

2SHB 1762 - S COMM AMD

By Committee on Labor & Commerce

ADOPTED AND ENGROSSED 04/11/2023

1 Strike everything after the enacting clause and insert the
2 following:

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

6 (1) "Affiliate" means a person that directly or indirectly,
7 through one or more intermediaries, controls, is controlled by, or is
8 under common control with another person. For purposes of this
9 subsection, "control" means the possession, directly or indirectly,
10 of more than 50 percent of the power to direct or cause the direction
11 of the management and policies of a person, whether through the
12 ownership of voting shares, by contract, or otherwise.

13 (2) "Aggregated data" means information that an employer has
14 combined or collected in summary or other form such that the data
15 cannot be identified with any individual.

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

19 (4) "Department" means the department of labor and industries.

20 (5) "Designated employee representative" means any employee
21 representative, including but not limited to an authorized employee
22 representative that has a collective bargaining relationship with the
23 employer.

24 (6) "Director" means the director of the department of labor and
25 industries or the director's designee.

26 (7) "Employee" means an employee who is not exempt under RCW
27 49.46.010(3)(c) and works at a warehouse distribution center.

28 (8)(a) "Employee work speed data" means information an employer
29 collects, stores, analyzes, or interprets relating to an individual
30 employee's performance of a quota including, but not limited to,
31 quantities of tasks performed, quantities of items or materials
32 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 department rules, except for any content of
6 those records that includes employee work speed data as defined in
7 this subsection.

8 (9) (a) "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 services, or staffing agency,
11 independent contractor, or any similar entity, at any time, employs
12 or exercises control over the wages, hours, or working conditions of
13 100 or more employees at a single warehouse distribution center in
14 the state or 500 or more employees at one or more warehouse
15 distribution centers in the state.

16 (b) For the purposes of determining the number of employees
17 employed at a single warehouse distribution center or at one or more
18 warehouse distribution centers, all employees employed directly or
19 indirectly, or through an agency or any other person, and all
20 employees employed by an employer and its affiliates, must be
21 counted.

22 (c) For the purposes of determining responsible employers, all
23 agents or other persons, and affiliates must be deemed employers and
24 are jointly and severally responsible for compliance with this
25 chapter.

26 (10) "Person" means an individual, corporation, partnership,
27 limited partnership, limited liability partnership, limited liability
28 company, business trust, estate, trust, association, joint venture,
29 agency, instrumentality, or any other legal or commercial entity,
30 whether domestic or foreign.

31 (11) "Quota" means a work performance standard, whether required
32 or recommended, where: (a) An employee is assigned or required to
33 perform at a specified productivity speed, or perform a quantified
34 number of tasks, or to handle or produce a quantified amount of
35 material, within a defined time period and under which the employee
36 may suffer an adverse employment action if they fail to complete the
37 performance standard; or (b) an employee's actions are categorized
38 between time performing tasks and not performing tasks, if the
39 employee may suffer an adverse employment action if they fail to meet
40 the performance standard.

1 (12) "Warehouse distribution center" means an establishment
2 engaged in activities as defined by any of the following North
3 American industry classification system codes, however such
4 establishment is denominated:

5 (a) 493 for warehousing and storage, but does not include 493130
6 for farm product warehousing and storage and 493120 for refrigerated
7 warehousing and storage;

8 (b) 423 for merchant wholesalers, durable goods;

9 (c) 424 for merchant wholesalers, nondurable goods; or

10 (d) 454110 for electronic shopping and mail-order houses.

11 NEW SECTION. **Sec. 2.** (1) An employer must provide to each
12 employee, upon hire, or within 30 days of the effective date of this
13 section, a written description of:

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

17 (b) Any potential adverse employment action that could result
18 from failure to meet each quota; and

19 (c) Any incentives or bonus programs associated with meeting or
20 exceeding each quota.

21 (2) Whenever there is a change to the quota that results in a
22 different quota than the most recent written description provided to
23 the employee, the employer must: (a) Notify the employee verbally or
24 in writing as soon as possible and before the employee is subject to
25 the new quota; and (b) provide the employee with an updated written
26 description of each quota to which the employee is subject within two
27 business days of the quota change.

