

SENATE BILL REPORT

SB 5348

As Reported by Senate Committee On:
Labor & Commerce, February 14, 2023

Title: An act relating to warehouse distribution centers.

Brief Description: Concerning warehouse distribution centers. [**Revised for 1st Substitute:** Protecting warehouse employees.]

Sponsors: Senators Conway, Keiser, Saldaña, Stanford, Hasegawa, Schoesler, Valdez and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/31/23, 2/14/23 [DPS, DNP].

Brief Summary of First Substitute Bill

- Requires certain warehouse distribution center employers to provide written descriptions of quotas to employees in certain circumstances.
- Provides that a violation occurs if the quota meal and rest breaks or exposes them to health and safety hazards or violates related laws and rules.
- Requires employers to provide information about quotas and work speeds data upon an employee's request and a request by a former employee for three years from separation.
- Prohibits retaliation, including a rebuttable presumption.
- Provides remedies and for Department of Labor and Industries investigations.
- Allows for an attorney general action and a private right of action.

SENATE COMMITTEE ON LABOR & COMMERCE

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.

Majority Report: That Substitute Senate Bill No. 5348 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson, Schoesler and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun and MacEwen.

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.

L&I is required to classify all occupations or industries in accordance with their degree of hazard, and fix the basic rates of premium to be:

- the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles; and
- designed to attempt to limit fluctuations in premium rates.

L&I has classifications for warehouses and fulfillment centers.

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 preferred language. L&I may adopt rules regarding the requirements for the written description.

The written description must be provided upon hire or within 30 days of the effective date. In addition, whenever there is a change to the quota from the most recent written description provided, the employer must notify the employee verbally or in writing as soon as possible and before the employee is subject to the new quota; and provide the employee with an updated written description of each quota within two business days of the quota change.

Whenever an employer takes an adverse action against an employee for failure to meet a quota, the employer must provide that employee with the applicable quota and the personal work speed data for the employee that was the basis for the adverse action.

Prohibited Activities. A quota is a violation if the quota: does not provide sufficient time for breaks, including travel time; or prevents the performance of any activity required by the employer for the employee to do the work subject to any quota.

It is a violation of the industrial safety and health act, if a quota:

- does not provide sufficient time to use the bathroom, including reasonable travel time; and to take any actions necessary for the employee to exercise the employee's right to a safe and healthful workplace;
- prevents the performance of any activity related to occupational safety and health required by the employer for the employee to do the work subject to any quota; or
- exposes an employee to occupational safety and health hazards.

An employee is not required to meet a quota that violates these provisions.

Retaliation and Rebuttable Presumption. An employer may not take any adverse action against an employee or former employee for exercising their rights related to quotas.

There is a rebuttable presumption of retaliation if an employer takes any adverse action against any employee within 90 days of the employee engaging in protected actions.

The presumption may be rebutted by clear and convincing evidence.

Time Considered in a Quota. The time period considered in a quota, including time designated as productive time or time on task must include:

- time for rest breaks and reasonable time to travel to designated locations for rest breaks;
- reasonable travel time to on-site designated meal break locations. 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;
- time to perform any activity required by the employer in order to do the work subject to any quota;
- time to use the bathroom, including reasonable travel time; and
- time to take any actions necessary for the employee to exercise the employee's right to a safe and healthful workplace, including to time to access tools or safety equipment necessary to perform the employee's duties.

Right to Information. An employee has the right to request, and the employer must provide, a written description of the quota, a copy of the employee's own personal work speed data for the prior six months, and a copy of the prior six months of aggregated work speed data

for similar employees at the same warehouse distribution center.

A former employee has the right to request, within three years subsequent to the date of their separation, a written description of the quota as of the date of their separation, a copy of the employee's own personal work speed data for the six months prior to their date of separation, and a copy of aggregated work speed data for similar employees at the same warehouse distribution center for the six months prior to their date of separation.

