

2023 -- S 0661

LC002440

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WAREHOUSE WORKER
PROTECTION ACT

Introduced By: Senators Ciccone, F. Lombardi, Britto, DiPalma, Tikoian, Burke, and Bell

Date Introduced: March 07, 2023

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR RELATIONS"
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 60

4 WAREHOUSE WORKER PROTECTION ACT

5 **28-60-1. Short title.**

6 This chapter shall be known and may be cited as the "Warehouse Worker Protection Act".

7 **28-60-2. Definitions.**

8 As used in this chapter:

9 (1) "Aggregated data" means information that an employer has combined or collected
10 together in summary or other form such that the data cannot be identified with any individual.

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

13 (3) "Designated employee representative" means any employee representative, including,
14 but not limited to, an authorized employee representative that has a collective bargaining
15 relationship with the employer.

16 (4) "Employee" means a nonexempt employee who works at a warehouse distribution
17 center and is subject to a quota as defined in this section.

18 (5) "Employee work speed data" means information an employer collects, stores, analyzes,

1 or interprets relating to an individual employee's performance of a quota, including, but not limited
2 to, quantities of tasks performed, quantities of items or materials handled or produced, rates or
3 speeds of tasks performed, measurements or metrics of employee performance in relation to a
4 quota, and time categorized as performing tasks or not performing tasks.

5 (6)(i) "Employer" means a person who directly or indirectly, or through an agent or any
6 other person, including through the services of a third-party employer, temporary services, or
7 staffing agency, independent contractor, or any similar entity, at any time in the prior twelve (12)
8 months, employs or exercises control over the wages, hours, or working conditions of one hundred
9 (100) or more employees at a single warehouse distribution center or five hundred (500) or more
10 employees at one or more warehouse distribution centers in the state.

11 (ii) For the purposes of this subsection:

12 (A) All employees employed directly or indirectly, or through an agent or any other person,
13 as described in subsection (6)(i) of this section, as well as any employee employed by a member of
14 a controlled group of corporations of which the employer is a member, shall be counted in
15 determining the number of employees employed at a single warehouse distribution center or at one
16 or more warehouse distribution centers in the state; and

17 (B) All agents or other persons, as described in subsection (6)(i) of this section, and all
18 members of a controlled group of corporations of which the employer is a member, shall be deemed
19 to be employers and shall be jointly and severally responsible for compliance with this chapter. For
20 purposes of this subsection, the term "controlled group of corporations" shall be defined as provided
21 under Section 1563 of the Internal Revenue Code, 26 U.S.C. section 1563, except that fifty percent
22 (50%) shall be substituted for eighty percent (80%) where eighty percent (80%) is specified in that
23 definition.

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

28 (8) "Quota" means a work standard which:

29 (i) An employee is assigned or required to perform:

30 (A) At a specified productivity speed; or a quantified number of tasks, or to handle or
31 produce a quantified amount of material, within a defined time period; or

32 (B) An employee's actions are categorized between time performing tasks and not
33 performing tasks, and the employee's failure to complete a task performance standard or
34 recommendation may have an adverse impact on the employee's continued employment or the

1 conditions of such employment.

2 (9) "Warehouse distribution center" means an establishment as defined by any of the
3 following North American industry classification system ("NAICS") codes, however such
4 establishment is denominated:

5 (i) Four hundred ninety-three (493) for warehousing and storage;

6 (ii) Four hundred twenty-three (423) for merchant wholesalers, durable goods;

7 (iii) Four hundred twenty-four (424) for merchant wholesalers, nondurable goods;

8 (iv) Four hundred fifty-four thousand one hundred ten (454,110) for electronic shopping
9 and mail-order houses; or

10 (v) Four hundred ninety-two thousand one hundred ten (492,110) for couriers and express
11 delivery services.

12 **28-60-3. Disclosure of quotas.**

13 (a) Each employer shall provide to each employee, upon hire, or within thirty (30) days of
14 the effective date of this chapter, a written description of each quota to which the employee is
15 subject, including the quantified number of tasks to be performed or materials to be produced or
16 handled, within the defined time period, and any potential adverse employment action that could
17 result from failure to meet the quota.

