day *still* creates trauma?

IV. LEGAL REMEDIES

Once we accept that emotional trauma may be involved in the slaughter of animals, what legal remedies do traumatized slaughterhouse workers have?

A. Tort Law

Tort law provides a cause of action for the intentional infliction of emotional distress.⁷¹ “An actor who by extreme and outrageous conduct intentionally or recklessly causes severe emotional harm to another is subject to liability for that emotional harm and, if the emotional harm causes bodily harm, also for the bodily harm.”⁷² If an industry, like meatpacking, is accepted, legal, and regulated, it seems hard to argue that its general requirements, though arguably extreme and outrageous in its violence, are “extreme and outrageous” under tort law.

B. Workers’ Compensation

Historically, recovery for employees under tort law was limited by the number and effectiveness of defenses employers could raise.⁷³ New York was the first state in the United States to pass a workers’ compensation law.⁷⁴ By 1920, most states had a workers’ compensation statute, and now all do.⁷⁵ While every state has its own statutory scheme of workers’ compensation laws,⁷⁶ those statutes vary by state,

⁷⁰ *See id.* Actually, there was a photograph of one lone, bright pink pig. I remain fiercely skeptical. My hunch is this is a slick diversionary public relations campaign to reassure consumers who have been brainwashed by retailers like Whole Foods’ “5 step Animal Welfare Rating.” I emailed Tyson saying I appreciated the transparency they promoted on their website and asked if I could visit one of their plants. I received an email response a few minutes later with a phone number. When I called, I was supposedly transferred to the appropriate department. My call, stating I was a regular person who wanted to visit one of their facilities, went straight to voicemail. I have yet to hear back.

⁷¹ RESTATEMENT (THIRD) OF TORTS: INTENTIONAL TORTS TO PERSONS § 106 (AM. LAW INST. 2015).

⁷² *Id.*

⁷³ DAN B. DOBBS ET AL., TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY 895–96 (7th ed. 2013).

⁷⁴ *Id.* at 897.

⁷⁵ *Id.*

⁷⁶ *See Blood, Sweat, and Fear*, *supra* note 19, at 59 (discussing the state-based system of workers’ compensation in the U.S. and the “many differences in amount and duration of benefits and rules on eligibility for benefits”).

specifically in the way the statute defines “injury.”⁷⁷ The way state courts interpret “injury” also determines what types of injuries fall within the scope of workers’ compensation.⁷⁸ Some statutes explicitly provide for mental and emotional injuries; some statutes demand that mental injuries occur as a result of physical injuries; and some statutes bar any recovery for mental or emotional injury.⁷⁹

Although workers’ compensation statutes vary from state to state, some general characteristics include: strict liability, immediate and periodic payment, and exclusive remedy, which bars workers from bringing other claims in exchange for the benefits of not having to prove liability and faster economic relief.⁸⁰ While this strict liability relieves some of the burden on the employee, workers’ compensation recovery payouts tend to be much less than damages available under tort law.⁸¹

Workers’ compensation is intended to provide compensation for the loss of the ability to work because of workplace injury, and therefore is much more limited in its remedies than other kinds of protective insurance.⁸² Furthermore, it is intended “to compensate for the disabled worker’s diminished ability to compete in the open labor market, not to compensate every work-related injury.”⁸³

However, workers’ compensation, in theory, covers out-of-pocket expenses, co-payments, and rehabilitative services that might not be covered by health insurance.⁸⁴ It also provides wage compensation for the time period that the worker cannot work.⁸⁵ The wage compensation, though, is limited and “[n]o statute affords 100% wage replacement in providing disability benefits.”⁸⁶

Obvious physical injuries are easier to prove and obtain compensation for than invisible injuries, even if they are physical. For example, a Nebraska Beef worker told Human Rights Watch that the company will have to pay if they cut off a finger at work, but it is much

⁷⁷ Marc A. Antonetti, *Labor Law: Workers’ Compensation Statutes and the Recovery of Emotional Distress Damages in the Absence of Physical Injury*, 1990 ANN. SURV. AM. L. 671, 674 (1990).

⁷⁸ *See id.* at 673–77 (1990) (“Judicial interpretations of the statutory definitions of ‘injury’ and ‘accident,’ are the key to determining whether a worker will recover on such a claim.”).

