

JAN 19 2024

A BILL FOR AN ACT

RELATING TO WAREHOUSE WORKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the rapid growth of
2 just-in-time logistics and same- and next-day consumer package
3 delivery, and advances in technology used for tracking employee
4 productivity, have led to a rise in the number of warehouse and
5 distribution center workers who are subject to quantified work
6 quotas. Warehouse and distribution center employees who work
7 under quotas are expected to complete a quantified number of
8 tasks within specific time periods, often measured down to the
9 minute or second, and face adverse employment action, including
10 suspension or termination, if they fail to do so. The
11 legislature further finds that those quotas generally do not
12 allow for workers to comply with safety guidelines or to recover
13 from strenuous activity during productive work time, leaving
14 warehouse and distribution center employees who work under them
15 at high risk of injury and illness.

16 The legislature further finds that the quotas under which
17 warehouse and distribution center employees regularly work also



1 affect their compensation. Warehouse and distribution center
2 employees who work under a quota may not receive the full
3 benefit of minimum wages if their quota is increased to make up
4 for the direct or indirect effect of a minimum-wage increase.
5 The legislature finds that quotas in occupations that are
6 already physically demanding incentivize unsafe work, resulting
7 in an increase in injuries. The legislature also finds that the
8 workforce in warehouse and logistics is largely comprised of
9 people of color who depend upon these jobs to provide for their
10 families and often see no alternative but to prioritize quota
11 compliance over their own safety. These workers often work
12 faster than is healthy in order to keep their jobs.

13 The legislature further finds that workplace injuries can
14 take a terrible toll on workers, their families, and their
15 communities, and can create substantial costs for employers.
16 The most common types of work-related serious injury reported by
17 employers in the warehouse sector are musculoskeletal injuries,
18 which often require workers to miss work and can force workers
19 permanently out of the job and even out of the workforce.

20 Accordingly, the purpose of this Act is to establish the
21 Warehouse Worker Protection Act to create new requirements and



1 protections for the benefit of employees in certain warehouse
2 distribution centers.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to title 21 to be appropriately designated
5 and to read as follows:

6 **"CHAPTER**

7 **WAREHOUSE WORKER PROTECTION ACT**

8 § -1 **Short title.** This chapter shall be known and may
9 be cited as the "Warehouse Worker Protection Act".

10 § -2 **Definitions.** As used in this chapter:

11 "Controlled group of corporations" has the same meaning as
12 defined under section 1563 of the Internal Revenue Code of 1986,
13 as amended, except that fifty per cent shall be substituted for
14 eighty per cent where eighty per cent is specified in that
15 definition.

16 "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 "Director" means the director of labor and industrial
20 relations.



1 "Employee" means a nonexempt and non-administrative
2 employee who works at a warehouse distribution center and is
3 subject to a quota.

4 "Employee work speed data" means information an employer
5 collects, stores, analyzes, or interprets relating to an
6 individual employee's performance of a quota, including but not
7 limited to quantities of tasks performed, quantities of items or
8 materials handled or produced, rates or speeds of tasks
9 performed, measurements or metrics of employee performance in
10 relation to a quota, and time categorized as performing tasks or
11 not performing tasks. "Employee work speed data" includes
12 aggregated information that an employer has combined or
13 collected together in summary or other form so that the data
14 cannot be identified with any individual.

15 "Employer" means a person who directly or indirectly, or
16 through an agent or any other person, including through the
17 services of a third party employer, temporary services, staffing
18 agency, independent contractor, or any similar entity, at any
19 time in the prior twelve months, employs or exercises control
20 over the wages, hours, or working conditions of one hundred or
21 more employees at a single warehouse distribution center or five



1 hundred or more employees at one or more warehouse distribution
2 centers in the State; provided that:

3 (1) All employees employed directly or indirectly, through
4 an agent or any other person, or employed by a member
5 of a controlled group of corporations of which the
6 employer is a member, shall be counted in determining
7 the number of employees employed at a single warehouse
8 distribution center or at one or more warehouse
9 distribution centers in the State; and

10 (2) All agents or other persons, and all members of a
11 controlled group of corporations of which the employer
12 is a member, shall be deemed to be employers.

13 "Person" means an individual, corporation, partnership,
14 limited partnership, limited liability partnership, limited
15 liability company, business trust, estate, trust, association,
16 joint venture, agency, instrumentality, or any other legal or
17 commercial entity, whether domestic or foreign.

18 "Quota" means a work standard that:

19 (1) An employee is assigned or required to perform:

20 (A) At a specified productivity speed;

21 (B) As a quantified number of tasks; or



1 (C) To handle or produce a quantified amount of
2 material, within a defined time period; or
3 (2) An employee's actions are categorized between time
4 performing tasks and not performing tasks, and the
5 employee's failure to complete a task performance
6 standard or recommendation may have an adverse impact
7 on the employee's continued employment or the
8 conditions of employment.

9 "Warehouse distribution center" means an establishment as
10 defined by any of the following North American Industry
11 Classification System codes, however the establishment is
12 denominated:

- 13 (1) 493 for warehousing and storage;
- 14 (2) 423 for merchant wholesalers, durable goods;
- 15 (3) 424 for merchant wholesalers, nondurable goods;
- 16 (4) 454110 for electronic shopping and mail-order houses;
- 17 or
- 18 (5) 492110 for couriers and express delivery services.

19 § -3 **Quotas.** Each employer shall provide to each
20 employee, upon hire, or within thirty days of the effective date
21 of this chapter, a written description of each quota to which



1 the employee is subject, including the quantified number of
2 tasks to be performed or materials to be produced or handled,
3 within the defined time period, and any potential adverse
4 employment action that could result from failure to meet the
5 quota. The employer shall provide an updated written
6 description of each quota to which the employee is subject
7 within two business days of any quota change. The employer
8 shall provide any employee against whom the employer takes an
9 adverse employment action with the applicable quota for the
10 employee.