18 (b) Each time the quota changes thereafter, the employer shall provide an updated written
19 description of each quota to which the employee is subject within two (2) business days of such
20 quota change.

21 (c) Each time an employer takes an adverse employment action against an employee, the
22 employer shall provide that employee with the applicable quota for the employee.

23 **28-60-4. Protection from quotas.**

24 (a) An employee shall not be required to meet a quota that prevents compliance with meal
25 or rest periods or use of bathroom facilities, including reasonable travel time to and from bathroom
26 facilities. An employer shall not take adverse employment action against an employee for failure
27 to meet a quota that does not allow a worker to comply with meal and rest periods or for failure to
28 meet a quota that has not been disclosed to the employee pursuant to § 28-60-3.

29 (b) Consistent with existing law, paid and unpaid breaks shall not be considered productive
30 time for the purpose of any quota or monitoring system unless the employee is required to remain
31 on call.

32 **28-60-5. Recordkeeping.**

33 (a) Each employer shall establish, maintain, and preserve contemporaneous, true, and
34 accurate records of the following:

- 1 (1) Each employee's own personal work speed data;
2 (2) The aggregated work speed data for similar employees at the same establishment; and
3 (3) The written descriptions of the quota such employee was provided pursuant to § 28-60-

4 3.

5 (b) Such records shall be maintained and preserved throughout the duration of each
6 employee's period of employment and made available to the director of the department of labor and
7 training upon request.

8 (c) Subsequent to any employee's separation from the employer, such records relating to
9 the six (6) month period prior to the date of the employee's separation from the employer shall be
10 preserved for a period of time not less than three (3) years subsequent to the date of such employee's
11 separation and made available to the director upon request.

12 (d) Nothing in this section shall require an employer to keep such records if such employer
13 does not use quotas as defined in this chapter or monitor work speed data.

14 **28-60-6. Right to request.**

15 (a) A current employee has the right to request a written description of each quota to which
16 the employee is subject, a copy of the employee's own personal work speed data, and a copy of the
17 prior six (6) months of aggregated work speed data for similar employees at the same establishment.

18 (b) A former employee has the right to request, within three (3) years subsequent to the
19 date of their separation from the employer, a written description of the quota to which they were
20 subject as of the date of their separation, a copy of the employee's own personal work speed data
21 for the six (6) months prior to their date of separation, and a copy of aggregated work speed data
22 for similar employees at the same establishment for the six (6) months prior to their date of
23 separation.

24 (c) Such requested records pursuant to this section shall be provided at no cost to the current
25 or former employee.

26 (d) The employer shall provide such requested records pursuant to this section as soon as
27 practicable; provided that, requested written descriptions of the quota shall be provided no later
28 than two (2) business days following the date of the receipt of the request and requested personal
29 work speed data and aggregated work speed data shall be provided no later than seven (7) business
30 days following the date of the receipt of the request.

31 (e) Nothing in this section shall require an employer to use quotas as defined in this chapter
32 or monitor work speed data. An employer that does not monitor this data has no obligation to
33 provide it.

34 **28-60-7. Unlawful retaliation.**

1 (a) No person, including, but not limited to, an employer, their agent, or person acting as
2 or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation,
3 partnership, or limited liability company, shall discharge or in any way retaliate, discriminate or
4 take adverse action against any person for exercising any rights conferred under this chapter, or for
5 being perceived as exercising rights conferred by this chapter, including, but not limited to:

6 (1) Initiating a request for information about a quota or personal work speed data pursuant
7 to § 28-60-6.

8 (2) Making a complaint related to a quota alleging any violation of §§ 28-60-3, 28-60-4
9 and 28-60-6 to the director, any other local, state, or federal governmental agency or official, or the
10 employer.

11 (b) An employee need not explicitly refer to this chapter or the rights enumerated in this
12 chapter to be protected from an adverse action. Protections of this section shall apply to former
13 employees and to employees who mistakenly, but in good faith, allege violations of this chapter.

