
SUBSTITUTE SENATE BILL 5891

State of Washington

67th Legislature

2022 Regular Session

By Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Conway, Keiser, Hasegawa, Hunt, Nobles, and Saldaña)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to warehouse distribution centers; adding a new
2 chapter to Title 49 RCW; prescribing penalties; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Affiliate" has the same meaning as in RCW 82.04.290(2)(f).

9 (2) "Defined time period" means any unit of time measurement
10 equal to or less than the duration of an employee's shift, and
11 includes hours, minutes, and seconds and any fraction thereof.

12 (3) "Department" means the department of labor and industries.

13 (4) "Director" means the director of the department of labor and
14 industries, or the director's designated representative.

15 (5) "Employee" means an employee who is not exempt under RCW
16 49.46.010(3)(c) and works at a warehouse distribution center.

17 (6)(a) "Employee work speed data" means information an employer
18 collects, stores, analyzes, or interprets relating to an individual
19 employee's performance of a quota including, but not limited to,
20 quantities of tasks performed, quantities of items or materials
21 handled or produced, rates or speeds of tasks performed, measurements

1 or metrics of employee performance in relation to a quota, and time
2 categorized as performing tasks or not performing tasks.

3 (b) "Employee work speed data" does not include qualitative
4 performance assessments, personnel records, or itemized wage
5 statements pursuant to WAC 296-126-040, except for any content of
6 those records that includes employee work speed data as defined in
7 this subsection.

8 (7) "Employer" means a person who directly or indirectly, or
9 through an agent or any other person, including through the services
10 of a third-party employer, temporary service, or staffing agency or
11 similar entity, employs or exercises control over the wages, hours,
12 or working conditions of 100 or more employees at a single warehouse
13 distribution center or 1,000 or more employees at one or more
14 warehouse distribution centers in the state. For purposes of this
15 subsection, all employees of an employer and its affiliates must be
16 counted in determining the number of employees employed at a single
17 warehouse distribution center or at one or more warehouse
18 distribution centers in the state.

19 (8) "Person" means an individual, corporation, partnership,
20 limited partnership, limited liability partnership, limited liability
21 company, business trust, estate, trust, association, joint venture,
22 agency, instrumentality, or any other legal or commercial entity,
23 whether domestic or foreign.

24 (9) "Productive time" or "time on task" means time included in
25 the time period considered for a quota, and must include reasonable
26 time to travel to bathrooms, break rooms, meal break locations, and
27 access to tools or safety equipment necessary to perform their
28 duties. Travel time must include consideration of the architecture
29 and geography of the facility and the location within the facility
30 that the employee is located at the time.

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

37 (11)(a) "Warehouse distribution center" means an establishment as
38 defined by any of the following North American industry
39 classification system codes, however that establishment is
40 denominated:

- 1 (i) 493110 for general warehousing and storage;
- 2 (ii) 423 for merchant wholesalers, durable goods;
- 3 (iii) 424 for merchant wholesalers, nondurable goods; and
- 4 (iv) 454110 for electronic shopping and mail-order houses.

5 (b) "Warehouse distribution center" does not include North
6 American industry classification system code 493130, farm product
7 warehousing and storage.

8 NEW SECTION. **Sec. 2.** (1) Each employer must provide to each
9 employee a written description of:

10 (a) Each quota to which the employee is subject, including the
11 quantified number of tasks to be performed or materials to be
12 produced or handled, within the defined time period;

13 (b) Any potential adverse employment action that could result
14 from failure to meet the quota; and

15 (c) Any incentives or bonus programs associated with meeting or
16 exceeding the quota.

17 (2) The written description must be understandable in plain
18 language and in the employee's language of preference. The department
19 may adopt rules regarding the format, plain language, and language
20 access requirements for the written description.

21 (3) The written description must be provided:

22 (a) Upon hire;

23 (b) At least annually; and

24 (c) No fewer than two working days prior to the effective date of
25 any modification of existing quotas.

