

# HOUSE BILL REPORT

## 2SHB 1762

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### As Amended by the Senate

**Title:** An act relating to protecting employees of warehouses.

**Brief Description:** Protecting warehouse employees.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Doglio, Berry, Ramel, Fosse, Reed, Alvarado, Peterson and Pollet).

### Brief History:

#### Committee Activity:

Labor & Workplace Standards: 2/8/23, 2/15/23 [DPS];

Appropriations: 2/21/23, 2/23/23 [DP2S(w/o sub LAWS)].

#### Floor Activity:

Passed House: 3/6/23, 53-42.

Senate Amended.

Passed Senate: 4/11/23, 29-20.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/22/23, 28-21.

### Brief Summary of Second Substitute Bill

- Requires certain warehouse distribution center employers to provide written descriptions of quotas and work speed data to employees.
- Provides that quotas must include sufficient time for breaks and other activities.
- Prohibits retaliation against employees and former employees, and creates a rebuttable presumption.
- Authorizes the Department of Labor and Industries to investigate complaints and enforce provisions, including enforcement under the

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Washington Industrial Safety and Health Act and the Minimum Wage Act.

- Allows for a private right of action and for independent action by the Attorney General.

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

**Staff:** Trudes Tango (786-7384).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 17 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Springer.

**Staff:** Emily Stephens (786-7157).

### **Background:**

#### The Washington Industrial Safety and Health Act.

Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (Department) administers WISHA. If the Department believes an employer has committed a violation, the Department issues a citation and notice of assessment, and, depending on the violation, may assess civil penalties. Civil penalties may be adjusted based on the

employer's inspection history, the size of the workforce, and other factors.

#### Rest and Meal Breaks.

Employees must be allowed paid rest periods of at least 10 minutes for every four hours worked, and at least 30 minutes for a meal period for every five hours worked. An employee may waive the right to a meal break, but may not waive the rest period requirements. Employees must also be provided reasonable access to bathroom facilities and employers may not restrict bathroom breaks to time schedules or impose unreasonable time use restrictions.

#### Minimum Wage Act.

The Minimum Wage Act (MWA) establishes a statewide minimum hourly wage, requires overtime pay for certain workers, provides for paid sick leave, and provides for other employment standards. Under the MWA, the Director of the Department may inspect places of business, investigate, and gather data regarding wages, hours, and other conditions and practices of employment in any industry subject to the MWA.

### **Summary of Second Substitute Bill:**

#### Warehouse Distribution Center Employers.

The provisions of the act apply to employers that, directly or indirectly, or through an agent or other person, exercise control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center (warehouse) in the state or of 500 or more employees at one or more warehouses in the state. For purposes of determining responsible employers, all agents and affiliates will be deemed employers and are jointly and severally responsible for compliance.

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

- 493 for warehousing and storage;
- 423 for merchant wholesalers, durable goods;
- 424 for merchant wholesalers, nondurable goods;
- 454110 for electronic shopping and mail-order houses; or
- 492110 for couriers and express delivery services.

#### Descriptions and Notices of Quotas.

An employer must provide every employee: (1) a written description of each quota the employee is subject to; (2) any potential adverse employment action that could result from failing to meet the quota; and (3) any incentives or bonuses associated with meeting the quota. The written description must be provided to employees upon hire, or within 30 days of when this requirement takes place. Written descriptions must be in plain language in the employee's preferred language. The Department may adopt rules regarding the format and language access requirements.

Whenever a quota is changed, the employer must notify the employee of the new quota as soon as possible and before the employee is subject to the quota. Notice can be verbal and must be followed by an updated written description within two business days.

Whenever an employer takes adverse action against an employee for failing to meet a quota, the employer must provide the employee with the applicable quota and the employee's personal work speed data.

#### Prohibited Activities Involving Quotas.

The time period in a quota must include:

- time for rest and bathroom breaks, and reasonable time to travel to rest areas and bathroom facilities;
- reasonable travel time to on-site designated meal break locations;
- time to perform any activity required by the employer to do the work subject to the quota; and
- time to take any actions necessary for the employee to exercise the right to a safe and healthful workplace under WISHA, including time to access tools or safety equipment.

Reasonable travel time must include consideration of the architecture and geography of the facility.

An employee is not required to meet a quota that violates the provisions regarding sufficient time. An employer may not take adverse action against an employee for failing to meet a quota that: (1) was not disclosed to the employee as required; or (2) violates the provisions requiring sufficient time.

A quota that does not allow time for bathroom breaks or time to take action necessary for the employee to exercise the right to a safe and healthful workplace or that exposes an employee to occupational safety and health hazards, violates WISHA, and WISHA enforcement procedures apply. A quota that violates the other provisions may be enforced using procedures established by the bill.

#### Recordkeeping and Right to Request Records.

An employer must keep records of: (1) written descriptions of quotas; (2) each employee's personal work speed data; and (3) aggregated work speed data for similar employees at the same warehouse. An employer must keep records for at least three years from the date an employee separates from employment or from the date of any adverse action taken against an employee.

An employee may request, at any time, from the employer: (1) a written description of each quota to which the employee was subject to; (2) the employee's own personal work speed data for the prior six months; and (3) aggregated work speed data for the prior six months.

A former employee may request similar data within three years after the date of the employee's separation from the employer.

The employer must provide the written descriptions of quotas within two business days, and personal work speed data and aggregated work speed data within seven business days, of receiving the request.

