

Requested by Representative RUIZ

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3568**

1 In line 2 of the printed bill, before the period insert “; creating new pro-  
2 visions; and amending ORS 659A.825”.

3 Delete lines 4 through 8 and insert:

4 **“SECTION 1. Sections 2 to 11 of this 2023 Act are added to and made**  
5 **a part of ORS chapter 653.**

6 **“SECTION 2. Definitions. As used in sections 2 to 11 of this 2023**  
7 **Act:**

8 **“(1) ‘Controlled group of corporations’ has the meaning given that**  
9 **term in section 1563 of the Internal Revenue Code, except that the**  
10 **percent requirements for stock ownership by member corporations of**  
11 **the group shall be limited to fifty percent.**

12 **“(2) ‘Defined time period’ means any unit of time measurement**  
13 **equal to or less than the duration of an employee’s shift, including but**  
14 **not limited to hours, minutes, seconds and any fraction of those units**  
15 **of time.**

16 **“(3) ‘Employee’ means an employee who is:**

17 **“(a) Subject to federal and state laws relating to minimum wage**  
18 **and overtime;**

19 **“(b) Employed at a warehouse distribution center; and**

20 **“(c) Subject to a quota.**

21 **“(4) ‘Employer’ means a person who directly or indirectly, through**

1 an agent or any other person, including through the services of a  
2 third-party, temporary services or staffing agency or any other similar  
3 entity, employs or exercises control over the wages, hours or working  
4 conditions of the employees employed at a warehouse distribution  
5 center.

6 “(5) ‘Person’ means an individual, corporation, limited partnership,  
7 limited liability partnership, limited liability company, business trust,  
8 estate, trust, association, joint venture, agency, instrumentality or  
9 any other legal or commercial entity.

10 “(6) ‘Quota’ means a work standard under which:

11 “(a) An employee is assigned or required to:

12 “(A) Perform at a specified productivity or speed;

13 “(B) Perform a quantified number of tasks; or

14 “(C) Handle or produce a quantified number of materials within a  
15 defined time period.

16 “(b) An employee’s actions are categorized by time spent by the  
17 employee performing and not performing tasks.

18 “(c) An employee may suffer an adverse employment action for  
19 failing to complete a performance standard.

20 “(7) ‘Warehouse distribution center’ means an establishment en-  
21 gaged in any services relating to:

22 “(a) Warehousing and storage, as that term is used in the 2022  
23 North American Industry Classification System code 493.

24 “(b) Merchant wholesale of durable goods, as those terms are used  
25 in the 2022 North American Industry Classification System code 423.

26 “(c) Merchant wholesale of nondurable goods, as those terms are  
27 used in the 2022 North American Industry Classification System code  
28 424.

29 “(d) Retailing using electronic shopping and mail-order houses, as  
30 those terms are used in the 2017 North American Industry Classifica-

1 tion System code 454110.

2 “(e) Couriers and express delivery services, as those terms are used  
3 in the 2022 North American Industry Classification System code 492110.

4 “(8) ‘Work speed data’ includes any of the following information  
5 that is collected or maintained by an employer for purposes of evalu-  
6 ating an employee’s performance regarding meeting a quota to which  
7 the employee is subject:

8 “(a) Quantity of tasks performed;

9 “(b) The quantity of items or materials handled or produced;

10 “(c) The rate or speed at which the employee performs assigned  
11 tasks;

12 “(d) Measurements or metrics of employee performance in relation  
13 to an applicable quota; and

14 “(e) Time categorized as performing tasks or not performing tasks.

15 “SECTION 3. Covered employers. (1) Sections 2 to 11 of this 2023  
16 Act apply to employers that are one or more of the following:

17 “(a) A warehouse distribution center that employs 100 or more em-  
18 ployees at a single warehouse distribution center;

19 “(b) A warehouse distribution center that employs 500 or more em-  
20 ployees at one or more warehouse distribution centers within this  
21 state.