⁷⁹ *Id.* at 674–76.

⁸⁰ *See* DOBBS, *supra* note 73, at 897–98 (discussing the shared characteristics of workers’ compensation statutes).

⁸¹ Antonetti, *supra* note 77, at 671.

⁸² *See* DOBBS, *supra* note 73, at 897–98 (explaining how limited liability and exclusive remedy limit compensation and remedies for employee’s seeking workers’ compensation).

⁸³ *Livitsanos v. Superior Court of L.A. Cty.*, 828 P.2d 1195, 1201 (Cal. 1992).

⁸⁴ *See Blood, Sweat, and Fear*, *supra* note 19, at 61 (explaining the differences between workers’ compensation and general medical insurance).

⁸⁵ *Id.*

⁸⁶ *See* DOBBS, *supra* note 73, at 900 (discussing limits on disability benefits offered by workers’ compensation).

harder to prove that work activities caused wrist pain or back injury.⁸⁷ In North Carolina, where Smithfield, the largest pork producer in the United States is located,⁸⁸ the average time period between a worker's compensation claim and any actual compensation is seventy-eight days, and companies often pressure workers to find an alternative remedy like paying on their own through regular medical insurance or taking short term disability.⁸⁹ Waiting for over three months for any payment is not necessarily a great benefit, nor does it effectuate the workers' compensation promise or policy of "immediate" payment.⁹⁰ Workers, particularly those who are undocumented, may be reluctant to file workers' compensation claims because of pressure from their employer, and fears about losing their jobs or retaliation. Human Rights Watch reported that meat and poultry processing employers routinely block, delay, and deny worker's compensations claims, and threaten workers attempting to seek compensation.⁹¹

C. Workers' Compensation for Emotional Distress

In general, it is possible to succeed on a workers' compensation claim for emotional distress or mental injury.⁹² Emotional claims were not originally included in workers' compensation laws, and some of the ongoing concerns courts wrestle with include: the subjective nature of emotional injury; whether the emotional injury was actually caused by or occurred in the workplace; and whether the emotional injury arose out of other circumstances, situations, or pre-existing mental health issues of the worker.⁹³ Courts tend to have an easier time awarding compensation for emotional suffering tied to physical injuries than emotional suffering alone:

When the worker is physically injured on the job and suffers emotional or mental disability as a result, courts can easily feel that the statutory requirement of accidental injury arising out of the course of employment has been met. . . . In the 'mental-mental' case—when the employee is subjected to some kind of mental or emotional stress causing mental or emotional injury without physical injury—courts may feel less certain.⁹⁴

⁸⁷ See *Blood, Sweat, and Fear*, *supra* note 19, at 62 (quoting a Nebraska beef worker explaining the different injuries that can qualify for workers' compensation compared to those that the company can say were not caused by work).

⁸⁸ *Id.* at 8.

⁸⁹ *Id.* at 62–63.

⁹⁰ See *Dobbs*, *supra* note 73, at 897 (discussing characteristics of the statutes in terms of immediate payments).

⁹¹ *Blood, Sweat, and Fear*, *supra* note 19, at 57.

⁹² I will use these terms interchangeably—they are also referred to as "mental-mental" claims. See *Antonetti*, *supra* note 77, at 671–72 (discussing the mental-mental claim).

⁹³ *Id.* at 672.

⁹⁴ See *DOBBS*, *supra* note 73, at 917–18 (discussing how courts generally treat mental disability claims under workers' compensation statutes).

Although workers' compensation statutes vary from state to state, generally a plaintiff must prove these elements to establish emotional distress: (1) an employer-employee relationship; (2) that the plaintiff suffered emotional distress or a mental injury; (3) an ascertainable cause of the injury; (4) that the injury arose out of and in the course of employment; and (5) a causal connection between the emotional distress and the emotional stimulus.⁹⁵

1. *Examples of States' Workers' Compensation Statutes for Emotional Injury*

a. *Emotional Injury Must be Tied to Physical Injury*

Some states do not provide recovery for mental injury unless it has a physical source. In Arkansas, where the poultry industry is the state's "largest private sector employer,"⁹⁶ the statute states "[a] mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body."⁹⁷ Furthermore, the mental injury is only compensable if "it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders."⁹⁸