An employer must provide records requested under this section at no cost to the employee or former employee. An employer must provide records as soon as practicable. Requested records of written descriptions of a quota must be provided no later than two business days following receipt of the request. Requested personal work speed data and aggregated work speed data must be provided no later than seven business days following receipt of the request.

Records Retention. An employer must establish and maintain records of:

- each employee's own personal work speed data;
- aggregated work speed data for similar employees at the same warehouse distribution center; and
- written descriptions of each quota provided to an employee as required.

The records must be maintained:

- throughout each employee's employment;
- after separation, records relating to the six-month period prior to the date of the employee's separation for at least three years; and
- for at least three years if adverse action is taken failure to meet a quota. These are records relating to the basis for the adverse action.

The employer must make records available to L&I upon request.

Department of Labor and Industries Enforcement For Safety and Health Violations.

Violations related to a quota interfering with their safety and health rights 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.

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

Private Right of Action. An employee or former employee or designated representative may bring an action for injunctive relief to obtain compliance, except related to industrial safety and health act violations. Injunctive relief, related to violations in regards to breaks, activities required to do the work subject to the quota, or taking adverse action, is limited to suspension of the quota and restitution and injunctive relief to address any retaliation or other adverse action taken by the employer in relation to the complaint or its enforcement.

In any action alleging retaliation, in addition to the injunctive relief, the prevailing employee or former employee or the representative must be awarded damages equal to the greater of \$10,000 or three times the actual damages, including unpaid wages and benefits, and costs and reasonable attorneys' fees.

Attorney General Action. The attorney general, either upon the attorney general's own complaint or the complaint of any person acting for themselves or the general public, may bring a civil or criminal action for violations, except for industrial safety and health act violations, or to enforce the provisions, independently and without specific L&I direction.

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 500 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: 493 for warehousing and storage; 423 for merchant wholesalers, durable goods; 424 for merchant wholesalers, nondurable goods; 454110 for

electronic shopping and mail-order houses; and 492110 for couriers and express delivery services.

Quota means a work performance 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 COMMITTEE (First Substitute):

- Modifies and adds certain definitions; for the definition of employer, reduces the number of employees to 100, from 180, or more at a single warehouse distribution center in the state and to 500, from 1200, at one or more distribution centers in the state; and warehouse distribution centers, including adding "engaged in activities" for NAICs codes changing 493110 to 493, adding 492110—couriers and express delivery services, and removing the exclusion of 493130—farm products warehousing and storage.
- Removes the definition of productive time.
- Changes the timing of providing a written description of the quotas to add within 30 days of the effective date, remove annually, and add requirements related to a change in the quota and when an adverse action is taken.
- Describes the time period considered in a quota.
- Modifies the violations related to quotas, including that a violation occurs if the quota prevents the performance of any activity required by the employer for the employee to do the work subject to any quota.
- Requires an employer to maintain certain records related to quotas and work speed data.
- Modifies the requirements for providing the information to employees and former employees, including due dates.
- Modifies the retaliation provisions.
- Allows an employee or former employee to bring an action, except related to safety and health violations, for certain injunctive relief, and damages for the greater of \$10,000 or three times the actual damages for retaliation.
- Allows the attorney general to bring a civil or criminal action for violations, except related to safety and health violations.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill will reduce injuries in highly automated workplaces by addressing unreasonable quotas. Employers will be required to have safety meetings to reduce their injury rates. This is an important worker protection and will set clear standards and expectations. Workers currently cut corners in order to meet unreasonable quotas, which puts them at increased risk. They are pressured to work as fast as possible with the threat of losing their jobs or being disciplined.

CON: This bill is overly broad, duplicative, and unnecessary. Workers already have protections under the Washington Industrial and Safety Act. This bill will affect every industry in the state and will interfere with day-to-day business and cause major disruptions in the supply chain. Quotas are currently handled at each facility, but this bill will put L&I in charge of quotas when they are not the experts.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; John Scearcy, Teamsters Local 117; Will Buff, Teamsters 117.

CON: Bob Battles, Association of Washington Business (AWB).

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