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The

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Regulation

Marc Linder

Fănpihuà Press Iowa City 2003

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Relatively Vigorous Complaint-Driven Enforcement: UFCW-Organized Animal Slaughter Plants in Iowa

[G]oing to bathroom at work is just a bad habit.1

Iowa OSHA was, as already noted, the first to act expressly to require employers to let workers void when needed,² in large part because the author and Mark Smith, the president of the state Labor Federation, pressed for the change, which was implemented by an openly labor-friendly commissioner, Byron Orton, who has a national reputation for administering a vigorous state-plan OSHA program.³ Iowa OSHA, therefore, is important to examine as a case study of the kind of results that this relatively favorable constellation of forces can generate.

Enforcement in Iowa differs from that of other jurisdictions in that four of the six toilet-standard citations issued after the new interpretation had gone into effect (in the case of Iowa, on January 21, 1998) were for failure to provide prompt access, while the other two were issued to employers that had failed to provide any toilets at all.⁴ All four citations for failure to provide access were imposed against large firms in a major Iowa industry: animal slaughterhouses. One each was issued to John Morrell and Excel and two to Swift. All of these plants operate under collective bargaining agreements with the UFCW and all of the inspections were triggered by complaints (or, in one case, referral).

These unlawful conditions at animal disassembly plants are not confined to Iowa. The same incessant pressure to maximize throughput and a frenzied pace

¹Iowa OSHA, Excel. Corp., Insp. No. 300375060, Inspector's Notes at 200 (1999) (statement to OSHA inspector by worker at Excel quoting a supervisor).

²See above ch. 3.

³Telephone interview with Mike Wright, Director of Occupational Safety, Health, and Environment, United Steelworkers, Pittsburgh (Oct. 10, 2002).

⁴Area Residential Care, Dubuque, IA, Inspection No. 115090235 (July 15, 1998); Overton's Disposal Company, Inc., Davenport, IA, Inspection No. 115098535 (Feb. 25, 2002).

on slaughterhouse production lines that prevents workers from taking ergonomically recommended short breaks to avoid repetitive stress injuries also prevents them from going to the toilet throughout the United States.⁵ For example, some workers at the IBP plant in Wallula, Washington, which permits only a 30-minute lunch break and one 15-minute rest break during a seven-hour and 56-minute shift, have voided in their pants.⁶

Iowa OSHA's administrator, Mary Bryant, indicated that all of its inspections originated in complaints because it was too short-staffed to perform programmed inspections. Moreover, even if it were in a position to carry out such inspections, they would focus on violations suggestive of high injury rates; since lack of toilet access is not ordinarily associated with loss of work time or a reportable injury, such violations would not figure as high-priority items. Thus even in the case of an industry such as slaughterhouses with a documented record of repeated violations, Iowa OSHA continues to rely almost exclusively on complaints.⁷

The first of the two violations that Swift and Company (which at the time was a subsidiary of ConAgra, the second largest food company in the United States) committed at its Marshalltown plant was revealed by a referral from the Division of Latino Affairs of the Iowa Department of Human Rights to OSHA in June 2000: "Employees were not provided access to toilet facilities within a reasonable time frame: (a) Throughout establishment - Employees requesting to use toilet facilities were repeatedly told to wait. During the waiting period employees urinated and menstruated on themselves." OSHA proposed a penalty of \$1,875, which was reduced by settlement to \$1,000.8 A little more than a year later, responding to a complaint, Iowa OSHA cited Swift for a repeated violation: "Toilet facilities were not provided in accordance with TABLE J-1 of this Section: (a) On the Loin Boning Line - On or about 10-25-01, at approximately 11:00 pm, an employee was not able to use toilet facilities and subsequently urinated in his clothing. The availability of utility relief workers and employee information were contributing factors." Iowa OSHA proposed a penalty of \$5,000, which was reduced through settlement to \$2,5009—not exactly a

⁹Iowa Occupational Safety and Health Administration, In the Matter of Swift and



⁵Marc Linder, "I Gave My Employer a Chicken That Had No Bone: Joint Firm-State Responsibility for Line-Speed-Related Occupational Injuries," *Case Western Reserve Law Review* 46:33-143 (1995).

⁶Nancy Cleeland, "For Meatpackers, Walkout Was Step Forward and Back," L.A. Times, July 9, 1999, at A1 (Lexis).