The Arkansas courts have interpreted this statute quite literally. Where the Court of Appeals of Arkansas found that a public school employee sustained a compensable back injury, it denied workers' compensation for the depression the employee allegedly developed as a result of that injury.⁹⁹ The court found that the depression met only five out of the nine criteria for major depression under the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) stating, "[w]orkers' compensation statutes are strictly construed; when a statute is clear, it is given its plain meaning, and legislative intent must be gathered from the plain meaning of the language used."¹⁰⁰

Another Arkansas case refused to afford compensation for mental distress where there was no physical injury. The court in *Bennett v. Kentucky Fried Chicken* reasoned, "[w]e need not address claimant's argument regarding psychological injury because our workers' compensation statute requires proof of a physical injury before a psychological injury can be found compensable."¹⁰¹

⁹⁵ Emmanuel S. Tipon, Annotation, *Right to Workers' Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Nonsudden Stimuli – Requisites of, and Factors Affecting, Compensability*, 106 A.L.R.5th 111, *2 (2003).

⁹⁶ See *Blood, Sweat, and Fear*, *supra* note 19, at 9 (discussing Tyson Foods and the Northwest Arkansas poultry industry).

⁹⁷ ARK. CODE ANN. § 11-9-113 (1993).

⁹⁸ *Id.*

⁹⁹ *Lincoln Pub. Sch. v. Secrist*, 496 S.W.3d 396, 398 (2016).

¹⁰⁰ *Id.*

¹⁰¹ *Bennett v. Ky. Fried Chicken*, No. CA 97-1241, 1998 WL 567615, at *3 (Ark. Ct. App. 1998).

In the 1990s, Arkansas's workers' compensation program was in serious financial trouble, paying out much more than it took in.¹⁰² "The most radical change in the 1993 Arkansas Workers' Compensation Act is the amending of Arkansas Code Annotated section 11-9-102 to redefine compensable injury. Previously, the Arkansas Workers' Compensation Act defined *compensable injury* as any accidental injury arising out of and in the course of employment."¹⁰³ The change in the statute affected other previously compensated "non-physical injuries."¹⁰⁴

Minnesota, a state with one of the highest slaughterhouse employment levels,¹⁰⁵ also requires physical injury before recovery is available for emotional distress.¹⁰⁶ The Minnesota statute states in relevant part:

Physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable. . . . An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment¹⁰⁷

The plain language of the statute would seem to bar compensation for the emotional trauma of slaughterhouse workers because violence is "characteristic of" the trade.

In *Lockwood v. Independent School Dist. No. 877*, the Supreme Court of Minnesota considered whether Minnesota's Workers' Compensation Act afforded recovery to an employee who suffered mental injury because of work-related mental stress.¹⁰⁸ The court found that the plaintiff's emotional problems arose out of his work duties.¹⁰⁹ The court denied compensation, however, because the injury did not arise out of a physical injury.¹¹⁰

Nebraska is another state that will not compensate for a stand-alone mental injury.¹¹¹ Nebraska slaughters more meat by weight than any other state.¹¹² According to Human Rights Watch, "Nebraska

¹⁰² John D. Copeland, *The New Arkansas Workers' Compensation Act: Did the Pendulum Swing Too Far?*, 47 ARK. L. REV. 1, 3 (1994).

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.* at 10.

¹⁰⁵ BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL EMPLOYMENT STATISTICS: OCCUPATIONAL EMPLOYMENT AND WAGES, SLAUGHTERERS AND MEAT PACKERS 51-3023 (2016), <https://www.bls.gov/oes/2016/may/oes513023.htm> [<https://perma.cc/8ZJB-CKF4>] (accessed July 29, 2018).

¹⁰⁶ Antonetti, *supra* note 78, at 685–86.

¹⁰⁷ MINN. STAT. § 176.011 (2017).

¹⁰⁸ *Lockwood v. Indep. School Dist. No. 877*, 312 N.W.2d 924, 924 (Minn. 1981).

¹⁰⁹ Antonetti, *supra* note 77, at 686.

¹¹⁰ *Id.*

¹¹¹ See NEB. REV. STAT. § 48-151 (2017) (identifying cases illustrative of Nebraska's Workers' Compensation Act).