26 NEW SECTION. **Sec. 3.** (1) An employee may not be required to
27 meet a quota that interferes with their rights to meal or rest
28 periods, or that exposes them to occupational health and safety
29 hazards in violation of the requirements of chapter 49.17 RCW and
30 applicable rules or regulations including use of bathrooms, including
31 time to travel to bathrooms, break rooms, meal break locations, and
32 access to tools and safety equipment necessary to perform their
33 duties. A quota that exposes employees to an occupational health and
34 safety hazard in violation of the requirements of chapter 49.17 RCW
35 and applicable rules or regulations, including use of bathrooms, is a
36 violation under chapter 49.17 RCW.

37 (2) An employer may not discriminate, retaliate, or take any
38 adverse action against an employee for failure to meet a quota that

1 violates any of their rights in subsection (1) of this section, or
2 for failure to meet a quota that has not been disclosed to the
3 employee pursuant to section 2 of this act.

4 NEW SECTION. **Sec. 4.** (1) Any actions taken by an employee to
5 exercise their right to a safe and healthful workplace per chapter
6 49.17 RCW are considered time on task or productive time.

7 (2) Meal breaks are not considered time on task or productive
8 time unless the employee is required by the employer to remain on
9 duty on the premises or at a prescribed worksite in the interest of
10 the employer.

11 (3) Rest breaks are considered time on task or productive time.

12 NEW SECTION. **Sec. 5.** (1) If a current employee believes that
13 meeting a quota interfered with the employee's right under section
14 3(1) of this act, the employee has the right to request, and the
15 employer must provide, a written description of each quota to which
16 the employee is subject and a copy of the most recent 90 days of the
17 employee's own personal work speed data.

18 (2) An employer that receives a written or oral request for
19 information pursuant to subsection (1) of this section must comply
20 with the request as soon as practicable, but no later than 21
21 calendar days from the date of the request.

22 (3) The written description of each quota must meet the
23 requirement of section 2(2) of this act and the employee work speed
24 data must be provided in a manner understandable to the employee.

25 (4) Nothing in this section requires an employer to use quotas or
26 monitor employee work speed data. An employer that does not monitor
27 this data has no obligation to provide it.

28 NEW SECTION. **Sec. 6.** For purposes of this chapter, there is a
29 rebuttable presumption of unlawful retaliation if an employer in any
30 manner discriminates, retaliates, or takes any adverse action against
31 any employee within 90 days of the employee doing either of the
32 following:

33 (1) Initiating the employee's first request in a calendar year
34 for information about a quota or personal work speed data pursuant to
35 section 5(1) of this act; and

1 (2) Making a complaint related to a quota alleging any violation
2 of sections 2 through 5 of this act, inclusive, to the director, the
3 department, or the employer.

4 NEW SECTION. **Sec. 7.** (1) Violations of section 3(1) or 4(1) of
5 this act related to a quota interfering with their rights under
6 chapter 49.17 RCW or complaints of violations for the requirement for
7 a safety committee meeting at least quarterly under section 11 of
8 this act shall be implemented and enforced, including penalties,
9 violations, citations, and other administrative procedures, pursuant
10 to the Washington industrial safety and health act, chapter 49.17
11 RCW. An employer who fails to allow adequate inspection of records in
12 an inspection by the department within a reasonable time period may
13 not use such records in any appeal to challenge the correctness of
14 any citation and notice issued by the department.

15 (2) Except as provided in subsection (1) of this section, if an
16 employee files a complaint with the department alleging a violation
17 under this chapter or applicable rules adopted under this chapter,
18 the department must investigate the complaint.

19 (a) The department may not investigate any such alleged violation
20 of rights that occurred more than three years before the date that
21 the employee filed the complaint.

22 (b) If an employee files a timely complaint with the department,
23 the department must investigate the complaint and issue either a
24 citation and notice of assessment or a closure letter within 90 days
25 after the date on which the department received the complaint, unless
26 the complaint is otherwise resolved. The department may extend the
27 period by providing advance written notice to the employee and the
28 employer setting forth good cause for an extension of the period, and
29 specifying the duration of the extension.