22 “(2)(a) To determine the number of employees employed by an em-  
23 ployer, the calculation shall be based on the number of employees  
24 employed by the employer at any point in time in the immediately  
25 preceding 12 months.

26 “(b) All employees, whether employed directly or indirectly or  
27 through an agent or other person, including a controlled group of  
28 corporations of which the employer is a member, shall be included in  
29 the calculation and shall count toward the total number of employees  
30 who are employed a single warehouse distribution center or at one or

1 more warehouse distribution centers.

2 **“SECTION 4. Quotas. (1) An employer shall provide each employee**  
3 **with a written description regarding the quota to which an employee**  
4 **is subject. The description must include:**

5 **“(a) The quantified number of tasks to be performed, or materials**  
6 **to be produced or handled, within a defined time period; and**

7 **“(b) A description of the potential consequences, including any ad-**  
8 **verse employment actions, that an employee may face as a result of**  
9 **the employee’s failure to meet the applicable quota.**

10 **“(2) The employer shall provide the written description required**  
11 **under subsection (1) of this section as follows:**

12 **“(a) To a new employee at the time of hire.**

13 **“(b) To an existing employee within two calendar days following the**  
14 **date on which the employer makes a change to a quota to which the**  
15 **employee is subject, if any.**

16 **“(c) Whenever an employer takes an adverse employment action**  
17 **against the employee for failing to meet the applicable quota.**

18 **“(3) An employer may not:**

19 **“(a) Impose any quota that would:**

20 **“(A) Unreasonably interfere with an employee’s right to take meal**  
21 **and rest breaks under applicable federal or state laws relating to meal**  
22 **and rest breaks; or**

23 **“(B) Cause an employee to forgo taking meal and rest breaks to**  
24 **which an employee is entitled under any applicable federal or state law**  
25 **relating to meal or rest breaks.**

26 **“(b) Take an adverse employment action against an employee for:**

27 **“(A) Failing to meet a quota that interfered with or caused an em-**  
28 **ployee to forgo a meal or rest break.**

29 **“(B) Failing to meet a quota for which an employee did not receive**  
30 **a written description required under subsection (1) of this section.**

1       “(c) Consider time spent by an employee on a meal or rest break  
2 as productive time for purposes of monitoring a quota system or de-  
3 termining whether an employee has met an applicable quota require-  
4 ment, unless the employee is required to remain on call during the  
5 meal or rest break.

6       “SECTION 5. Recordkeeping. (1) An employer shall keep and main-  
7 tain employee records for current and former employees that include  
8 the following information:

9       “(a) The personal work speed data for each employee of the em-  
10 ployer.

11       “(b) The aggregated work speed data for similarly situated employ-  
12 ees who work in the same warehouse distribution center.

13       “(c) A copy of the written description provided to each employee  
14 pursuant to section 4 of this 2023 Act.

15       “(2) An employer shall retain the records described in subsection (1)  
16 of this section as follows:

17       “(a) For current employees, the employer shall retain the records  
18 throughout the duration of the employee’s employment with the em-  
19 ployer.

20       “(b) For former employees, the employer shall retain records:

21       “(A) Relating to the six months immediately preceding the date of  
22 the employee’s separation from employment; and

23       “(B) For three years immediately following the date of the  
24 employee’s separation from employment.

25       “(3) An employer shall make available to the Commissioner of the  
26 Bureau of Labor and Industries at the commissioner’s request the re-  
27 cords described under this section.

28       “SECTION 6. Employee right to request. (1) A current or former  
29 employee of an employer shall have a right, upon request, to receive  
30 copies of the records described in section 5 of this 2023 Act and in the

1 possession of the employer as follows:

2 “(a) If the requesting employee is a current employee, the employee  
3 shall have a right to a copy of a record that includes:

4 “(A) The information described in section 5 (1)(a) and (c) of this 2023  
5 Act; and

6 “(B) The information described in section 5 (1)(b) of this 2023 Act  
7 relating to the six month period immediately preceding the date of the  
8 employee’s request for records.

