

SENATE BILL REPORT

SB 5891

As of January 25, 2022

Title: An act relating to warehouse distribution centers.

Brief Description: Concerning warehouse distribution centers.

Sponsors: Senators Conway, Keiser, Hasegawa, Hunt, Nobles and Saldaña.

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/27/22.

Brief Summary of Bill

- Requires certain warehouse distribution center employers to provide specified quota information upon hire, at least annually, and no fewer than two working days before a modification.
- Prohibits requiring employees to meet quotas that interferes with rights to meal and rest breaks or exposes them to health and safety hazards or violates related laws and rules.
- Requires employers to provide information if an employee believes a quota interfered with their rights or laws.
- Prohibits retaliation, including a rebuttable presumption, and provides remedies and for Department of Labor and Industries investigations.
- Requires warehouse distribution center employers' safety committees to meet at least quarterly.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Susan Jones (786-7404)

Background: Washington Industrial Safety and Health Act. Under the Washington

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (L&I) administers WISHA. If L&I believes an employer has committed a violation, L&I issues a citation and, depending on the violation, may assess civil penalties. Civil penalties may be adjusted based on the employer's inspection history, the size of the workforce, and other factors. Civil penalties are mandatory for serious or willful violations.

Summary of Bill: Written Quota Description Required. Each employer must provide to each employee:

- a written description of each quota for the employee, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period;
- any potential adverse employment action that could result from failure to meet the quota; and
- any incentives or bonus programs associated with meeting or exceeding the quota.

The written description must be understandable in plain language and in the employee's language of preference. L&I may adopt rules regarding the requirements for the written description. The written description must be provided upon hire, at least annually, and no fewer than two working days before the effective date of any modification of existing quotas.

Prohibited Activities. An employee may not be required to meet a quota that interferes with their rights to meal or rest periods, or that exposes them to occupational health and safety hazards in violation of the safety and health requirements in statute and rule, including use of bathrooms; time to travel to bathrooms, break and meal break locations; and access to tools and safety equipment necessary to perform their duties. A quota that exposes employees to such occupational health and safety hazard is a violation under the safety and health laws.

An employer may not discriminate, retaliate, or take any adverse action against an employee for failure to meet a quota that does not allow a worker to exercise their rights to meal and rest periods, or that exposes them to occupational health and safety hazards in violation the safety and health requirements in statute and rule, or for failure to meet a quota that has not been disclosed to the employee as required.

Rebuttal Presumption of Retaliation. There is a rebuttable presumption of unlawful retaliation if an employer discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee initiating the employee's first request in a calendar year for information about a quota or personal work speed data; and making a complaint related to a quota alleging any violation to L&I or the employer.

Time on Task. Any actions taken by an employee to exercise their right to a safe and healthful workplace provided in the law are considered time on task or productive time.

Meal breaks are not considered time on task or productive time unless the employee is required by the employer to remain on duty on the premises or at a prescribed worksite in the interest of the employer. Rest breaks are considered time on task or productive time.

Right to Information. If a current employee believes that meeting a quota interfered with their rights, the employee has the right to request, and the employer must provide, a written description of the quota and a copy of the most recent 90 days of the employee's own personal work speed data. The employer must comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. The employee work speed data must be provided in a manner understandable to the employee.

Department of Labor and Industries Enforcement For Safety and Health Violations. Violations related to a quota interfering with their safety and health rights or complaints of violations for the requirement for a safety committee meeting must be enforced through the Industrial Safety and Health laws. An employer who fails to allow adequate inspection of records in an inspection by L&I within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by L&I.

Complaints for Non-Safety and Health Violations, Investigations, Penalties. If an employee files a complaint with L&I alleging a violation of other provisions, L&I must investigate the complaint. L&I may not investigate any such alleged violations that occurred more than three years before the date that the employee filed the complaint. L&I must generally investigate the complaint and issue either a citation and notice of assessment, or a closure letter within 90 days after receipt of the complaint, except when written notice of a good cause extension is provided. Upon receiving a complaint regarding a violation, L&I may request or subpoena the records of warehouse distribution center quotas and employee work speed data. If L&I's investigation finds the employee's allegation cannot be substantiated, L&I must issue a closure letter to the employee and the employer.

L&I may initiate an investigation without an employee's complaint to ensure compliance with the law.

An employer may be subject to a civil penalty of not less than \$1,000 for each violation. An employer who is found to have violated a requirement resulting in a rest or meal period violation must pay the employee one additional hour of pay at the employee's regular rate of pay for each day there is a violation.

Procedures for appeal and collection of assessments and judgments are provided.

Civil Action. Except for violations of certain safety and health rights and the requirement for safety committees' quarterly meetings, an employee may bring a civil action against an employer for violations for actual damages; statutory damages equal to the actual damages or \$5,000, whichever is greater; interest of 1 percent per month on all compensation owed; and costs and reasonable attorneys' fees. The court may also order reinstatement and

injunctive relief. The employee must bring a civil action within three years of the date of the alleged violation. Filing a civil action must terminate L&I's processing of the complaint.

Quarterly Safety Committee Meetings. Any safety committee of an employer must meet at least quarterly and follow any rules related to safety committees adopted by L&I.

L&I may adopt and implement rules to carry out and enforce the provisions of this act.

Definitions. Certain terms are defined. Employer means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1000 or more employees at one or more warehouse distribution centers in the state. All employees of an employer and its affiliates are counted.

Warehouse distribution center means an establishment with the following North American industry classification system codes: 493110 for general warehousing and storage; 423 for merchant wholesalers, durable goods; 424 for merchant wholesalers, nondurable goods; and 454110 for electronic shopping and mail-order houses. Warehouse distribution center does not include North American industry classification system code 493130, farm product warehousing and storage.

Quota means a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.

Appropriation: None.

Fiscal Note: Requested on January 24, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.