
OLR Bill Analysis

sSB 314

AN ACT CONCERNING PROTECTION OF WAREHOUSE WORKERS.

SUMMARY

This bill limits the extent to which certain warehouse distribution centers can require their employees to meet production quotas. It generally applies to employers that are (1) single warehouses that employ at least 100 employees or (2) multiple warehouses that are owned and operated by the same business entity and collectively employ at least 1,000 employees.

Among other things, the bill does the following:

1. requires the covered employers to give their employees a written description of the quotas they must meet and any possible adverse employment actions they may face for failing to do so;
2. prohibits the employers from requiring employees to meet quotas that were not disclosed or that prevent (a) legally required meal periods, (b) using restroom facilities, or (c) complying with the federal Occupational Safety and Health Act (OSHA); and
3. requires the employers to give a current or former employee, upon request, copies of the employee's personal work speed data if the employee believes that meeting a quota caused a violation of certain provisions in the bill.

The bill allows an employee who believes that an employer violated the bill's provisions on quotas to file a complaint with the labor commissioner. It also allows anyone aggrieved by a violation of its provisions to bring a civil action in Superior Court. In addition, the bill creates a rebuttable presumption of unlawful retaliation if an employer takes certain actions against an employee, but it is unclear how this provision would be enforced (see COMMENT).

The bill requires the labor commissioner to (1) enforce its provisions by engaging in coordinated and strategic enforcement efforts with the Workers' Compensation Commission and (2) educate employees and employers about their rights and obligations under the bill to increase compliance. It also requires the commissioner and the commission to track employee injuries in warehouses and report on them to the Labor and Public Employees Committee.

EFFECTIVE DATE: July 1, 2022

COVERED EMPLOYERS

The employers covered by the bill are (1) single warehouse distribution centers in the state with at least 100 employees and (2) multiple warehouse distribution centers in the state that (a) are owned and operated by the same person, partnership, corporation, limited liability company, association, or other business entity and (b) have at least 1,000 aggregate employees.

Under the bill, a warehouse distribution center is an establishment as defined by North American Industry Classification System Code 493110 for General Warehousing and Storage; 423 for Merchant Wholesalers, Durable Goods; 424 for Merchant Wholesalers, Nondurable Goods; or 454110 for Electronic Shopping and Mail-Order Houses.

QUOTAS

Under the bill, a "quota" is a work standard under which an employee (1) is assigned or required to perform at a specified productivity speed, perform a quantified number of tasks, or handle or produce a quantified amount of material, within a defined period and (2) may suffer an adverse employment action for failing to complete a performance standard.

Disclosure

The bill requires covered employers to give each employee a written description of (1) each quota to which the employee is subject in a defined period and (2) any potential adverse employment action that may result from failing to meet it. The employers must do so by August 1, 2022, for existing employees and at the time of hire for each new

employee. The bill prohibits the employers from taking any adverse employment action against an employee for failing to meet a quota that was not disclosed in this notice.

Prohibited Quotas

The bill also prohibits covered employers from requiring an employee to meet a quota that prevents compliance with (1) the state law requiring a 30-minute meal break for anyone working at least seven-and-a-half consecutive hours; (2) using bathroom facilities, including a reasonable time to travel to and from them; and (3) OSHA.

Under the bill, any time an employee takes to comply with OSHA, or its regulations, must be considered time on task and productive time for any quota or monitoring system (the bill does not further define “time on task” or “productive time”). Meal and rest breaks are not considered productive time unless the employee must be on call.

Employee Access to Work Speed Data

If current or former employees believe that meeting a quota caused a violation of their right to a meal break, or required them to violate OSHA, the bill allows them to request a written description of each quota they were subject to and a copy of their personal work speed data. For current employees, this information must cover the most recent 90 days. For former employees, it must cover the 90 days before the employee’s separation with the employer. The bill limits former employees to one such request and employers must provide the information within 21 calendar days after receiving a written or oral request.

Under the bill, “employee work speed data” is information an employer collects, stores, analyzes, or interprets about an employee’s quota performance, such as quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, or measurements of employee performance in relation to a quota and time categorized as performing tasks or not performing tasks.

Enforcement

Under the bill, an employee who believes that a covered employer

violated the bill's provisions on quotas may file a complaint with the labor commissioner. Upon receiving the complaint, the commissioner must hold a hearing and, after the hearing, send each party a written copy of her decision. The bill allows the commissioner to award the employee all appropriate relief. Any party aggrieved by the decision may appeal to the Superior Court under the Uniform Administrative Procedures Act.

The bill also allows anyone aggrieved by a violation of its provisions, the labor commissioner, or the attorney general to bring a civil action in Superior Court to recover damages, civil penalties, and equitable and injunctive relief. An individual who prevails in the action must also be awarded attorney's fees and costs. (It is unclear if an employee in this action must first pursue an administrative decision by filing a complaint with the labor commissioner.)

In addition, the bill creates a rebuttable presumption of unlawful retaliation if an employer discriminates, retaliates, or takes any adverse action against an employee within 90 days after the employee (1) made his or her first request in a calendar year for information about a quota or personal work speed data or (2) filed with the labor commissioner a quota-related complaint alleging a violation of the bill's provisions. However, as the bill does not specify a statute that governs "unlawful retaliation" or how an employer could rebut such a presumption, this provision could be subject to claims that it violates the Constitution's Fourteenth Amendment, which prohibits states from depriving someone of life, liberty, or property without due process of law (see COMMENT).

DATA COLLECTION AND REPORTING

The bill requires that the labor commissioner have access to data, including (1) covered employer-reported injury data and enforcement actions in employer warehouses; (2) the identity of uninsured covered employers; (3) covered employers committing workers' compensation fraud or wage theft; and (4) other information relevant to the commissioner's authority. (The bill does not specify from where or how the commissioner must access this data.)

It also requires the Workers' Compensation Commission to track injury rates for covered employers. If an employer has an annual employee injury rate that is 1.5 times higher than the warehousing industry's average annual injury rate, then the commission must notify the labor commissioner, who must determine if it is appropriate to investigate for violations of the bill.

The bill requires the labor commissioner, by January 1, 2024, to submit a report to the Labor and Public Employees Committee with (1) the number of claims filed with the commissioner under the bill (presumably, complaints for quota-related violations), (2) data on warehouse production quotas in warehouses the Workers' Compensation Commission indicated have above average annual employee injury rates, and (3) the number of investigations and enforcement actions (presumably, related to quotas).

COMMENT

Rebuttable Presumption Unclear

The bill creates a rebuttable presumption of "unlawful retaliation" if an employer takes certain adverse actions against an employee. However, it does not specify a statute that governs "unlawful retaliation," making it unclear how the provision would be enforced. The provision also does not specify how an employer could rebut the presumption. In effect, this puts the burden of proof on the employer to prove it did not commit the violation without specifying how it must do so. As such, it could be subject to claims that it violates the U.S. Constitution's Fourteenth Amendment, which prohibits states from depriving someone of life, liberty, or property without due process of law.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/24/2022)