

Agribusiness Alert: Employee's Unauthorized Video Photography at Animal Facilities—Tips for Prevention

December 5, 2011

On November 18, 2011, the animal rights group Mercy for Animals released a video that was secretly recorded at several farms owned and operated by Litchfield, Minnesota-based Sparboe Farms, the fifth largest shell egg producer in the United States. The video shows the mistreatment of select hens used in the production of eggs. The video was obtained by ABC News and was used as part of a story for the ABC News Magazine television show 20/20. That story and the surrounding media attention caused a ripple effect in the food industry. Within days of the release of the video, customers of Sparboe Farms—including McDonald's, Target, Sam's Club, and Lunds & Byerly's—announced that they would no longer buy Sparboe-branded eggs. Although Sparboe Farms acknowledges select hens were mistreated, the company denies that these incidents are reflective of its general practices and has terminated the employees involved with the mistreatment of the animals.

For those companies involved in the business of agriculture and operating animal facilities, an important issue was raised in this case that has largely been ignored by the media: the tactics used by an animal rights group to obtain evidence used against Sparboe. The video was taken without authorization and before any attempt was made to address the issues internally with company management. The nonprofit group Mercy For Animals has taken credit for the video. It was taken by people associated with the group who obtained employment with Sparboe Farms for the sole objective to take the video.

Unauthorized or secret videos are a growing concern in the agriculture and food production industry, and for employers in general. It is remarkably easy to videotape anything with technology available today, and it is difficult to detect those who do this without permission. Often the videos displayed in the media focus only on isolated incidents of bad behavior. While the employee mistreatment of animals in the Sparboe videos is undeniable and inexcusable, Sparboe has publically taken responsibility for the problems and is in the process of a large-scale improvement initiative.

Sparboe is not alone. Other animal facilities have also been targeted by animal rights groups, and this latest news story is likely to fuel even more of this kind of activity. In some cases, facility management has learned after-the-fact that prospective employees have falsified information on their employment application in order to obtain access to the facility, and some videos taken by groups have later proven to be manipulated.

There are lessons to be learned in this particular case. Although select federal and state laws exist to prohibit the interference with research or operations at animal facilities, in many states the laws do not specifically address unauthorized videos taken by employees. For this reason, these videos continue to be a common strategy of animal rights groups. It is important for those in the industry to understand the laws surrounding the methods used by the animal rights group to draw attention to their cause and how to avoid becoming a target of these tactics. Adopting sound and thorough hiring practices, along with consistent training and enforcement of treatment guidelines, can help to prevent problems. Here are some suggestions:

Good Hiring Practices

- Reference checks. Take the time to check references. Always request employer references and verify that the past jobs listed on the application are accurate. Also, consider whether previous jobs held by the applicant seem out of character with the current open position. For example, if a person applying for a job in an egg production facility has listed a past job as a teacher or scientist, ask why they are seeking such a different job. It could be a genuine need or interest in changing jobs, but it also could be a warning sign.
- Prior addresses. Always request and verify that the prospective employee actually lived at the addresses provided. If the applicant doesn't provide a local address or has recently moved to the area, be sure to inquire about the reasons, while being careful to avoid questions that could give rise to claims of discrimination.
- Education and skill level. Consider whether the prospective employee seems to be overqualified for the position, based on both education and skill level.
- I-9 Compliance. Be sure to follow all rules for completing I-9s to verify identity. One common method of verification is a driver's license, but other forms of ID are also acceptable. Make sure your hiring personnel know and understand these requirements and consistently follow them.

Smart Interview Techniques

Prepare for interviews of applicants and use relevant questions in a consistent manner with each applicant. Not only will this help identify potential imposters, it is simply good business to conduct thorough interviews. Here are some particular areas to cover, and potential warning signs associated with them.

- Schedule preferences. If the prospective employee requests to work before or after normal business hours, it may or may not be a legitimate request. For example, if the applicant shares child care responsibilities with a former spouse and needs to be available at certain times to care for children, the request is understandable. If there seems to be no reasonable explanation for the request, note this as unusual.
- Work style with supervisors. If the prospective employee requests to work in an area that may put them in contact with animals without others around or without supervision, be sure you understand the reason for the request.
- Wage expectations. If the prospective employee is willing to take a job without pay to "learn" the position, this may be a red flag. While unpaid internships may be common in some industries, they aren't

considered "normal" at animal facilities.

- Short-term employment. If the prospective employee is willing to accept short-term employment, this may also be something that should be examined more closely. Many people are willing to take short-term jobs, especially in today's economy, so this may not be unusual at all; but ask questions to enable a better understanding of the person's motivation to work for a short time.

Effective Supervision and Management

If supervisors are properly trained and doing a good job overseeing staff, they will notice unusual behaviors that could indicate an imposter employee.

- Asks unusually detailed questions. Most new employees will have lots of questions and a certain period of "learning" while on the job. But if the employee asks specific questions about security matters, such as how people can access certain areas of the facility or the specific hours of supervisors in various areas, or operational time schedules for certain events, there may be a different motivation than simply learning the business.
- Arrives prior to or leaves after scheduled shift. Sporadic or inconsistent attendance can be a common problem for employers, but if an employee arrives prior to scheduled shifts or leaves after scheduled shifts on a regular basis, management should take notice and enforce the schedule. Not only does this behavior cause potential security issues, it could also raise claims of unpaid overtime under the Fair Labor Standards Act.
- Wandering. If the employee is discovered wandering around in areas not necessary for his/her job responsibilities, make sure management is following up and providing appropriate guidance about work hours and work locations.

Adopt a Technology Use Policy

Although there are very few laws regulating the use of videos in a workplace, employers are free to adopt policies prohibiting the use of certain technology and technical devices, such as video smartphones, in the workplace. The policy should be in writing and distributed to every employee, preferably with a requirement that the employee sign an acknowledgement regarding their understanding of the policy.

Train Employees and Enforce Animal Treatment Guidelines

As Ben Franklin taught us, an ounce of prevention is worth a pound of cure. The best way to avoid animal mistreatment is to make sure your employees understand the rules and follow them. In today's business world, codes of conduct are common and expected. Put in place an Animal Care Code of Conduct and regularly and consistently provide training, education, and guidance to employees about proper handling of animals. And, of course, enforce the rules. If employees are not following the rules, address the situation immediately and with an appropriate response given the offense. Most people learn best by example, so ensuring those who break rules receive timely and adequate discipline will send a strong message to all of those who work around them.



Gray Plant Mooty is a full-service law firm with specialized practices in agribusiness and employment law. Contact Jeff Peterson if you have any questions regarding this alert.

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