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**SUBSTITUTE SENATE BILL 5891**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Conway, Keiser, Hasegawa, Hunt, Nobles, and Saldaña)

AN ACT Relating to warehouse distribution centers; adding a new chapter to Title 49 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" has the same meaning as in RCW 82.04.290(2)(f).

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

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

(4) "Director" means the director of the department of labor and industries, or the director's designated representative.

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

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

(b) "Employee work speed data" does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to WAC 296-126-040, except for any content of those records that includes employee work speed data as defined in this subsection.

(7) "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state. For purposes of this subsection, all employees of an employer and its affiliates must be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state.

(8) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(9) "Productive time" or "time on task" means time included in the time period considered for a quota, and must include reasonable time to travel to bathrooms, break rooms, meal break locations, and access to tools or safety equipment necessary to perform their duties. Travel time must include consideration of the architecture and geography of the facility and the location within the facility that the employee is located at the time.

(10) "Quota" means a work standard under which 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.

(11)(a) "Warehouse distribution center" means an establishment as defined by any of the following North American industry classification system codes, however that establishment is denominated:

(i) 493110 for general warehousing and storage;

(ii) 423 for merchant wholesalers, durable goods;

(iii) 424 for merchant wholesalers, nondurable goods; and

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

(b) "Warehouse distribution center" does not include North American industry classification system code 493130, farm product warehousing and storage.

NEW SECTION. **Sec.**  (1) Each employer must provide to each employee a written description of:

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

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

(c) Any incentives or bonus programs associated with meeting or exceeding the quota.

(2) The written description must be understandable in plain language and in the employee's language of preference. The department may adopt rules regarding the format, plain language, and language access requirements for the written description.

(3) The written description must be provided:

(a) Upon hire;

(b) At least annually; and

(c) No fewer than two working days prior to the effective date of any modification of existing quotas.

NEW SECTION. **Sec.**  (1) An employee may not be required to meet a quota that interferes with their rights to meal or rest periods, or that exposes them to occupational health and safety hazards in violation of the requirements of chapter 49.17 RCW and applicable rules or regulations including use of bathrooms, including time to travel to bathrooms, break rooms, meal break locations, and access to tools and safety equipment necessary to perform their duties. A quota that exposes employees to an occupational health and safety hazard in violation of the requirements of chapter 49.17 RCW and applicable rules or regulations, including use of bathrooms, is a violation under chapter 49.17 RCW.

(2) An employer may not discriminate, retaliate, or take any adverse action against an employee for failure to meet a quota that violates any of their rights in subsection (1) of this section, or for failure to meet a quota that has not been disclosed to the employee pursuant to section 2 of this act.

NEW SECTION. **Sec.**  (1) Any actions taken by an employee to exercise their right to a safe and healthful workplace per chapter 49.17 RCW are considered time on task or productive time.

(2) Meal breaks are not considered time on task or productive time unless the employee is required by the employer to remain on duty on the premises or at a prescribed worksite in the interest of the employer.

(3) Rest breaks are considered time on task or productive time.

NEW SECTION. **Sec.**  (1) If a current employee believes that meeting a quota interfered with the employee's right under section 3(1) of this act, the employee has the right to request, and the employer must provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.

(2) An employer that receives a written or oral request for information pursuant to subsection (1) of this section must comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

(3) The written description of each quota must meet the requirement of section 2(2) of this act and the employee work speed data must be provided in a manner understandable to the employee.

(4) Nothing in this section requires an employer to use quotas or monitor employee work speed data. An employer that does not monitor this data has no obligation to provide it.

NEW SECTION. **Sec.**  For purposes of this chapter, there is a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee doing either of the following:

(1) Initiating the employee's first request in a calendar year for information about a quota or personal work speed data pursuant to section 5(1) of this act; and

(2) Making a complaint related to a quota alleging any violation of sections 2 through 5 of this act, inclusive, to the director, the department, or the employer.

NEW SECTION. **Sec.**  (1) Violations of section 3(1) or 4(1) of this act related to a quota interfering with their rights under chapter 49.17 RCW or complaints of violations for the requirement for a safety committee meeting at least quarterly under section 11 of this act shall be implemented and enforced, including penalties, violations, citations, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

(2) Except as provided in subsection (1) of this section, if an employee files a complaint with the department alleging a violation under this chapter or applicable rules adopted under this chapter, the department must investigate the complaint.

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

(b) If an employee files a timely complaint with the department, the department must investigate the complaint and issue either a citation and notice of assessment or a closure letter within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(c) The department shall send the citation and notice of assessment or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(3) If the department's investigation finds that the employee's allegation cannot be substantiated, the department shall issue a closure letter to the employee and the employer detailing such finding.

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

(5) Except as provided under subsection (1) of this section, an employer who is found to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than $1,000 for each violation. Civil penalties must be collected by the department and deposited into the supplemental pension fund established under RCW 51.44.033.

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

NEW SECTION. **Sec.**  (1) Except as provided in section 7(1) of this act, a person, firm, or corporation aggrieved by a citation and notice of assessment by the department or any rules adopted under this chapter, may appeal the citation and notice of assessment to the director by filing a notice of appeal with the director within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment pending final review of the appeal by the director as provided in chapter 34.05 RCW.

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

(4) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION. **Sec.**  Except as provided in section 7(1) of this act, if any person fails to pay an assessment under this chapter, or under any rule under this chapter, after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director may initiate collection procedures in accordance with the collection procedures under RCW 49.48.086.

NEW SECTION. **Sec.**  Upon receiving a complaint regarding a violation of this chapter, the department may request or subpoena the records of warehouse distribution center quotas and employee work speed data.

NEW SECTION. **Sec.**  Any safety committee of an employer must meet at least quarterly and follow any rules related to safety committees adopted by the department. This section is investigated and enforced pursuant to chapter 49.17 RCW.

NEW SECTION. **Sec.**  The department may adopt and implement rules to carry out and enforce the provisions of this chapter.

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

NEW SECTION. **Sec.**  Sections 1 through 12 and 15 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. **Sec.**  This act takes effect July 1, 2023.

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