⁷Telephone interview with Mary Bryant, Des Moines (Sept. 25, 2002).

⁸Iowa Occupational Safety and Health Administration, In the Matter of Swift and Company, IOSH No. 300378031 (Oct. 13, 2000). The reduction is shown in a computer print out of cases that Iowa OSHA made available and is also accessible in the Lexis OSHAIR file.

powerful financial deterrent vis-à-vis a very wealthy recidivist.

Ironically, just a few months before the first of these OSHA inspections in Iowa, ConAgra's manager of corporate relations, in response to complaints by Hispanic workers in slaughter plants in Nebraska that they were being denied permission to go to the bathroom and some were urinating on themselves, had declared that "she was appalled when she read reports that workers at some plants don't get bathroom breaks. She said that doesn't happen at ConAgra plants. 'I can assure you we allow our employees to go to the bathroom.... They can go when they need to go." ¹⁰

In 2001 Iowa OSHA imposed an (uncontested) penalty of \$2,000 on John Morrell & Company of Sioux City, which is organized by UFCW Local 1142, for a whole series of violations. Morrell is a subsidiary of Smithfield Farms, "the largest vertically integrated producer of processed meat and fresh pork in the United States." Generally, the employer restricted access "through extended delays, limits on the number of times employees were allowed to use the toilet per day, and limits on the time allowed to be away from the work area." OSHA then adduced the following specific instances, which in their variety and totality offer some insight into the lack of freedom to void even in unionized slaughterhouses:

An employee was required to wait 1 and ½ hours to use the toilet facilities. The employee asked his/her supervisor for a restroom break or spell out and was not allowed to use the restroom until their scheduled break time. The employee felt he/she would be fired for leaving the line without a utility person replacing them. The employee was delayed to the point that one or more of the following 3 events occurred—urinated, defecated, and/or heavy menstruation in their clothing. The employee has reduced the intake of liquids to avoid needing restroom breaks or spell outs during his/her shift.

An employee was required to wait 45 minutes to use the restroom. The employee asked his/her supervisor for a restroom break or spell out and was told "no". The employee left the work area to use the restroom and was verbally reprimanded by his/her supervisor.

An employee was afraid to ask for a restroom break. The employee felt if he/she requested too many breaks or spell outs they would be fired. The employee waits to use the facilities for a scheduled breaktime, the delay created [sic] one or more of the following to occur—urination, defecation, and/or a heavy menstruation in their clothing.

¹¹http://www.johnmorrell.com/



Company, IOSH No. 304790132 (Jan. 24, 2002).

¹⁰Mike Sherry, Cindy Gonzalez, and Leslie Reed, "Meatpacking Inquiry Opened," *Omaha World-Herald*, Sept. 11, 1999, at 59 (Lexis) (quoting Joan Lukas). On Lukas's position, see http://www.conagra.com/media/news.jsp?ID=19990712.

An employee was required to wait approximately 50 minutes to use the restroom. The employee asked his/her supervisor twice and another supervisor twice before he/she was replaced to use the facilities. The employee felt that they would be written up if they left without a utility worker present.

An employee was denied a restroom break or spell out because the supervisor believed the employee had received a restroom spell out break already that day. The employee had not received a spell out or restroom break. The employee pleaded with the supervisor until the restroom break was granted. The employee had to wait 55 minutes for a restroom break. The employee felt they would be written up if they left the line without a utility worker or supervisors [sic] approval.

An employee was verbally reprimanded for using the facilities on their way to be interviewed by the inspector. The employee was told to report to the conference room and was caught using the facilities prior to reporting to the conference room.

An employee was required to wait 45 minutes to 1 hour to use the restroom. The utility worker was busy working on the line to replace an absent employee. The utility worker has been doing that job for several weeks. The line was short workers. The employee was reprimanded for leaving the line to use the restroom.

An employee was required to wait 45 minutes to use the restroom. The employee asked his/her supervisor three times. The employee shut down the line to use the restroom. The employee was sent to the personnel office.

