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Department
of Labor

WAREHOUSE WORKER PROTECTION ACT

THE WAREHOUSE WORKER PROTECTION ACT

1. Requires employers to share written descriptions of all applicable quotas in writing with employees;
2. Prohibits quotas that prevent compliance with lawful meal or rest periods or use of bathroom facilities, including reasonable travel time to and from bathroom facilities;
3. Grants current and former employees the right to request certain information about quotas; and
4. Prohibits employers from retaliating against an employee for asking about quota information or making a complaint regarding a violation of the Warehouse Worker Protection Act (the Act).

IMPORTANT DEFINITIONS

- A **QUOTA** is a work standard that requires an employee to perform at a specified productivity speed, complete a quantified number of tasks, handle or produce a quantified amount of material within a defined time-period, or meet a similar type of performance standard for which an employee may be disciplined if they fail to complete it. A quota also exists where an employee's actions are categorized between time performing tasks and not performing tasks, and the failure to complete a task performance standard or recommendation may have an adverse impact on the employee's employment or other conditions of employment.
- This law applies to **WAREHOUSE DISTRIBUTION CENTERS**. Under the law, a warehouse distribution center is defined using the North American Industry Classification System (NAICS) codes for warehousing and storage (excluding farm product warehousing and storage), merchant wholesalers, and electronic shopping and mail order houses, as well as couriers and express delivery services.

- This law applies to any **EMPLOYER** who directly or indirectly employs or exercises control over the wages, hours, or working conditions of either 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.
- Any **EMPLOYEE** covered by the Act (1) works at a warehouse distribution center, (2) is subject to a quota, and (3) is not exempt from the minimum wage or applicable minimum wage orders and any overtime compensation provisions of the Labor Law. Drivers or couriers to and from a warehouse are not included in this law.

REQUIREMENT TO SHARE WRITTEN DESCRIPTIONS OF QUOTAS TO EMPLOYEES

Employers are mandated to provide a written description of each quota that their employees are subject to within thirty days of the law going into effect, which is July 19, 2023. For all future employees, the written description of quotas must be provided upon hire.

The written description must include the number of tasks to be performed, materials produced or handled, the applicable time period in which the tasks need to be performed, and any adverse employment actions that could materialize from failure to meet the quota. If a quota changes, an employer must tell employees, in writing, within two business days of the change.

If an employer takes any adverse employment action against an employee, they must again provide the employee with the written description of the quota that the employee is subject to. An employer is prohibited from taking adverse employment action against an employee regarding a quota if they have not disclosed it to the employee.

Employers must provide quotas in English, as well as any other language identified by an employee as their primary language.

The law does not require employers to use quotas or monitor work speed data and only applies to employers who choose to do so.

PROHIBITIONS ON CERTAIN TYPES OF QUOTAS

Quotas cannot prevent an employee from taking lawful meal or rest periods or using bathroom facilities, including reasonable travel time to and from bathroom facilities. Employers are prohibited from taking adverse employment actions against an employee for failure to meet a quota that violates their lawful right to take meal or rest periods or use the bathroom.

Employers cannot take an adverse employment action against an employee for failure to meet a quota that has not been disclosed to the employee as required under the Act.

Paid and unpaid breaks are prohibited from being considered productive time for the purpose of monitoring compliance with a quota unless the employee is required to remain on call.

Employees have the right to request a written description of each quota to which they are subject, at any time.

RIGHTS OF EMPLOYEES TO REQUEST INFORMATION REGARDING QUOTAS AND WORK PERFORMANCE

Current and former employees have the right to request the following information if they believe that they have been disciplined as the result of failing to meet a quota, or that meeting a quota caused a violation of their right to a meal or rest period or use of bathroom facilities, including reasonable travel time to and from bathroom facilities: (a) a written description of the quota to which they are subject, (b) a copy of the most recent 90 days of the employee's own personal work speed data, and (c) a copy of the aggregate work speed data for similar employees at the same establishment during the same time period. A former employee is limited to one request of this nature.

The employer is required to provide the above requested information no later than 14 calendar days from the date of the request, and at no cost to the current or former employee.

Any written description of the quota or personal work speed data provided must be provided in English and in the language identified by the current or former employee as their primary language.

UNLAWFUL RETALIATION

Retaliation is unlawful regardless of when it occurs. Additionally, the law provides that an employer will be required to prove that they did not retaliate if they take an adverse action against an employee within ninety days of an employee:

- Initiating the employee's first request in a calendar year for information about a quota or personal work speed data; or
- Making a complaint related to a quota to the Commissioner of the Department of Labor, the Department of Labor, another local or state governmental agency, or the employer.

Retaliation is still unlawful even if it occurs beyond the ninety-day timeframe.

RECORDKEEPING

Employers must establish, maintain, and preserve true and accurate records created in real time for three years to ensure compliance with employee or Department of Labor requests for data.

CONTACT THE DEPARTMENT OF LABOR

Employees may reach out to the New York State Department of Labor if they have any questions or concerns, or if they wish to make a complaint. Please reach out to labor.sm.warehouse.worker.claims@labor.ny.gov.

For more information on the Warehouse Worker Protection Act, please visit the DOL website at dol.ny.gov/WWPA.