28 (3) Whenever an employer takes an adverse action against an
29 employee in whole or in part for failure to meet a quota, the
30 employer must provide that employee with the applicable quota for the
31 employee and the personal work speed data for the employee that was
32 the basis for the adverse action.

33 (4) The written description must be understandable, in plain
34 language, and in the employee's preferred language. The department
35 may adopt rules regarding the format, plain language, and language
36 access requirements for the written description.

1 NEW SECTION. **Sec. 3.** (1) The time period considered in a quota,
2 including time designated as productive time or time on task must
3 include:

4 (a) Time for rest breaks and reasonable time to travel to
5 designated locations for rest breaks;

6 (b) Reasonable travel time to on-site designated meal break
7 locations. 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 (c) Time to perform any activity required by the employer in
12 order to do the work subject to any quota;

13 (d) Time to use the bathroom, including reasonable travel time;
14 and

15 (e) Time to take any actions necessary for the employee to
16 exercise the employee's right to a safe and healthful workplace
17 pursuant to chapter 49.17 RCW, including but not limited to time to
18 access tools or safety equipment necessary to perform the employee's
19 duties.

20 (2) Reasonable travel time must include consideration of the
21 architecture and geography of the facility and the location within
22 the facility that the employee is located at the time.

23 NEW SECTION. **Sec. 4.** (1) Except as provided in section 5 of
24 this act, a quota violates this chapter if the quota:

25 (a) Does not provide sufficient time as required under section
26 3(1) (a) through (c) of this act; or

27 (b) Prevents the performance of any activity required by the
28 employer for the employee to do the work subject to any quota.

29 (2) An employee is not required to meet a quota that violates
30 this section.

31 (3) An employer may not take adverse action against an employee
32 for failing to meet a quota that violates this section or that was
33 not disclosed to the employee as required under section 2 of this
34 act.

35 NEW SECTION. **Sec. 5.** (1) A quota violates chapter 49.17 RCW if
36 the quota:

37 (a) Does not provide sufficient time as required under section
38 3(1) (d) and (e) of this act;

1 (b) Prevents the performance of any activity related to
2 occupational safety and health required by the employer for the
3 employee to do the work subject to any quota; or

4 (c) Exposes an employee to occupational safety and health hazards
5 in violation of the requirements of chapter 49.17 RCW and the
6 applicable rules or regulations.

7 (2) An employee is not required to meet a quota that violates
8 this section.

9 (3) An employer may not take adverse action against an employee
10 for failing to meet a quota that violates this section.

11 (4) All provisions of section 8 of this act apply to any person
12 who complains to the employer, the director, or any local, state, or
13 federal governmental agency or official, related to a quota alleging
14 any violations of this section.

15 (5)(a) This section must be implemented and enforced, including
16 penalties, violations, citations, and other administrative
17 procedures, pursuant to chapter 49.17 RCW.

18 (b) An employer who fails to allow adequate inspection of records
19 in an inspection by the department within a reasonable time period
20 may not use such records in any appeal to challenge the correctness
21 of any citation and notice issued by the department.

22 NEW SECTION. **Sec. 6.** (1) An employer must establish, maintain,
23 and preserve contemporaneous, true, and accurate records of the
24 following:

25 (a) Each employee's own personal work speed data;

26 (b) The aggregated work speed data for similar employees at the
27 same warehouse distribution center; and

28 (c) The written descriptions of each quota the employee was
29 provided pursuant to section 2 of this act.

30 (2)(a) The required records must be maintained and preserved
31 throughout the duration of each employee's period of employment and
32 for the period required by this subsection.

33 (b) Except as required under (c) of this subsection, subsequent
34 to an employee's separation from the employer, records relating to
35 the six-month period prior to the date of the employee's separation
36 from the employer must be preserved for at least three years from the
37 date of the employee's separation.