11 **§ -4 Protection from quotas.** An employee shall not be
12 required to meet a quota that prevents compliance with meal or
13 rest periods or use of bathroom facilities, including reasonable
14 travel time to and from bathroom facilities. An employer shall
15 not take adverse employment action against an employee for
16 failure to meet a quota that does not allow a worker to comply
17 with meal and rest periods or for failure to meet a quota that
18 has not been disclosed to the employee pursuant to
19 section -3.

20 **§ -5 Time on task.** Consistent with existing law, paid
21 and unpaid breaks shall not be considered productive time for



1 the purpose of any quota or monitoring system unless the
2 employee is required to remain on call.

3 § -6 **Recordkeeping.** (a) Each employer shall establish,
4 maintain, and preserve contemporaneous, true, and accurate
5 records of the following:

6 (1) Each employee's own personal employee work speed
7 data;

8 (2) The aggregated employee work speed data for similar
9 employees at the same establishment; and

10 (3) The written descriptions of the quota the employee was
11 provided pursuant to section -3.

12 Records shall be maintained and preserved throughout the
13 duration of each employee's period of employment and made
14 available to the director upon request.

15 (b) Subsequent to any employee's separation from the
16 employer, the records relating to the six month period before
17 the date of the employee's separation from the employer shall be
18 preserved for at least three years subsequent to the date of the
19 employee's separation and made available to the director upon
20 request. Nothing in this section shall require an employer to



1 keep employee work speed data records if the employer does not
2 use quotas or monitor employee work speed data.

3 § -7 **Right to request.** (a) A current employee has the
4 right to request a written description of each quota to which
5 the employee is subject, a copy of the employee's own personal
6 employee work speed data, and a copy of the prior six months of
7 aggregated employee work speed data for similar employees at the
8 same establishment.

9 (b) A former employee has the right to request, within
10 three years subsequent to the date of their separation from the
11 employer, a written description of the quota to which they were
12 subject as of the date of their separation, a copy of the
13 employee's own personal employee work speed data for the six
14 months before their date of separation, and a copy of aggregated
15 employee work speed data for similar employees at the same
16 establishment for the six months before their date of
17 separation.

18 (c) Requested records pursuant to this section shall be
19 provided at no cost to the current or former employee.

20 (d) The employer shall provide requested records pursuant
21 to this section as soon as practicable; provided that requested



1 written descriptions of the quota shall be provided no later
2 than two business days following the date of the receipt of the
3 request and requested personal employee work speed data and
4 aggregated employee work speed data shall be provided no later
5 than seven business days following the date of the receipt of
6 the request.

7 (e) Nothing in this section shall require an employer to
8 use quotas or monitor employee work speed data. An employer
9 that does not monitor employee work speed data has no obligation
10 to provide it.

11 § -8 **Unlawful retaliation.** (a) No person, including
12 but not limited to an employer, the employer's agent, or person
13 acting as or on behalf of a hiring entity, or the officer or
14 agent of any entity, business, corporation, partnership, or
15 limited liability company, shall discharge or in any way
16 retaliate, discriminate or take adverse action against any
17 person for exercising any rights conferred under this chapter,
18 or for being perceived as exercising rights conferred by this
19 chapter, including but not limited to:



1 (1) Initiating a request for information about a quota or
2 personal employee work speed data pursuant to
3 section -7(a); or

4 (2) Making a complaint related to a quota alleging any
5 violation of this chapter to the director, any other
6 local, state, or federal governmental agency or
7 official, or the employer.

8 (b) An employee need not explicitly refer to this chapter
9 to be protected from an adverse action. This section shall
10 apply to former employees and to employees who mistakenly but in
11 good faith allege violations of this chapter.

12 (c) If a person takes adverse action against an employee
13 within ninety days of the employee's engaging or attempting to
14 engage in activities protected by this chapter, the conduct
15 shall raise a rebuttable presumption that the action is an
16 adverse action in violation of this chapter. The presumption
17 may be rebutted by clear and convincing evidence that:

18 (1) The action was taken for other permissible reasons;
19 and



1 (2) The engaging or attempting to engage in activities
2 protected by this chapter was not a motivating factor
3 in the adverse action.

4 § **-9 Enforcement.** The director shall adopt rules
5 pursuant to chapter 91 to implement this chapter. The director
6 shall be authorized to enforce this chapter and to assess civil
7 penalties.

8 § **-10 Other powers.** The attorney general, either upon
9 their own complaint or the complaint of any person acting for
10 themselves or the general public, may prosecute actions, either
11 civil or criminal, for violations of this chapter, and enforce
12 this chapter independently and without specific direction of the
13 director."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the

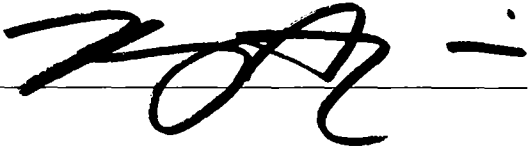


1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 2712

Report Title:

Warehouse Worker Protection Act; Warehouse Quotas; Employer Recordkeeping

Description:

Establishes the Warehouse Worker Protection Act. Requires certain warehouse employers to provide written descriptions of quotas to employees and maintain records of quotas and employee work speed data. Protects employees from quotas that would prevent compliance with meal or rest periods or the use of bathroom facilities. Allows employees to request a written description of their quota and employee work speed data. Requires the Director of Labor and Industrial Relations to adopt rules to implement the provisions of the Act.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

