

SENATE BILL REPORT

SB 5891

As Reported by Senate Committee On:
Labor, Commerce & Tribal Affairs, February 2, 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, 2/02/22 [DPS, DNP, w/oRec].

Brief Summary of First Substitute 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

Majority Report: That Substitute Senate Bill No. 5891 be substituted therefor, and the

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substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; King, Ranking Member; Robinson and Saldaña.

Minority Report: Do not pass.

Signed by Senator Braun.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Staff: Susan Jones (786-7404)

Background: Washington Industrial Safety and Health Act. Under the Washington 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 (First Substitute): 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.

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.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Modifies the definition of employee to mean individuals not employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as defined by rules.
- Makes technical changes by references sections in the bill.
- Removes an employee's private right of action.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is modeled after California legislation, including the definition of the included employers. These distribution centers are highly automated, but still involves many employees packaging and loading trucks. The conveyor belt never stops. We need to take look at these settings and make sure they are protected. A recent OSHA report indicates these types of employees are getting injured at higher rates because of productivity standards. The bill helps workers understand the quotas they are required to meet. This bill has an interest in transparency. The safety committee aspects are strengthened.

There were greater damages for e-commerce during the pandemic. This increased the use of the high churn employment model, including causing dangerous situations. This would restore the balance in the workforce. It will provide clear expectations for employees. The quota forces workers to cut corners, like not taking breaks, working too fast, and using improper lifting techniques. This causes dangerous work situations.

Some union employees have ways to control production standards. Many other workers don't have these guarantees. This about worker safety. Some companies time the tasks down to the second. If a worker is consistently under the standard, they will be terminated. The bill cracks down on hidden quotas and the safety and health violations quotas create. Injury rates have climbed in these fulfillment centers. We have reached a tipping point in the exploitation. The warehouse workers' compensation premium recently tripled, despite the non-Amazon warehouse claims going down during the same period. L&I split the rate class for distribution centers. Workers have to break some of the most superficial safety expectations to avoid negative attention and discipline. Other states are taking similar action. Workers are worried about speaking out. Lack of disclosure created fear.

CON: Safety committees are already required by law. The committee determines the frequency of the meetings and there are more employee members on the committee. Metrics are common in many industries. Meals and rest breaks are already regulated. The PRA is a problem. This is an overreach.

The definition of who is in and out of the bill are confusing, including the affiliate language. The bill duplicates existing law. The bill encourages private actions. This will create disincentive to have understandable performance metrics.

OTHER: L&I sees this as a new requirement to disclose a quota. The bill refers to existing rights. L&I has inspected Amazon facilities.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Eric Frumin, Strategic

Organizing Center; John Searcy, Teamsters Local 117; Matt Collins, Teamsters 117; Will Buff, Teamsters 117; Dan Stein, Awood Center; John Mataya, State Legislative Director, Department of Political and Field Action International Brotherhood of Te; Matt Broad, California Teamsters Public Affair Council; Joe Kendo, Washington State Labor Council, AFL-CIO.

CON: Robert Battles, Association of Washington Business (AWB); Bruce Beckett, Washington Retail Association.

OTHER: Mike Ratko, Labor & Industries; Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.