



# Senate

General Assembly

**File No. 444**

February Session, 2022

Substitute Senate Bill No. 314

*Senate, April 13, 2022*

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING PROTECTION OF WAREHOUSE WORKERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2022*) (a) As used in this section and  
2 sections 2 and 3 of this act:

3 (1) "Employee" means any person engaged in service to an employer  
4 in a business of the employer;

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

12 (3) "Employer" means (A) a single warehouse distribution center in  
13 the state in which one hundred or more employees work, or (B) one or  
14 more warehouse distribution centers in the state which are owned and

15 operated by the same person, partnership, corporation, limited liability  
16 company, association of persons or other business entity and in which,  
17 in the aggregate, one thousand or more employees work;

18 (4) "Quota" means a work standard under which an employee is  
19 assigned or required to perform at a specified productivity speed,  
20 perform a quantified number of tasks, or to handle or produce a  
21 quantified amount of material, within a defined time period and under  
22 which the employee may suffer an adverse employment action if the  
23 employee fails to complete a performance standard; and

24 (5) "Warehouse distribution center" means an establishment as  
25 defined by any of the following North American Industry Classification  
26 System Codes: (A) 493110 For General Warehousing and Storage; (B)  
27 423 for Merchant Wholesalers, Durable Goods; (C) 424 for Merchant  
28 Wholesalers, Nondurable Goods; or (D) 454110 for Electronic Shopping  
29 and Mail-Order Houses.

30 (b) (1) Not later than August 1, 2022, or at the time of hire, whichever  
31 is later, an employer shall provide to each employee a written  
32 description of each quota the employee is subject to within a defined  
33 time period and any potential adverse employment action that may  
34 result from a failure to meet such quota. An employee shall not be  
35 required to meet any quota that prevents compliance with (A) section  
36 31-51ii of the general statutes, concerning meal periods, (B) the use of  
37 bathroom facilities, including the reasonable time to travel to and from  
38 bathroom facilities, or (C) the Occupational Safety and Health Act of  
39 1970, 15 USC 651 et seq., as amended from time to time.

40 (2) An employer shall not take any adverse employment action  
41 against an employee for failure to meet a quota that prevents  
42 compliance as described in subparagraphs (A) to (C), inclusive, of  
43 subdivision (1) of this subsection or for a quota that has not been  
44 disclosed pursuant to this subsection. Any action taken by an employee  
45 to comply with the Occupational Safety and Health Act of 1970, 15 USC  
46 651 et seq., as amended from time to time, or regulations promulgated  
47 thereunder shall be considered time on task and productive time for

48 purposes of any quota or monitoring system. Meal and rest breaks are  
49 not considered productive time unless the employee is required to be on  
50 call.

51 (c) If a current or former employee believes that meeting a quota  
52 caused a violation of the employee's right to a meal period under section  
53 31-51ii of the general statutes or required the employee to violate the  
54 Occupational Safety and Health Act of 1970, 15 USC 651 et seq., the  
55 employee may request, and the employer shall provide, upon the  
56 employee's request, a written description of each quota to which the  
57 employee is subject and a copy of the employee's own personal work  
58 speed data for the most recent ninety days. If a former employee  
59 requests a written description of the quotas to which the former  
60 employee was subject and a copy of the former employee's own  
61 personal work speed data pursuant to this subsection, the employer  
62 shall provide ninety days of the former employee's quotas and personal  
63 work speed data for the ninety days prior to the date of the employee's  
64 separation from employment with the employer. A former employee  
65 may make only one request pursuant to this subsection.

66 (d) An employer that receives a written or oral request for  
67 information pursuant to subsection (c) of this section shall comply with  
68 the request as soon as practicable, but not later than twenty-one calendar  
69 days after the date of the request.

70 (e) There shall be a rebuttable presumption of unlawful retaliation if  
71 an employer in any manner discriminates, retaliates or takes any  
72 adverse action against any employee not later than ninety days after the  
73 employee:

74 (1) Initiates the employee's first request in a calendar year for  
75 information about a quota or personal work speed data pursuant to  
76 subsection (c) of section 1 of this act; or

77 (2) Makes a complaint related to a quota alleging any violation of this  
78 section to the Labor Commissioner.

79 (f) Any employee who believes an employer violated any provision  
80 of this section may file a complaint with the Labor Commissioner. Upon  
81 receipt of any such complaint, the commissioner shall hold a hearing.  
82 After the hearing, the commissioner shall send each party a written copy  
83 of the commissioner's decision. The commissioner may award the  
84 employee all appropriate relief. Any party aggrieved by a decision of  
85 the commissioner may appeal the decision to the Superior Court in  
86 accordance with the provisions of chapter 54 of the general statutes.