14 (c) If a person takes adverse action against an employee within ninety (90) days of the
15 employee's engaging or attempting to engage in activities protected by this chapter, such conduct
16 shall raise a rebuttable presumption that the action is an adverse action in violation of this chapter.
17 Such presumption may be rebutted by clear and convincing evidence that:

18 (1) The action was taken for other permissible reasons; and

19 (2) The engaging or attempting to engage in activities protected by this chapter was not a
20 motivating factor in the adverse action.

21 **28-60-8. Requirements for basing discipline on quota compliance.**

22 If the employer wishes to discipline an employee for work under quota, the employer shall
23 provide a written explanation to the employee regarding the manner in which the employee failed
24 to perform, including the applicable quota and comparison of work performance to that standard.

25 **28-60-9. Posting of notices in the workplace related to quotas.**

26 Employers subject to this chapter shall post a notice in the workplace regarding workers'
27 rights under the chapter, including what constitutes a permissible quota, as well as the employees'
28 right to request quota and speed date information, and to make a complaint to various state
29 authorities regarding violation of an employee's quota rights.

30 **28-60-10. Enforcement.**

31 The director of the department of labor and training shall adopt rules and regulations
32 implementing the provisions of this chapter. The director shall be authorized to enforce the
33 provisions of this chapter and to assess civil penalties in a manner consistent with state law.

34 **28-60-11. Workplace inspections.**

1 If a particular worksite or employer is found to have an annual employee injury rate of at
2 least one and one-half (1½) times as high as the warehousing industry's average annual injury rate
3 as published by the Bureau of Labor Statistics' most recent Fatal and Non-fatal Occupational
4 Injuries and Illnesses data, the director shall conduct an investigation of violations pursuant to this
5 chapter.

6 **28-60-12. Private right of action.**

7 (a) A current or former employee or their representative may bring an action for injunctive
8 relief to obtain compliance with this chapter and may, upon prevailing in the action, recover costs
9 and reasonable attorneys' fees in such action.

10 (b) In any action involving a quota that prevented the compliance with applicable
11 regulations on workplace safety and health or meal or rest break requirements, the injunctive relief
12 shall be limited to suspension of the quota and restitution and injunctive relief to address any
13 retaliation or other adverse action taken by the employer in relation to the complaint or its
14 enforcement.

15 (c) In any action involving a retaliation in violation of this chapter, in addition to the relief
16 authorized in this section, a prevailing current or former employee or their representative shall be
17 awarded damages equal to the greater of ten thousand dollars (\$10,000) or three (3) times the actual
18 damages, including, but not limited to, unpaid wages and benefits.

19 **28-60-13. Enforcement by attorney general.**

20 The attorney general, either upon their own complaint or the complaint of any person acting
21 for themselves or the general public, has the authority to prosecute actions, either civil or criminal,
22 for violations of this chapter, or to enforce the provisions of this chapter, independently and without
23 specific direction of the director.

24 **28-60-14. Severability.**

25 If any provision of this chapter, or any application of any provision of this chapter, is held
26 to be invalid, that shall not affect the validity or effectiveness of any other provision of this chapter,
27 or of any other application of any provision of this chapter, which can be given effect without that
28 provision or application; and to that end, the provisions and applications of this chapter are
29 severable.

30 SECTION 2. This act shall take effect on September 1, 2023.

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- WAREHOUSE WORKER
PROTECTION ACT

1 This act would require employers to provide each employee, defined as a nonexempt
2 employee who works at a warehouse distribution center, upon hire or within thirty (30) days of the
3 effective date of this chapter, with a written description of each quota to which the employee is
4 subject, including the quantified number of tasks to be performed or materials to be produced or
5 handled, within the defined time period and any potential adverse employment action that could
6 result from failure to meet the quota. This act also would provide each employee with protections
7 against quotas and remedies for violations of those protections, including, but not limited to,
8 unlawful retaliation or dismissal.

9 This act would take effect on September 1, 2023.

=====
LC002440
=====