¹¹² Thomas Frohlich, *States Killing the Most Animals for Food*, USA TODAY (Apr. 15, 2015, 12:06 PM), <https://www.usatoday.com/story/money/business/2015/04/15/247-wall->

Beef has annual sales of more than \$800 million and capacity for slaughtering three thousand head of beef per day. The company employs 1,100 workers, none of whom are union represented.”¹¹³ Immigrants from Mexico, Central America, South East Asia, and the Middle East now make up “more than 10 percent of Nebraska’s population and 25 to 30 percent of the population in Omaha and urban areas.”¹¹⁴

Nebraska compensates for mental injuries without physical injuries for first responders under certain conditions.¹¹⁵ Otherwise, if a mental injury occurs in the regular course of employment, it will not be compensated unless precipitated by a physical injury. “Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom and personal injuries described in section 48-101.01.”¹¹⁶

While workers in those states discussed above might be able to obtain workers’ compensation for physical injuries, the statutes leave out workers who may not have or may not be able to prove physical injury.¹¹⁷ Without legislative change, a financial restructuring of workers’ compensation, and community action, slaughterhouse workers suffering from emotional trauma in states like Arkansas, Minnesota, and Nebraska face a difficult, if not impossible, legal course of action.

b. Emotional Injury Can Stand Alone without Physical Injury

In states like California and Colorado, mental injury without physical harm may be compensable under certain criteria. California is another state with one of the highest levels of slaughterhouse employment with slaughterhouse workers earning an average annual salary of \$25,710.¹¹⁸ The California workers’ compensation statute states, “[a] psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment,” and that “an employee shall demonstrate by a preponderance of the evidence that the actual events of employment were predominant as to all causes

st-states-killing-animals/25807125/ [https://perma.cc/AH3P-986W] (accessed July 29, 2018).

¹¹³ *Blood, Sweat, and Fear*, *supra* note 19.

¹¹⁴ *Id.*

¹¹⁵ See NEB. REV. STAT. § 48-101.01 (establishing the elements necessary for first responders to succeed on a mental injuries and mental illness claim under Nebraska’s Workers’ Compensation Act).

¹¹⁶ NEB. REV. STAT. § 48-151.

¹¹⁷ See, e.g., ARK. CODE ANN. § 11-9-113 (requiring a mental injury to be accompanied by a physical injury to be compensable); MINN. STAT. § 176.011 (requiring a mental injury to be caused by a physical injury to be compensable); NEB. REV. STAT. § 48-101.01 (requiring that any workers’ compensation claim for mental injury be also caused by a physical injury).

¹¹⁸ BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, OCCUPATIONAL EMP. STATISTICS: OCCUPATIONAL EMP. AND WAGES, SLAUGHTERERS AND MEAT PACKERS 51-3023 (2016), <https://www.bls.gov/oes/current/oes513023.htm> [https://perma.cc/9EYL-4M46] (accessed July 29, 2018).

combined of the psychiatric injury”¹¹⁹ and as long as the psychiatric injury is diagnosed according to one of the enumerated procedures.¹²⁰ Where an employee’s mental injuries come from violence, “the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.”¹²¹ According to the statute, “substantial cause” “means at least 35 to 40 percent of the causation from all sources combined.”¹²² “It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.”¹²³ It seems likely that the “violence” contemplated in the statute refers to human-on-human violence, but this may be an entry point for lawyers advocating on behalf of slaughterhouse workers, and is certainly worth pursuing.

The California Court of Appeal has interpreted “predominant as to all causes” to mean 50% or more causation.¹²⁴ Despite the lack of an actual number in the statute, the court reasoned that before the statute was amended in 1993, the employee had to prove that the actual events caused 10% or more of the injury, and that therefore the inclusion of “predominant to all causes” increases the necessary percentage of causation that a plaintiff must prove.¹²⁵

Furthermore, “the purpose of section 3208.3 is to limit liability for psychiatric injury claims.”¹²⁶ So although California recognizes a stand-alone mental injury claim, a claimant now has a higher burden of proof.