#### Enforcement.

Procedures are established for filing complaints with the Department and appealing citations and notices of assessment. An employer may be liable for a minimum civil penalty of \$1,000 for each violation. An employer who violates a requirement resulting in a rest or meal period violation must pay the employee one additional hour of pay for each day there was a violation.

In addition, an employee, former employee, or a designated employee representative may bring a court action for injunctive relief to enforce compliance. Injunctive relief is limited to suspension of the quota, restitution, and injunctive relief to address retaliation or other adverse action taken by the employer. In any action involving retaliation, the prevailing employee or former employee must be awarded damages equal to the greater of \$10,000 or three times the actual damages, including unpaid wages and benefits.

The Attorney General, either upon a complaint or on its own, may bring a civil action for violations, except for WISHA violations, or to enforce the provisions of the act.

#### Rebuttable Presumption of Retaliation.

A person may not discharge, retaliate, discriminate, or take adverse action against an employee or former employee for exercising any rights established by the act, including requesting data or filing a complaint.

There is a rebuttable presumption that an adverse action is retaliatory if the action is taken within 90 days of an employee or former employee engaging in a protected activity. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons and the employee's or former employee's protected activity was not a motivating factor for taking the adverse action. Enforcement of anti retaliation provisions must be pursuant to procedures under the MWA.

#### Definitions.

Definitions are provided for various terms. "Quota" means a work performance standard where:

- an employee is assigned or required to perform a specified productivity speed, a quantified number of tasks, or a quantified amount of material, within a defined time period and under which the employee may suffer adverse employment action if the employee fails to complete the performance standard; or
- an employee's actions are categorized between time performing tasks and not

performing tasks, and the employee may suffer adverse employment action for failing to meet the standard.

"Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment made the following changes:

1. increases the threshold number of employees at one or more warehouse distribution centers, from 500 to 1,000, for the purposes of defining which employers are subject to the bill;
2. removes from the definition of "warehouse distribution center," NAICS code 492110 (couriers and express delivery services), and explicitly excludes 493130 (farm product warehousing and storage);
3. changes the standard to rebut the presumption of employer retaliation, from clear and convincing to preponderance of the evidence;
4. removes provisions allowing for a private cause of action by an employee, former employee, or designated employee representative, and removes the provision allowing for civil actions by the Attorney General;
5. amends the Department of Labor and Industries' (Department) administration and enforcement provisions by: (a) authorizing the Department to bring a civil action to enforce violations; (b) allowing the Department to request the employer to perform self-audits; (c) allowing the Department to require that the employer notify employees that the Department is conducting an investigation; (d) requiring rule-making to create a schedule of penalties for repeat violators; (e) shortening the time period to appeal a citation and notice of compliance, from 30 calendar days to 15 calendar days; (f) allowing the Department to require an employer to provide a corrected quota to employees; (g) allowing the Department to waive or reduce penalties if the employer takes corrective action; and (h) changing the term "closure letter" to "determination of compliance."

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2024.

#### **Staff Summary of Public Testimony (Labor & Workplace Standards):**

(In support) This is mainly a transparency bill and will require large distribution centers to disclose their quotas when hiring employees or when the quotas change. It will create clear expectations for employees. Workers should be able to comply with speed standards without fear of being subject to adverse action. They should be able to take breaks while

meeting their quotas. Poorly designed standards force workers to focus on speed rather than safety. Workers cut corners, work through their breaks, and engage in improper lifting techniques. This bill will help workers work safely and with dignity.

(Opposed) This bill is unnecessary. Laws already exist to provide breaks and a safe work environment. Work quotas and the day-to-day expectations of an employee's performance should remain between the employer and employee. Performance metrics should not be legislated. This bill could affect the supply chain. This bill is not just about one or two warehouses; it captures most warehouses in the state. The bill goes beyond just transparency and providing notice to employees. The bill will create litigation.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill is a transparency bill. The number of injuries among warehouse employees is high. The number of injuries at Amazon warehouses were so high, the Department of Labor and Industries (L&I) split them off from the general warehouse risk class. Injuries result in an immense cost. The bill gives workers in writing their expectations of the production standard. The cost should be low for an employer to produce what the production standard is, or when the production standard changes. Injuries cost employers, employees, and consumers money.

(Opposed) This bill does not add any items that are not already enforceable by the L&I, except for quotas. The funds would come from employees and employers, not from the State General Fund. The bill would impact food costs. The bill duplicates protections that could lead to unnecessary litigation and confusion. Employers should be working with employees on a common understanding regarding quotas, but the bill shifts attention away from safety measures. If the bill is really about transparency, warehouses should address the issue themselves and save the costs associated with the bill.

**Persons Testifying (Labor & Workplace Standards):** (In support) Representative Beth Doglio, prime sponsor; John Scearcy and Will Buff, Teamsters Local 117; and Donald Guzman.

(Opposed) Bob Battles, Association of Washington Business; Bruce Beckett, Washington Retail Association; and Brandon Houskeeper, Northwest Grocery Association.

**Persons Testifying (Appropriations):** (In support) Brenda Wiest, Teamsters Local 117; and Joe Kendo, Washington State Labor Council.

(Opposed) Bob Battles, Association of Washington Business; Katie Beeson, Washington Food Industry Association; Bruce Beckett, Washington Retail Association; and Brandon Houskeeper, Northwest Grocery Association.

**Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):**  
None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.