

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1762

68th Legislature
2023 Regular Session

Passed by the House April 22, 2023
Yeas 56 Nays 42

**Speaker of the House of
Representatives**

Passed by the Senate April 22, 2023
Yeas 28 Nays 21

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1762** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1762

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington **68th Legislature** **2023 Regular Session**

By House Appropriations (originally sponsored by Representatives Doglio, Berry, Ramel, Fosse, Reed, Alvarado, Peterson, and Pollet)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to protecting employees of warehouses; adding a
2 new 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" means a person that directly or indirectly,
9 through one or more intermediaries, controls, is controlled by, or is
10 under common control with another person. For purposes of this
11 subsection, "control" means the possession, directly or indirectly,
12 of more than 50 percent of the power to direct or cause the direction
13 of the management and policies of a person, whether through the
14 ownership of voting shares, by contract, or otherwise.

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

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

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

1 (5) "Designated employee representative" means any employee
2 representative, including but not limited to an authorized employee
3 representative that has a collective bargaining relationship with the
4 employer.

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

7 (7) "Employee" means an employee who is not exempt under RCW
8 49.46.010(3)(c) and works at a warehouse distribution center.

9 (8)(a) "Employee work speed data" means information an employer
10 collects, stores, analyzes, or interprets relating to an individual
11 employee's performance of a quota including, but not limited to,
12 quantities of tasks performed, quantities of items or materials
13 handled or produced, rates or speeds of tasks performed, measurements
14 or metrics of employee performance in relation to a quota, and time
15 categorized as performing tasks or not performing tasks.

16 (b) Employee work speed data does not include qualitative
17 performance assessments, personnel records, or itemized wage
18 statements pursuant to department rules, except for any content of
19 those records that includes employee work speed data as defined in
20 this subsection.

21 (9)(a) "Employer" means a person who directly or indirectly, or
22 through an agent or any other person, including through the services
23 of a third-party employer, temporary services, or staffing agency,
24 independent contractor, or any similar entity, at any time, employs
25 or exercises control over the wages, hours, or working conditions of
26 100 or more employees at a single warehouse distribution center in
27 the state or 1,000 or more employees at one or more warehouse
28 distribution centers in the state.

29 (b) For the purposes of determining the number of employees
30 employed at a single warehouse distribution center or at one or more
31 warehouse distribution centers, all employees employed directly or
32 indirectly, or through an agency or any other person, and all
33 employees employed by an employer and its affiliates, must be
34 counted.

35 (c) For the purposes of determining responsible employers, all
36 agents or other persons, and affiliates must be deemed employers and
37 are jointly and severally responsible for compliance with this
38 chapter.

39 (10) "Person" means an individual, corporation, partnership,
40 limited partnership, limited liability partnership, limited liability

1 company, business trust, estate, trust, association, joint venture,
2 agency, instrumentality, or any other legal or commercial entity,
3 whether domestic or foreign.

4 (11) "Quota" means a work performance standard, whether required
5 or recommended, where: (a) An employee is assigned or required to
6 perform at a specified productivity speed, or perform a quantified
7 number of tasks, or to handle or produce a quantified amount of
8 material, within a defined time period and under which the employee
9 may suffer an adverse employment action if they fail to complete the
10 performance standard; or (b) an employee's actions are categorized
11 between time performing tasks and not performing tasks, if the
12 employee may suffer an adverse employment action if they fail to meet
13 the performance standard.

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

18 (a) 493 for warehousing and storage, but does not include 493130
19 for farm product warehousing and storage;

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

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

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

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

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

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

31 (c) Any incentives or bonus programs associated with meeting or
32 exceeding each quota.

33 (2) Whenever there is a change to the quota that results in a
34 different quota than the most recent written description provided to
35 the employee, the employer must: (a) Notify the employee verbally or
36 in writing as soon as possible and before the employee is subject to
37 the new quota; and (b) provide the employee with an updated written
38 description of each quota to which the employee is subject within two
39 business days of the quota change.

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

6 (4) The written description must be understandable, in plain
7 language, and in the employee's preferred language. The department
8 may adopt rules regarding the format, plain language, and language
9 access requirements for the written description.

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

13 (a) Time for rest breaks and reasonable time to travel to
14 designated locations for rest breaks;

15 (b) Reasonable travel time to on-site designated meal break
16 locations. Meal breaks are not considered time on task or productive
17 time unless the employee is required by the employer to remain on
18 duty on the premises or at a prescribed worksite in the interest of
19 the employer;

20 (c) Time to perform any activity required by the employer in
21 order to do the work subject to any quota;

22 (d) Time to use the bathroom, including reasonable travel time;
23 and

24 (e) Time to take any actions necessary for the employee to
25 exercise the employee's right to a safe and healthful workplace
26 pursuant to chapter 49.17 RCW, including but not limited to time to
27 access tools or safety equipment necessary to perform the employee's
28 duties.

29 (2) Reasonable travel time must include consideration of the
30 architecture and geography of the facility and the location within
31 the facility that the employee is located at the time.

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

34 (a) Does not provide sufficient time as required under section
35 3(1) (a) through (c) of this act; or

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

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

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

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

9 (a) Does not provide sufficient time as required under section
10 3(1) (d) and (e) of this act;

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

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

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

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

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

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

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

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

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

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

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

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

6 (b) Except as required under (c) of this subsection, subsequent
7 to an employee's separation from the employer, records relating to
8 the six-month period prior to the date of the employee's separation
9 from the employer must be preserved for at least three years from the
10 date of the employee's separation.