An employee, with a doctor's excuse slip to use the toilet facilities because of a medical problem, was required to wait because he/she had already went [sic] once that day. Supervisor and other employees gave the employee a "hard time" about the frequent visits to the restroom. The employee did not believe they could leave the line without a utility person replacing them. The employee was delayed to the point that one or more of the following events occurred—urinated, defecated, and/or a heavy menstruation in their clothing. 12

Against the background of such a broad array of blatant transgressions, the question, once again, arises as to whether the meager financial penalty can be expected to deter a wealthy corporation that may have calculated that the monetary value of the additional production it can squeeze out of a workforce deprived of toilet breaks (until it is cited again) exceeds the cost of the fine.

The most egregious systemic denials of voiding rights in Iowa slaughter-houses took place in 1999 at the 1,600-employee hog slaughter plant in Ottumwa owned by the Excel Corporation, the third-largest meat-packing firm in the

¹²Iowa Occupational Safety and Health Administration, In the Matter of John Morrell and Company, IOSH No. 303736573, Apr. 18, 2001.



United States, which in turn is controlled by Cargill, one of the largest food processing firms in the United States and the largest privately held corporation.¹³ The degree of indignity and humiliation inflicted on workers was so intense that one worker who defecated in her pants filed an unprecedented private tort suit against the employer.

Initially, on July 21, 1999, an Iowa OSHA Compliance Safety and Health Officer (CSHO), responding to a complaint, telephoned Excel's human resources manager, Les Elders, about denial of timely access to the bathroom and faxed the OSHA sanitation standard together with Byron Orton's January 21, 1998 interpretation.¹⁴ That complaint had alleged:

All employee[s] are having problems being allowed to go to the rest room. The shift starts at 6:00 am and employees are not allowed to go until 7:00 am, nor are employees allowed to go to the rest room for the proceeding [sic] half hour before breaks. Employees are required to have a relief person take their place on the line before leaving. Sometimes there is no relief person available for the entire shift.¹⁵

Elders responded on July 26:

Excel-Ottumwa operates a union facility in which all breaks and rest periods are a negotiated item. The company has no policy or practice that would restrict employees from using the restroom when requested. The company does ask the employee to notify management when it is necessary to use the restroom outside of a normal break or rest period. A relief person would be used, where possible to ensure the flow of the process continues. If no relief person is available, employees are still allowed to use the restroom.¹⁶

The CSHO replied the following day, recommending that the employer cover the complaint with its supervisors so that they understood the requirements. Nevertheless, two weeks later, on August 11, A,¹⁷ a female hogpusher cooler,

¹⁷Throughout this account of the events at the Excel plant in Ottumwa the names of the workers denied access have been deleted and replaced with letters. The OSHA Inspection Report and inspector's notes were released to the lawyer representing the worker who



¹³Iowa OSHA, Excel Corp., Inspection Report, Insp. No. 300375060, Nov. 22, 1999; http://www.sierraclub.org/factoryfarms/rapsheets/iowa/excel.asp.

¹⁴IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 3.

¹⁵IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 4.

¹⁶IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 4.

requested but never received a bathroom "let out" from a lead person because she had not gone to a supervisor, Gene Miller, and there were people ahead of her on the list because they had gone to him. She had not been trained that she was required to go to a supervisor, recalling only that the lead person gives let outs and a doctor's excuse was necessary to get a let out "whenever needed." An hour and 35 minutes later, at break time, still without having received the let out, she informed Miller that she had had an accident in her pants and had to go home to change them. Then in the middle of the kill floor "Mr. Miller said loudly to her: 'You mean you shit your pants.'" 18

On August 19, Miller's supervisor, Jim Greinert, met with Miller, employee representative Denny Glattfelder, and Elders, concerning this incident. Elders absolved Miller of any involvement in preventing A from going to the bathroom. Elders told the group that if someone had to go to the bathroom, "they will go," and that Greinert would tell A that if she could not find a relief person, "she should go to the bathroom before having an accident." In a "personal note," the OSHA compliance officer observed that although Excel knew that there had been previous problems with toilet access, "the company chose to drop the issue," taking no further action. The OSHA officer added that Glattfelder "told me that one of the big issues in becoming the union president was to make sure that the employees at Excel-Ottumwa would be allowed to go to the bathroom when needed. This statement impressed upon me...that this must have been an ongoing problem. Mr. Glattfelder told me this was one of the major items on his platform when running for union President." 19

filed a tort suit against the company; because Iowa OSHA did not redact these records, the names of the workers appear in them, but since it is not clear whether these workers agreed to have their names divulged, they have been suppressed here after telephonic consultation with Kathleen Uehling, Asst. Commissioner of Labor, Des Moines (Dec. 30, 2002).