38 (c) Where an employer has taken adverse action against an
39 employee in whole or in part for failure to meet a quota, the

1 employer must preserve the records relating to the basis for the
2 adverse action for at least three years from the date of the adverse
3 action.

4 (d) The employer must make records available to the director upon
5 request.

6 (3) Nothing in this section requires an employer to collect or
7 keep such records if the employer does not use quotas or monitor work
8 speed data.

9 (4) An employer who fails to allow adequate inspection of records
10 in an inspection by the department within a reasonable time period
11 may not use such records in any appeal to challenge the correctness
12 of any citation and notice issued by the department.

13 NEW SECTION. **Sec. 7.** (1) An employee has the right to request,
14 at any time, a written description of each quota to which the
15 employee is subject, a copy of the employee's own personal work speed
16 data for the prior six months, and a copy of the prior six months of
17 aggregated work speed data for similar employees at the same
18 warehouse distribution center.

19 (2) A former employee has the right to request, within three
20 years subsequent to the date of their separation from the employer, a
21 written description of the quota to which they were subject as of the
22 date of their separation, a copy of the employee's own personal work
23 speed data for the six months prior to their date of separation, and
24 a copy of aggregated work speed data for similar employees at the
25 same warehouse distribution center for the six months prior to their
26 date of separation.

27 (3) An employer must provide records requested under this section
28 at no cost to the employee or former employee.

29 (4) An employer must provide records requested under this section
30 as soon as practicable and subject to the following:

31 (a) Requested records of written descriptions of a quota must be
32 provided no later than two business days following the date of the
33 receipt of the request; and

34 (b) Requested personal work speed data and aggregated work speed
35 data must be provided no later than seven business days following the
36 date of the receipt of the request.

37 (5) Nothing in this section requires an employer to use quotas or
38 monitor work speed data. An employer that does not use quotas or

1 monitor work speed data has no obligation to provide records under
2 this section.

3 NEW SECTION. **Sec. 8.** (1) A person, including but not limited to
4 an employer, his or her agent, or person acting as or on behalf of a
5 hiring entity, or the officer or agent of any entity, business,
6 corporation, partnership, or limited liability company, may not
7 discharge or in any way retaliate, discriminate, or take adverse
8 action against an employee or former employee for exercising any
9 rights established in this chapter, or for being perceived as
10 exercising rights established in this chapter including, but not
11 limited to:

12 (a) Initiating a request for information about a quota or
13 personal work speed data pursuant to section 7 of this act; and

14 (b) Making a complaint to the employer, the director, or any
15 local, state, or federal governmental agency or official, related to
16 a quota that is allegedly in violation of this chapter or chapter
17 49.17 RCW.

18 (2) An employee or former employee need not explicitly refer to
19 this section or the rights established in this chapter to be
20 protected from an adverse action. The protection provided in this
21 section applies to former employees and to employees who mistakenly
22 but in good faith allege violations of this chapter.

23 (3) (a) If a person takes adverse action against an employee or
24 former employee within 90 days of the employee engaging or attempting
25 to engage in activities protected by this chapter, there is a
26 rebuttable presumption that the adverse action is a retaliatory
27 action in violation of this section.

28 (b) The presumption may be rebutted by a preponderance of the
29 evidence that: (i) The action was taken for other permissible
30 reasons; and (ii) the engaging or attempting to engage in activities
31 protected by this chapter was not a motivating factor in the adverse
32 action.

33 (4) Except as provided for in section 5 of this act, the
34 department must carry out and enforce the provisions of this section
35 and section 4(3) of this act pursuant to procedures established under
36 chapter 49.46 RCW and any applicable rules. The department may adopt
37 new rules to implement or enforce this subsection.

1 NEW SECTION. **Sec. 9.** (1)(a) An employee may file a complaint
2 with the department alleging a violation under this chapter or
3 applicable rules, except for violations and enforcement of sections 5
4 and 8 of this act. The department must investigate the complaint.

5 (b) The department may not investigate any such alleged violation
6 of rights that occurred more than three years before the date that
7 the employee filed the complaint.