11 (c) Where an employer has taken adverse action against an
12 employee in whole or in part for failure to meet a quota, the
13 employer must preserve the records relating to the basis for the
14 adverse action for at least three years from the date of the adverse
15 action.

16 (d) The employer must make records available to the director upon
17 request.

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

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

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

31 (2) A former employee has the right to request, within three
32 years subsequent to the date of their separation from the employer, a
33 written description of the quota to which they were subject as of the
34 date of their separation, a copy of the employee's own personal work
35 speed data for the six months prior to their date of separation, and
36 a copy of aggregated work speed data for similar employees at the
37 same warehouse distribution center for the six months prior to their
38 date of separation.

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

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

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

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

11 (5) Nothing in this section requires an employer to use quotas or
12 monitor work speed data. An employer that does not use quotas or
13 monitor work speed data has no obligation to provide records under
14 this section.

15 NEW SECTION. **Sec. 8.** (1) A person, including but not limited to
16 an employer, his or her agent, or person acting as or on behalf of a
17 hiring entity, or the officer or agent of any entity, business,
18 corporation, partnership, or limited liability company, may not
19 discharge or in any way retaliate, discriminate, or take adverse
20 action against an employee or former employee for exercising any
21 rights established in this chapter, or for being perceived as
22 exercising rights established in this chapter including, but not
23 limited to:

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

26 (b) Making a complaint to the employer, the director, or any
27 local, state, or federal governmental agency or official, related to
28 a quota that is allegedly in violation of this chapter or chapter
29 49.17 RCW.

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

35 (3) (a) If a person takes adverse action against an employee or
36 former employee within 90 days of the employee engaging or attempting
37 to engage in activities protected by this chapter, there is a
38 rebuttable presumption that the adverse action is a retaliatory
39 action in violation of this section.

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

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

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

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

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

26 (d) The department must send the citation and notice of
27 assessment or the determination of compliance to both the employer
28 and the employee by service of process or using a method by which the
29 mailing can be tracked or the delivery can be confirmed to their last
30 known addresses.

31 (2) If the department's investigation finds that the employee's
32 allegation cannot be substantiated, the department must issue a
33 determination of compliance to the employee and the employer
34 detailing such finding.

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

37 (4) The department may request an employer perform a self-audit
38 of any records relating to this act, which must be provided within a
39 reasonable time. Reasonable timelines will be specified in the self-

1 audit request. The department must determine reasonable time based on
2 the number of affected employees and the period of time covered by
3 the self-audit. The records examined by the employer in order to
4 perform the self-audit must be made available to the department upon
5 request.

6 (5) Upon the department's request, an employer must notify
7 affected employees in writing that the department is conducting an
8 investigation. The department may require the employer to include a
9 general description of each investigation as part of the
10 notification, including the allegations and whether the notified
11 employee may be affected. The employer may consult with the
12 department to provide the information for the description of the
13 notification or investigation.

14 (6) If the department determines that the employer has violated a
15 requirement of this chapter or any rule adopted under this chapter,
16 the department also may order the employer to pay the department a
17 civil penalty of not less than \$1,000. The first violation may not
18 exceed \$1,000. The department may, at any time, waive or reduce any
19 civil penalty assessed against an employer under this section if the
20 department determines that the employer has taken corrective action
21 to remedy a violation. The department must adopt rules creating a
22 schedule to enhance penalties, not to exceed \$10,000 per violation,
23 based on repeat violations by the employer. Civil penalties must be
24 collected by the department and deposited into the supplemental
25 pension fund established under RCW 51.44.033.

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

31 (8) Upon receiving a complaint, the department may request or
32 subpoena the records of the warehouse distribution center.

33 (9) For enforcement actions under this section, if any person
34 fails to pay an assessment under this chapter, or under any rule
35 under this chapter, after it has become a final and unappealable
36 order, or after the court has entered final judgment in favor of the
37 agency, the director may initiate collection procedures in accordance
38 with the collection procedures under RCW 49.48.086.

39 (10) If the department finds that a quota violates this act, the
40 department may order the employer to review and provide a corrected

1 written quota to the affected employee or employees within 15
2 calendar days and place a letter in the employee's personnel file to
3 acknowledge the correction. If the employer fails to do so, the
4 employer may be subject to the penalties under subsection (6) of this
5 section and associated rules.

6 (11) In addition to any enforcement authority provided in this
7 chapter or applicable rules, the department may enforce any violation
8 under this chapter or applicable rules, except for violations and
9 enforcement of section 5 of this act, by filing an action in the
10 superior court for the county in which the violation is alleged to
11 have occurred. If the department prevails, it is entitled to
12 reasonable attorneys' fees and costs, in the amount to be determined
13 by the court.

14 NEW SECTION. **Sec. 10.** (1) For enforcement actions under section
15 9 of this act, a person, firm, or corporation aggrieved by a citation
16 and notice of assessment or determination of compliance by the
17 department or any rules adopted under this chapter may appeal the
18 citation and notice of assessment or determination of compliance to
19 the director by filing a notice of appeal with the director within 15
20 calendar days of the department's issuance of the citation and notice
21 of assessment or determination of compliance. A citation and notice
22 of assessment or determination of compliance not appealed within 15
23 calendar days is final and binding, and not subject to further
24 appeal.

25 (2) A notice of appeal filed with the director under this section
26 stays the effectiveness of the citation and notice of assessment or
27 determination of compliance pending final review of the appeal by the
28 director as provided in chapter 34.05 RCW.

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

1 (4) The director must 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. 11.** The department may adopt and implement
13 rules to carry out and enforce the provisions of this chapter.

14 NEW SECTION. **Sec. 12.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

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

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

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