¹⁸IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 4.

¹⁹IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 4-5. Glattfelder refused to be interviewed by the author on the grounds that he had in the meantime become part of management. When told that Ron Brown, the current union president, who had suggested the interview, had stated that Glattfelder's platform had included bathroom breaks, Glattfelder denied the truth of that statement and claimed that there had not been any problems with bathroom breaks. When he nevertheless insisted that the author speak to Brown, the author pointed out the self-contradiction in suggesting that he interview someone who allegedly had not told the truth; seeing this impossible situation, Glattfelder instead recommended another Excel worker and former union official. Telephone interview with Denny Glattfelder, Ottumwa, IA (Nov. 3, 2002). That person, however, also refused to be interviewed. Telephone inter-



Three weeks later, on September 8, bathroom history repeated itself at Excel as tragedy and farce. The previous day B, having hurt her hand, was assigned light duty marking export hogs with a marker, which, however, was a two-handed job; on the morning of September 8, B saw the company nurse, who gave her permission to return to her old job wiping rails in the cooler, and told her to tell Miller to call the nurse if he gave her any trouble. That morning Miller told B she would have to keep marking hogs until he could find a replacement, and, even after she had complained that the work was hurting her hands, added: "I don't care, switch hands." Later in the morning when she asked Miller for a let out, he replied: "Well I will put you on the list." When she told him that "she really needed to go," he responded: "Well in 35 minutes I will have someone here to take your place." When she told a co-worker she really needed to go, he told her to just go, but "Ms. Miller's [sic; must be B's] comment to this [was], 'You just don't do that with Gene." Her relief person did not show up for 33 minutes, but when B stood up to go, she "could no longer hold it. She defecated in her pants." The same day Miller did not allow a male worker to go to the bathroom for an hour and a half; that worker "also felt that he would be written up if he stopped the line to go to the bathroom." That same day B contacted the union, which contacted Elders, who put Miller on a fully-paid suspension until September 13, pending an investigation.²⁰

On September 14, Glattfelder called in the complaint to Iowa OSHA²¹ and the OSHA opening conference took place a week later. To the OSHA inspector Miller later acknowledged that he had known that B had a doctor's slip allowing her to go to the bathroom, and that since they were friends, he also knew that she was on dietary pills and "might need to go to the bathroom unexpectedly and suddenly." Miller also explained to the inspector that "through a union grievance that he had once done back when he was the union steward he knew that he had 35 minutes to get" B to the bathroom. Yet the company later told the inspector that this 35 minutes did not pertain to bathrooms, and Miller himself stated to her that he found out later from the employer that "he was to get those people who needed to use the bathroom out right away." This confusing welter of conflicting statements left the inspector "wondering what Mr. Miller thought the August 19, 1999 meeting was about" and whether he had lied to her about the 35 minutes.

²¹According to a very small article months later in the *Des Moines Register*, Glattfelder said that a female employee had lost control of her bowels after being prohibited from going to the bathroom until the next scheduled break. "Company Appeals Restroom Fine, *Des Moines Register*, Dec. 30, 1999, at 5M, col. 1.



view with Michael Larkin (Nov. 3, 2002).

²⁰IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 5-6.

After all, one of the workers she interviewed had reported that "Mr. Miller's 'favorite comment' was 'that will be 35 minutes.""²²

The OSHA inspector interviewed 12 workers, three of whom stated that Excel had not told them that they were allowed to go to the bathroom if no relief came and they could no longer hold it: "The overall tone of these interviews indicate[d] that there were definite problems with going to the bathroom. 4 of the interviewed employees indicate that they have had an accident in their pants. 2 of these employees were found just by random interviewing. The other 2 employees were part of the complaint filed by...Glattfelder. Several employees were required to wait 1.5 hours to use the toilet." During her last visit to the plant on November 12, 1999, Glattfelder told the inspector that the sanitation issue no longer existed, prompting her to issue a citation but to consider it abated. Nevertheless, the citation was to be "willful." She had contacted Helen Rogers at Federal OSHA General Industry Compliance in Washington, who told her that Federal OSHA had been citing this violation as "serious."²³ The inspector determined that the citation had been willful because Excel committed the violation intentionally and knowingly since it was aware of the law and the practice in violation thereof and did not abate the hazard; in addition: "There has been a lot of media publication on this issue concerning rights of employees to use the bathroom." The inspector's passion and compassion were poignantly on display when she insisted:

33 minutes...is too long. I have also documented several cases where people were required to wait 1.5 hours to use the bathroom. Having to wait this long when you need to use the bathroom must have been very painful for some of these people. Much less the loss of a primary human and animal right to use the bathroom as needed. This is harmful both physically and mentally. The loss of dignity for these people whether or not they los[t] control or had 'accidents' is very obvious to this inspector.²⁴

The violations for which Iowa OSHA penalized Excel the sum of \$36,000, which the company initially announced it would contest²⁵ but subsequently paid, included:

²⁵Jeff Strait, "Excel Fined for OSHA Violation," *Ottumwa Courier*, Dec. 29, 1999, at 1, col. 1; see also "Company Appeals Restroom Fine."



²²IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 5-6.

²³IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 6-7.

²⁴IOWA OSHA, Excel Corp., Inspection Report, "Coverage Information/Additional Comments" at 7.

Throughout the area of the Excel-Ottumwa plant where Gene Miller serves as supervisor, toilet facilities were not provided to employees.

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An employee was required to wait 1 and ½ hours to use the toilet facilities. The employee asked his/her supervisor for a bathroom let out and was not allowed to use the bathroom until their scheduled break time. The employee thought they would be written up if they left without a relief person present.

An employee was required to wait 30 to 45 minutes to use the toilet facilities. The employee found their own relief person. The employee was delayed to the point that one or more of the following 3 events occurred—urinated, defecated, or a heavy menstruation in their clothing.

An employee was required to wait 1 and ½ hours to use the toilet facilities. The employee felt that they would be fired if they just left the line. The employee was delayed to the point where one or more of the following 3 events occurred—urinated, defecated, or a heavy menstruation in their clothing.

An employee was required to wait 1 hour to use the toilet facilities. The employee reports that the supervisor gave them a "hard time" about the frequency of their visits to the toilet.

An employee with a doctor's excuse slip to use the toilet facilities because of a medical problem was required to wait 33 minutes to use the toilet facilities. The employee felt if they left the line they would be written up by the supervisor. The employee was delayed to the point that one or more of the following 3 events occurred—urinated, defecated, or a heavy menstruation in their clothing.

An employee was required to wait 1 and ½ hours to use the toilet facilities. The employee did not believe they could leave the line without a relief person taking over. The employee was delayed to the point where one or more of the following 3 events occurred—urinated, defecated, or a heavy menstruation in their clothing.²⁶

Iowa Labor Commissioner Byron Orton, who was personally and decisively involved in the resolution of the Excel case, attending the closing conference at the plant on November 23, explained that he had initially offered to resolve the case informally without an on-site inspection, but that the company had been very recalcitrant and refused. Although Orton characterized the supervisor who refused to let workers go to the bathroom as a "renegade" with a "Hitler complex," the commissioner insisted that management had been aware of what the supervisor had been doing. Iowa OSHA then classified Excel's violation as willful because the employer had continued to deny workers access to the toilet

²⁶Citation and Notification of Penalty to Excel Corp., Inspection No. 300375060, (Nov. 29, 1999).



even after the agency had sent it a copy of Orton's January 21, 1998 interpretation. The company sought a settlement that would have deleted the "willful" classification because, according to Orton, like many employers, it regarded that designation as injurious to its corporate reputation. In an innovative enforcement approach, Orton agreed to reduce "willful" to "serious"—which conversion would not have helped the company financially since in both cases a repeat violation would warrant OSHA's levying the highest statutory penalty of \$70,000—if Excel paid the full \$36,000, and in addition made a contribution of \$25,000 to the Ottumwa fire department and a seven-county hazardous materials entity.²⁷

Iowa OSHA's enforcement actions in these slaughterhouse cases clearly demonstrate that this state agency has not adopted the aforementioned narrow position of Federal OSHA's director of compliance that a 30-minute wait did not rise to the level of a violation.²⁸