To sustain a claim in California, the plaintiff needs to prove that the actual events of the workplace environment caused the injury. In *Verga v. Workers’ Compensation Appeals Board*, the Court of Appeal, Third District of California took up the issue of whether a worker who alleged a mental injury based on harassment by her co-workers was entitled to compensation under the statute.¹²⁷ The question was whether the course of hostile and disparaging treatment of the plaintiff by her co-workers constituted “the actual events of employment.”¹²⁸ The court, though, found that the plaintiff was a difficult person and had brought on the stressful situation herself.¹²⁹ Therefore, the mental injury was not a result of the job itself but rather a result of the plaintiff’s own behavior and character.¹³⁰ The court noted

¹¹⁹ CAL. LAB. CODE § 3208.3 (2017).

¹²⁰ See *id.* (describing the necessary elements of a claim for compensable psychiatric disorders).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Dep’t of Corr. v. Workers’ Comp. Appeals Bd.*, 76 Cal. App. 4th 810, 816 (1999).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Verga v. Workers’ Comp. Appeals Bd.*, 159 Cal. App. 4th 174, 177 (2008).

¹²⁸ *Id.*

¹²⁹ *Id.* at 188.

¹³⁰ *Id.* at 187.

that the Legislature intended to prevent against an employee's compensation for her "subjective misperception that the employment was stressful."¹³¹ The court explained that the amended statute demands a higher standard for mental injury, "by requiring the claimant to demonstrate that 'actual events of employment' were the "predominant" cause of the alleged psychiatric injury."¹³² In addition, "[t]his change in the statutory scheme constituted an intent to require the claimant to establish objective evidence of harassment, persecution, or other such basis for alleged psychiatric injury."¹³³

In California, then, a worker need not have a physical injury, but the emotional injury must be predominantly caused by workplace activities and must prevent the worker from being able to do her job. By this standard, it seems that a slaughterhouse worker might have a chance in California for recovery under workers' compensation for the emotional trauma of slaughterhouse work.

A few miles outside of Greeley, Colorado, "[t]he ConAgra Beef Company runs the nation's biggest meatpacking complex."¹³⁴ In Colorado, as in California, a claim for mental injury requires "evidence supported by the testimony of a licensed physician or psychologist."¹³⁵ The "mental impairment" must arise out of the course of employment and is compensable "when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances."¹³⁶

The Colorado Court of Appeals in *McCallum v. Dana's Housekeeping* found that one traumatic triggering event was not required to make out a claim for mental injury, but rather that a mental injury could be established through a series of events.¹³⁷ In that case, the employee seeking compensation alleged weeks of job-related stress based on overwork and the triggering event of additional work and stress when her assistant manager quit.¹³⁸ The claimant argued that the triggering event alone should be considered.¹³⁹

The court affirmed the administrative law judge's (ALJ) finding that periods of stress were common to managerial positions and that the alleged triggering event of the assistant manager quitting was likewise an expected occurrence in that type of work.¹⁴⁰ The court,

¹³¹ *Id.* at 178.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* 149–50 (2001).

¹³⁵ COLO. REV. STAT. § 8-41-301 (2017).

¹³⁶ *Id.*

¹³⁷ *McCallum v. Dana's Housekeeping*, 940 P.2d 1022, 1024 (Colo. App. 1996).

¹³⁸ *Id.* at 1023.

¹³⁹ *Id.* at 1023–24.

¹⁴⁰ *See id.* (stating that claimant, as a manager, reasonably could be expected to handle increased work load and the accommodation of new personnel, which the court refers to as a "series of stressful incidents").

however, held that the statute applied “not only to a single traumatic event, but also to multiple traumatic events. Therefore, it applies to a series of stressful incidents.”¹⁴¹ Although this holding did not help the *McCallum* claimant, it could be used to help slaughterhouse workers, who need not rely on one “single traumatic event,” but could show “a series of stressful events” in making their claim.

In another Colorado Court of Appeals decision, *City Market, Inc. v. Industrial Claim Appeals Office of the State of Colorado*, the court affirmed a finding of compensation for mental injury where the claimant was sexually harassed by her supervisor and resigned from her position.¹⁴² After signing an agreement not to take legal action against the employer, the claimant returned to her job, where she developed mental and emotional stress after being “shunned and ostracized” by her co-workers.¹⁴³ Amazingly, the employer argued that the claimant did not prove that the supervisor’s sexual harassment was not common to all fields of employment.¹⁴⁴ Apparently assuming that sexual harassment is not common to all fields of employment, the court held that “it is sufficient merely to show that the stress producing incidents were not usual, ordinary, or customary in all fields of employment.”¹⁴⁵

Could this argument be used on behalf of slaughterhouse workers in Colorado? Inflicting violence to the degree required of slaughterhouse workers is not “usual, ordinary, or customary in all fields of employment.” In fact, it seems unique to slaughterhouse work.