87 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) The Labor Commissioner shall  
88 enforce the provisions of sections 1 to 3, inclusive, of this act by engaging  
89 in coordinated and strategic enforcement efforts with the Workers'  
90 Compensation Commission.

91 (b) The Labor Commissioner shall educate employees and employers  
92 about their rights and obligations under said sections in order to  
93 increase compliance.

94 (c) The Labor Commissioner shall have access to data, including  
95 employer-reported injury data and enforcement actions in employer  
96 warehouses, the identity of uninsured employers, and employers who  
97 are committing workers' compensation fraud, wage theft or other  
98 information relevant to the commissioner's authority.

99 (d) Not later than January 1, 2024, the Labor Commissioner shall  
100 report to the joint standing committee of the General Assembly having  
101 cognizance of matters relating to labor on the number of claims filed  
102 with the commissioner under sections 1 to 3, inclusive, of this act, data  
103 on warehouse production quotas in warehouses in which the Workers'  
104 Compensation Commission has indicated that annual employee injury  
105 rates are above the industry average, and the number of investigations  
106 undertaken and enforcement actions initiated.

107 (e) The Workers' Compensation Commission shall keep track of  
108 injury rates for each employer as defined under section 1 of this act. If  
109 an employer is found to have an annual employee injury rate one and  
110 one-half times higher than the warehousing industry's average annual

111 injury rate, or more, the Workers' Compensation Commission shall  
112 notify the Labor Commissioner, and the commissioner shall determine  
113 whether an investigation concerning potential violations of sections 1 to  
114 3, inclusive, of this act is appropriate.

115 (f) The commissioner may adopt regulations, in accordance with the  
116 provisions of chapter 54 of the general statutes, to implement and  
117 enforce the provisions of sections 1 to 3, inclusive, of this act.

118 Sec. 3. (NEW) (*Effective July 1, 2022*) Any person aggrieved by a  
119 violation of any provision of this section and sections 1 and 2 of this act,  
120 the Labor Commissioner, or the Attorney General may bring a civil  
121 action in the Superior Court to recover damages, civil penalties and such  
122 equitable and injunctive relief as the court deems appropriate. Any  
123 person who prevails in such civil action shall be awarded reasonable  
124 attorney's fees and costs to be taxed by the court.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2022</i>	New section
Sec. 2	<i>July 1, 2022</i>	New section
Sec. 3	<i>July 1, 2022</i>	New section

**Statement of Legislative Commissioners:**

In Section 1(b)(2), "such a quota" was changed to "a quota that prevents compliance as described in subparagraphs (A) to (C), inclusive, of subdivision (1) of this subsection" for clarity, in Section 2(e), "investigation of violations pursuant to sections 1 to 3" was changed to "investigation concerning potential violations of sections 1 to 3" for clarity; and in Section 3, "individual" was changed to "person" for consistency.

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Labor Dept.	GF - Potential Cost	103,081	108,133
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Potential Cost	39,752	40,746
Resources of the General Fund	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which establishes limits on production quotas for certain warehouse distribution centers, results in: 1) a potential cost to the Department of Labor (DOL) of \$142,833 in FY 23 and \$148,879 in FY 24, and 2) a potential minimal revenue gain to the extent there are violations found and penalties imposed.<sup>2</sup>

The bill allows complaints to be filed with DOL and requires DOL to enforce its provisions via coordinated and strategic efforts with the Workers' Compensation Commission. It is uncertain how many complaints would be filed and investigated annually.<sup>3</sup> To the extent the

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

<sup>2</sup> The bill allows the labor commissioner to award the employee all appropriate relief and allows a civil action by aggrieved parties to recover damages, civil penalties, and equitable and injunctive relief.

<sup>3</sup> The bill covers 87 employers and 32,651 employees as of the time of publication.

number is significant there is a cost to DOL of \$137,833 in FY 23 and \$141,279 in FY 24, inclusive of salaries and benefits, for a position dedicated to enforcement/investigation. There are also potential associated overhead costs estimated at \$5,000 in FY 23 and \$7,600 in FY 24 for computers, office supplies, etc.

The bill allows anyone aggrieved by a violation of its provisions, the labor commissioner, or the attorney general to bring a civil action in Superior Court. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to have a material impact on court operations.

### ***The Out Years***

The annualized ongoing cost impact identified above would continue into the future subject to inflation.

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**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)