On September 10, 2001, Linda Long, who worked at the Excel hog slaughter plant in Ottumwa, filed suit in Iowa District Court for Wapello County against Excel, Cargill Incorporated, which owns a controlling interest in and sets employee policies for Excel, Earl Gene Miller (her immediate supervisor), Jim Greinert (head of Long's department and Miller's immediate supervisor), and Les Elders (Excel's human resources manager). Long's legal claim is based on the accusation that "Miller refused to allow Plaintiff to leave her post to go to the bathroom within a reasonable period of time after Plaintiff requested to do so. As a result of Defendant Miller's conduct, Plaintiff defecated in her clothing." Nor, according to her court filing, had Long been the first victim. Despite the fact that Iowa OSHA had notified Elders about employees' toilet access complaints and advised him of state and federal regulations requiring employee access: "On multiple prior occasions, Defendant Miller and other supervisory personnel had refused to allow employees to go to the bathroom within a reasonable period of time, causing some employees to urinate or defecate in their clothing."29 After Long had defecated in hers, Excel gave a new dimension to adding insult to injury by virtue of having "informed others, allowed word to spread, or otherwise caused knowledge of what had occurred to pass to other employees of Excel."30

Excel, while claiming that it did "not deny[] its employees the right to go to the bathroom if they need to go to the bathroom," asserted in its defense that

³⁰Long v. Excel Corp., Petition, ¶27.



²⁷Telephone interview with Byron Orton, Iowa Labor Commissioner (Oct. 17, 2002).

²⁸See above ch. 8.

²⁹Long v. Excel Corp., Petition at Law, No. LALA 102518, ¶¶8-10, 13 (Iowa D.C. Wapello Cty, Sept. 10, 2001).

"companies like Excel have to guard against those employees who would abuse the privilege." Although the company insisted that it "does not take lightly its responsibility to allow workers to use toilet facilities," it nevertheless appeared unable to make up its corporate mind as to whether workers have a right or merely a privilege to void when they have to at work.³¹

The core of Long's claim, which is not only simple, straightforward, and commonsensical, but also innovative and even perhaps unprecedented in the annals of jurisprudence in the United States,³² is reminiscent of the human rights approach developed by the Conseil des Prud'hommes in the Bigard case.³³ It reads:

Human beings have a fundamental right to defecate or urinate in a reasonably private and dignified way. This right is grounded in principles of liberty and privacy.

The actions of Defendants in refusing...Plaintiff reasonable access to a toilet served to deprive Plaintiff of this fundamental right.

Plaintiff suffered a loss of personal dignity and experienced embarrassment and humility [sic; should be "humiliation"] as a result of Defendants' conduct.³⁴

The compelling nature of Long's claim of a fundamental human right to void in a private and dignified way is powerfully confirmed by the astonishing fact that Excel admitted the truth of this allegation in its Answer.³⁵ The resolution of this creative litigation, which may be tried in 2003,³⁶ could potentially expand the legal resources—beyond passive reliance on OSHA enforcement—available to workers to defend their individual and collective autonomy in the workplace.

³⁶Telephone interview with Steven Lawyer, Linda Long's attorney, Des Moines (Dec. 27, 2002).



³¹Strait, "Excel Fined for OSHA Violation" (quoting Mark Klein, Excel communications manager)

³²An appeals court did permit a General Motors worker who had defecated in his pants because his foreman had made him wait 35-50 minutes for relief to sue the latter for intentional infliction of mental stress for non-employment-related "gratuitous and intentional disclosure of plaintiff's predicament" (i.e., for having said that "plaintiff had 'crapped his pants'") to 40 co-workers after he finally let the worker go home to change his clothes. Kissinger v. Mannor, 285 N.W.2d 214, 216, 217 (Mich. App. 1979). However, a similar claim was dismissed involving a telephone operator whose AIDS medication caused diarrhea and who defecated on himself before he was permitted to leave his station and then had to sit in his soiled pants for three hours. Swatzell v. Southwestern Bell Tel. Co., 2001 U.S. Dist. Lexis 17733 (N.D. Tx. Oct. 31, 2001).

³³See above ch. 10.

³⁴Long v. Excel Corp. ¶¶20-22.

³⁵Long v. Excel, Answer and Affirmative Defenses to Petition at Law and Jury Demand, ¶20 (Sept. 28, 2001).