The state of New York has at least 50 USDA-inspected slaughterhouses,¹⁴⁶ employing about 910 workers, who earn an average of \$10.04 an hour.¹⁴⁷ New York’s workers’ compensation statute also provides recovery for stand-alone mental injuries: “An injury can be a mental or physical injury caused by a work-related accident or disease.”¹⁴⁸ In New York, “[p]sychological or nervous injuries, which are caused by psychic trauma, are known as mental-mental cases and are as compensable as any physical injury. The injury does not necessarily have to be caused by a discrete, identifiable trauma but can be the result of prolonged unusual circumstances.”¹⁴⁹

In re Ottomanelli, a Third Department decision, involved a claimant who was a butcher working “five twelve-hour work days per week”

¹⁴¹ *Id.* at 1024.

¹⁴² *City Mkt., Inc. v. Indus. Claim Appeals Office of the State of Colo.*, 800 P.2d 1335, 1337–38 (Colo. App. 1990).

¹⁴³ *Id.* at 1337.

¹⁴⁴ *Id.* at 1338.

¹⁴⁵ *Id.*

¹⁴⁶ *NY State Slaughterhouse Map*, CORNELL U.: CORNELL SMALL FARMS PROGRAM, <http://smallfarms.cornell.edu/resources/livestock/slaughterhouse-map/> [https://perma.cc/4MJT-YSN7] (accessed July 29, 2018).

¹⁴⁷ DIV. OF OCCUPATIONAL EMP’T STATISTICS, U.S. DEP’T OF LABOR, MAY 2016 STATE OCCUPATIONAL EMP. AND WAGE ESTIMATES NEW YORK, https://www.bls.gov/oes/2016/may/oes_ny.htm [https://perma.cc/8SHU-LRN3] (accessed July 29, 2018).

¹⁴⁸ N.Y. Workers’ Compensation Law § 2 (McKinney 2017).

¹⁴⁹ *Id.*

and engaging in “myriad other duties [which] caused him to suffer acute anxiety and disabling depression.”¹⁵⁰ The court found for the claimant, holding that “[i]t is well settled that depressive reactions triggered by a claimant’s work and environment can constitute accident arising out of and in the course of employment[] [and] an accident can occur either as initial trauma leading to ultimate disability or, as here, as result of prolonged, unusual circumstances.”¹⁵¹

Lawyers for slaughterhouse workers might use this case in New York, because it involves a butcher, whose work could be analogized to slaughterhouse work, and because the court found that the work environment and the “prolonged, unusual circumstances” led to the mental injury.¹⁵²

In a Third Department case against an insurance agency employer, *La Mendola v. Butler*, the claimant was under excessive stress, “which caused an underlying personality disorder to manifest itself, thereby disabling claimant, and . . . was an accidental injury arising in the course of employment.”¹⁵³ The court found for the claimant, notwithstanding the claimant’s predisposition to mental suffering.¹⁵⁴ Furthermore, the court held, “the injury need not have been caused by a discrete, identifiable trauma but may occur as the result of prolonged, unusual circumstances.”¹⁵⁵

Similar to California, the New York workers’ compensation and case law seems to provide some room for slaughterhouse workers to make the claim that the very nature of their work is unusual.¹⁵⁶ Furthermore, the Third Department’s willingness to give credence to a claimant’s individual susceptibility to mental trauma could be helpful to slaughterhouse workers who are more sensitive or more troubled by the nature of the work.

An individual’s right to workers compensation for suffering mental trauma was addressed again in *Rackley v. County of Rensselaer*.¹⁵⁷ The Third Department upheld the plaintiff’s claim for compensation for mental injury finding that:

[A] determination of psychic accident may be made even though the underlying cause is common to all similarly employed and adversely affects claimant only because of his peculiar vulnerability. . . . If the hazard seeks out the susceptible, who are few in number among the work force, and passes by the greater, though all perform the same work under the same

¹⁵⁰ *Ottomanelli v. Ottomanelli Bros.*, 80 A.D.2d 688, 689 (N.Y. App. Div. 1981).