30 (c) The department shall send the citation and notice of
31 assessment or the closure letter to both the employer and the
32 employee by service of process or using a method by which the mailing
33 can be tracked or the delivery can be confirmed to their last known
34 addresses.

35 (3) If the department's investigation finds that the employee's
36 allegation cannot be substantiated, the department shall issue a
37 closure letter to the employee and the employer detailing such
38 finding.

1 (4) The director may initiate an investigation without an
2 employee's complaint to ensure compliance with this chapter.

3 (5) Except as provided under subsection (1) of this section, an
4 employer who is found to have violated a requirement of this chapter
5 and the rules adopted under this chapter, is subject to a civil
6 penalty of not less than \$1,000 for each violation. Civil penalties
7 must be collected by the department and deposited into the
8 supplemental pension fund established under RCW 51.44.033.

9 (6) Except as provided under subsection (1) of this section, an
10 employer who is found to have violated a requirement of this chapter
11 and the rules adopted under this chapter resulting in a rest or meal
12 period violation, shall pay the employee one additional hour of pay
13 at the employee's regular rate of pay for each day there is a
14 violation.

15 NEW SECTION. **Sec. 8.** (1) Except as provided in section 7(1) of
16 this act, a person, firm, or corporation aggrieved by a citation and
17 notice of assessment by the department or any rules adopted under
18 this chapter, may appeal the citation and notice of assessment to the
19 director by filing a notice of appeal with the director within 30
20 days of the department's issuance of the citation and notice of
21 assessment. A citation and notice of assessment not appealed within
22 30 days is final and binding, and not subject to further appeal.

23 (2) A notice of appeal filed with the director under this section
24 shall stay the effectiveness of the citation and notice of assessment
25 pending final review of the appeal by the director as provided in
26 chapter 34.05 RCW.

27 (3) Upon receipt of a notice of appeal, the director shall assign
28 the hearing to an administrative law judge of the office of
29 administrative hearings to conduct the hearing and issue an initial
30 order. The hearing and review procedures shall be conducted in
31 accordance with chapter 34.05 RCW, and the standard of review by the
32 administrative law judge of an appealed citation and notice of
33 assessment shall be de novo. Any party who seeks to challenge an
34 initial order shall file a petition for administrative review with
35 the director within 30 days after service of the initial order. The
36 director shall conduct an administrative review in accordance with
37 chapter 34.05 RCW.

1 (4) The director shall issue all final orders after appeal of the
2 initial order. The final order of the director is subject to judicial
3 review in accordance with chapter 34.05 RCW.

4 (5) Orders that are not appealed within the time period specified
5 in this section and chapter 34.05 RCW are final and binding, and not
6 subject to further appeal.

7 (6) An employer who fails to allow adequate inspection of records
8 in an investigation by the department under this chapter within a
9 reasonable time period may not use such records in any appeal under
10 this section to challenge the correctness of any determination by the
11 department of the penalty assessed.

12 NEW SECTION. **Sec. 9.** Except as provided in section 7(1) of this
13 act, if any person fails to pay an assessment under this chapter, or
14 under any rule under this chapter, after it has become a final and
15 unappealable order, or after the court has entered final judgment in
16 favor of the agency, the director may initiate collection procedures
17 in accordance with the collection procedures under RCW 49.48.086.

18 NEW SECTION. **Sec. 10.** Upon receiving a complaint regarding a
19 violation of this chapter, the department may request or subpoena the
20 records of warehouse distribution center quotas and employee work
21 speed data.

22 NEW SECTION. **Sec. 11.** Any safety committee of an employer must
23 meet at least quarterly and follow any rules related to safety
24 committees adopted by the department. This section is investigated
25 and enforced pursuant to chapter 49.17 RCW.

26 NEW SECTION. **Sec. 12.** The department may adopt and implement
27 rules to carry out and enforce the provisions of this chapter.

28 NEW SECTION. **Sec. 13.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 14.** Sections 1 through 12 and 15 of this act
33 constitute a new chapter in Title 49 RCW.

1 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2023.

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