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Washington State's New Warehouse Employee Protections Begin on July 1, 2024

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In response to abundant press reports of injury rates in warehouse and distribution centers, Washington State has joined New York and California in enacting a new law, House Bill (HB) 1762, regulating employers' use of production quotas or standards for workers at warehouse distribution centers. The law takes effect on July 1, 2024.

Quick Hits

- Washington State enacted a law that regulates employers' use of production quotas or standards for workers at warehouse distribution centers.
- The law applies to employers that employ or otherwise engage, whether directly or indirectly, more than (1) 100 or more nonexempt employees in a single warehouse distribution center, or (2) 1,000 or more nonexempt employees in one or more warehouse distribution centers in Washington.
- The law takes effect on July 1, 2024.

HB 1762 is codified as Chapter 49.84 RCW. The Washington Department of Labor and Industries' (L&I) public comment period on proposed regulations to support the new law closed on April 22, 2024, and the agency is reviewing the comments.

Covered Employers

This law applies to employers that employ or otherwise engage, whether directly or indirectly, more than (1) 100 or more nonexempt employees in a single warehouse distribution center, or (2) 1,000 or more nonexempt employees in one or more warehouse distribution centers in Washington.

"Warehouse distribution center" is defined to include establishments engaging in activities falling

under specific NAICS codes for warehousing and storage (other than farm products), merchant wholesalers (durable and nondurable goods) or electronic shopping and mail-order houses.

Definition of "Quota"

This law precisely defines a quota to include both measures based upon "productive time," such as five widgets per hour, or "time on task," or the time a task takes to complete

> a work performance standard, whether required or recommended, where: (a) 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; or (b) an employee's actions are categorized between time performing tasks and not performing tasks, if the employee may suffer an adverse employment action if they fail to meet the performance standard.

HB 1762 also dictates the activities employers must consider as productive time or time on task time, including

- restroom breaks, including the reasonable travel time to and from the restroom;
- meal and rest breaks, including travel to and from the designated locations;
- time to perform the activity subject to the quota; and
- time to take any actions necessary for the worker to exercise the right to a safe and healthful workplace, such as accessing tools or safety equipment.

The "reasonable travel time" must take into account "the architecture and geography of the facility," as well as the employee's location.

Notice Requirements

The law also imposes three new notice requirements.

First, employers must provide ("in plain language and in the employee's preferred language") a written description of (a) each productivity metric or standard, "including the quantified number of tasks to be performed or materials to be produced or handled within a defined time period," applicable to the associate; (b) "[a]ny potential adverse employment action that could result from failure to meet each [metric/standard]"; (c) "[a]ny incentives or bonus programs associated with meeting or exceeding each [metric/standard]," including any rate(s) and how they apply to the quantified number of tasks to be performed or materials to be produced or handled within a defined time period; and (d) the right to protections under RCW 49.84.020 and associated rules. Employers must provide this written description starting July 1, 2024, for employees hired on or after that date. Employers have until July 31, 2024, to distribute the written description to current employees.

Second, employers must update this written description with any changes and notify employees verbally or in writing as soon as possible before the change is put into effect subject to the new change, followed by an updated written description within two business days.

Third, employers must notify workers of the applicable quota that forms the basis (even partially) for any adverse action for failure to meet a quota.

Recordkeeping and Disclosure Requirements

Employers will need to establish, maintain, and preserve contemporaneous, true, and accurate records of the following:

- “Each employee’s own personal work speed data”;
- “The aggregated work speed data for similar employees at the same warehouse distribution center”; and
- “The written descriptions of each quota the employee was provided.”

The records “must be maintained and preserved throughout the duration of each employee’s period of employment.” Additionally, records relating to the six-month period prior to the date of the employee’s separation from the employer must be preserved for at least three years from the date of separation.

Also, workers will have “the right to request, at any time, a written description of each quota” that applies to them, a copy of their work speed and 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. It must be provided to them for free.

Discrimination and Retaliation Prohibited

The law protects current and former employees from discrimination and retaliation for exercising their new rights. There is a rebuttable presumption of retaliation if an employer takes any adverse action within ninety days of any protected activity, including alleging violations of the law.

Enforcement

L&I will investigate employees’ complaints and can initiate its own investigations. It can request that an employer conduct a self-audit and make records available. L&I can also order an employer to correct a prohibited quota within fifteen calendar days.

L&I can assess civil penalties, based on the initial and successive violations of the law, ranging from $1,000 for the first violation and up to $10,000 per successive violation. Additionally, L&I can require employers to correct a prohibited quota within fifteen calendar days and pay employees one hour of pay for each day that had a rest or meal period violation. L&I can sue employers in court and seek its attorneys’ fees and costs, but the new law does not provide a private right of action.

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