¹⁵¹ *Id.*

¹⁵² *Id.* at 443.

¹⁵³ *La Mendola v. Butler*, 179 A.D.2d 862, 862 (N.Y. App. Div. 1992) (internal citations omitted).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *See Rackley v. County of Rensselaer*, 141 A.D.2d 232, 234 (N.Y. App. Div. 1988) (holding that psychic trauma may be compensable as a physical injury under New York’s workers’ compensation law).

conditions, the victim may have sustained an accident * * * within the meaning of the Workers' Compensation Law.¹⁵⁸

This holding could be useful to individual slaughterhouse workers who, although engaged in the same work, are more traumatized by it than their co-workers.

V. OTHER POSSIBLE STRATEGIES AND FINAL THOUGHTS

First and foremost, there needs to be more research and studies on the effects of slaughterhouse work on the workers, specifically the psychological, emotional, and mental effects of the work. More research into PITS is needed, as it may prove helpful in establishing proof of mental injury in court. As a historical analogy, as PTSD became recognized, defense lawyers began using the diagnosis in their defense of Vietnam veterans.¹⁵⁹ As a mitigating factor, prosecutors also used PTSD to overcome evidentiary problems and credibility issues in child sexual abuse cases where the child was the only witness.¹⁶⁰ "The recognition of PTSD by the American Psychological Association suggested new potential strategies to address these challenges. Soon after the release of DSM-III, prosecutors sought to offer testimony through psychological experts centered on the theory and criteria of PTSD."¹⁶¹ Lawyers representing slaughterhouse workers could use the results of those psychological studies to support their claims, as well as advocate for the inclusion of PITS in the DSM.

Attorneys also can look to strategies that have been effective in exposing and litigating the treatment of sweatshop workers and restaurant workers. Perhaps it is time to file a class-action lawsuit on behalf of slaughterhouse workers.

Consumers can also organize to pressure the meatpacking industry to live up to its claims of greater transparency. Retailers like Whole Foods reassure anxious meat buyers with their animal welfare standards, but make no mention of the welfare of the workers behind the meat.¹⁶² The meatpacking industry most likely will fight tooth and nail against exposure of what actually goes on in their slaughterhouses, just as they have fought animal rights' groups like People for the Ethical Treatment of Animals (PETA), the Humane Society of the United States, and other organizations which seek to expose cruelty to agricultural animals.¹⁶³ I urge fellow vegans and animal rights' activ-

¹⁵⁸ *Id.*

¹⁵⁹ Daniel W. Shuman, *Persistent Reexperiences in Psychiatry and Law*, in *POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES AND FORENSIC ASSESSMENT* 1, 9 (Robert I. Simon ed., 2nd ed. 2003).

¹⁶⁰ *Id.* at 36.

¹⁶¹ *Id.*

¹⁶² *Animal Welfare Basics*, WHOLE FOODS, <http://www.wholefoodsmarket.com/mision-values/animal-welfare/animal-welfare-basics> [<https://perma.cc/9WCM-K3PF>] (accessed July 29, 2018).

¹⁶³ *See Ag-Gag Law Keeps Animal Cruelty Behind Closed Doors*, HUMANE SOC'Y U.S., http://www.humanesociety.org/issues/campaigns/factory_farming/fact-sheets/ag_gag

ists as well as people who love animals to seek to redress the cruelty done to humans who work in slaughterhouses as being inextricably entwined with the cruelty done to the animals. This can be done through community organizing as well as by putting pressure on Congress and politicians at the local level who may be more responsive to their constituents. Slaughterhouse workers deserve our support and advocacy, not only for the physical demands of their work, but also for the emotional and psychological price they pay for that work.

.html?referrer=https://www.google.com/ [https://perma.cc/WT8F-R6QH] (accessed July 29, 2018) (“Ag-gag bills seek to make it difficult or impossible for whistleblowing employees or animal advocacy groups to expose animal cruelty or safety issues. These bills can take a variety of forms, but the intent is the same: to punish those who expose patterns of animal abuse or food safety violations on factory farms, and therefore conceal these abuses from the public.”).