8 (c) If an employee files a timely complaint with the department,
9 the department must investigate the complaint and issue either a
10 citation and notice of assessment or a closure letter within 90 days
11 after the date on which the department received the complaint, unless
12 the complaint is otherwise resolved. The department may extend the
13 period by providing advance written notice to the employee and the
14 employer setting forth good cause for an extension of the period and
15 specifying the duration of the extension.

16 (d) The department must send the citation and notice of
17 assessment or the closure letter to both the employer and the
18 employee by service of process or using a method by which the mailing
19 can be tracked or the delivery can be confirmed to their last known
20 addresses.

21 (2) If the department's investigation finds that the employee's
22 allegation cannot be substantiated, the department must issue a
23 closure letter to the employee and the employer detailing such
24 finding.

25 (3) The director may initiate an investigation without an
26 employee's complaint to ensure compliance with this chapter.

27 (4) For complaints filed under this section, an employer who is
28 found to have violated a requirement of this chapter and the rules
29 adopted under this chapter, is subject to a civil penalty of not less
30 than \$1,000 for each violation. Civil penalties must be collected by
31 the department and deposited into the supplemental pension fund
32 established under RCW 51.44.033.

33 (5) Except as provided under subsection (1) of this section, an
34 employer who is found to have violated a requirement of this chapter
35 and the rules adopted under this chapter resulting in a rest or meal
36 period violation, must pay the employee one additional hour of pay at
37 the employee's regular rate of pay for each day there is a violation.

38 (6) Upon receiving a complaint, the department may request or
39 subpoena the records of the warehouse distribution center.

1 (7) For enforcement actions under this section, if any person
2 fails to pay an assessment under this chapter, or under any rule
3 under this chapter, after it has become a final and unappealable
4 order, or after the court has entered final judgment in favor of the
5 agency, the director may initiate collection procedures in accordance
6 with the collection procedures under RCW 49.48.086.

7 NEW SECTION. **Sec. 10.** (1) For enforcement actions under section
8 9 of this act, a person, firm, or corporation aggrieved by a citation
9 and notice of assessment by the department or any rules adopted under
10 this chapter may appeal the citation and notice of assessment to the
11 director by filing a notice of appeal with the director within 30
12 days of the department's issuance of the citation and notice of
13 assessment. A citation and notice of assessment not appealed within
14 30 days is final and binding, and not subject to further appeal.

15 (2) A notice of appeal filed with the director under this section
16 stays the effectiveness of the citation and notice of assessment
17 pending final review of the appeal by the director as provided in
18 chapter 34.05 RCW.

19 (3) Upon receipt of a notice of appeal, the director must assign
20 the hearing to an administrative law judge of the office of
21 administrative hearings to conduct the hearing and issue an initial
22 order. The hearing and review procedures must be conducted in
23 accordance with chapter 34.05 RCW, and the standard of review by the
24 administrative law judge of an appealed citation and notice of
25 assessment must be de novo. Any party who seeks to challenge an
26 initial order must file a petition for administrative review with the
27 director within 30 days after service of the initial order. The
28 director must conduct an administrative review in accordance with
29 chapter 34.05 RCW.

30 (4) The director must issue all final orders after appeal of the
31 initial order. The final order of the director is subject to judicial
32 review in accordance with chapter 34.05 RCW.

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

36 (6) An employer who fails to allow adequate inspection of records
37 in an investigation by the department under this chapter within a
38 reasonable time period may not use such records in any appeal under

1 this section to challenge the correctness of any determination by the
2 department of the penalty assessed.

3 NEW SECTION. **Sec. 11.** The department may adopt and implement
4 rules to carry out and enforce the provisions of this chapter.

5 NEW SECTION. **Sec. 12.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
10 constitute a new chapter in Title 49 RCW.

11 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2024."

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ADOPTED 04/11/2023

12 On page 1, line 1 of the title, after "warehouses;" strike the
13 remainder of the title and insert "adding a new chapter to Title 49
14 RCW; prescribing penalties; and providing an effective date."

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