9 “(b) If the requesting employee is a former employee, the employee  
10 shall have a right to a copy of a record that includes:

11 “(A) The information described under section 5 (1)(a) of this 2023  
12 Act related to the quota to which the former employee was subject as  
13 of the date of the former employee’s separation from employment; and

14 “(B) The information described in section 5 (1)(b) and (c) of this 2023  
15 Act relating to the six month period immediately preceding the date  
16 of the former employee’s separation from employment.

17 “(2) An employer shall provide records requested pursuant to this  
18 section free of charge and as soon as practicable upon request of a  
19 current or former employee, but not later than:

20 “(a) Two business days following the date of a request for records  
21 regarding information described under section 5 (1)(c) of this 2023 Act;  
22 and

23 “(b) Seven days following the date of a request for records regarding  
24 information described under section 5 (1)(a) or (b) of this 2023 Act.

25 **“SECTION 7. Prohibited conduct.** No person may take an adverse  
26 employment action or in any manner discriminate or retaliate against  
27 a current or former employee because the current or former employee  
28 has engaged in any activity protected under the provisions of sections  
29 1 to 11 of this 2023 Act, including but not limited to:

30 “(1) The filing of a complaint under section 8 of this 2023 Act.

1       “(2) Making a request for records under section 6 of this 2023 Act.

2       “**SECTION 8. Remedies.** (1) A violation of the provisions of sections  
3 1 to 11 of this 2023 Act is an unlawful practice under ORS chapter 659A.  
4 An employee alleging a violation of sections 1 to 11 of this 2023 Act  
5 may file a complaint under ORS 659A.820 with the Commissioner of the  
6 Bureau of Labor and Industries. The commissioner shall enforce the  
7 provisions of this section in the manner provided in ORS chapter 659A  
8 regarding other unlawful practices.

9       “(2)(a) In any complaint brought under this section, there is a  
10 rebuttable presumption that a violation of section 7 of this 2023 Act  
11 has occurred if a person takes an adverse employment action or oth-  
12 erwise retaliates against an employee or a former employee within 90  
13 days after the employee or former employee has engaged in any of the  
14 protected activities described in sections 1 to 11 of this 2023 Act.

15       “(b) A person may overcome the presumption incurred by demon-  
16 strating by clear and convincing evidence that:

17       “(A) The action was taken for a nonretaliatory reason; and

18       “(B) The action was not motivated by the employee’s or former  
19 employee’s engaging in any of the activities protected under sections  
20 1 to 11 of this 2023 Act.

21       “**SECTION 9. Effect of workplace inspections.** (1) If at any time, as  
22 a result of an inquiry, inspection or investigation conducted by the  
23 Director of the Department of Consumer and Business Services under  
24 ORS chapter 654, the director determines that an employer’s worksite  
25 has a employee injury rate that is at least one and one-half times the  
26 average number of fatal and non-fatal injuries and illnesses recorded  
27 for the warehousing industry, as reported in the most recent report  
28 published by the Bureau of Labor and Statistics of the United States  
29 Department of Labor, the director shall notify the Commissioner of  
30 the Bureau of Labor and Industries of that fact.

1       **“(2) The commissioner’s receipt of the notice described under sub-**  
2 **section (1) of this section is sufficient to establish the reasonable belief**  
3 **that an employer has committed an unlawful practice in violation of**  
4 **sections 1 to 11 of this 2023 Act for purposes of the commissioner’s**  
5 **filing of a complaint pursuant to ORS 659A.825.**

6       **“SECTION 10. Rulemaking. The Commissioner of the Bureau of**  
7 **Labor and Industries may adopt any rules necessary to implement the**  
8 **provisions of sections 1 to 11 of this 2023 Act.**

9       **“SECTION 11. Severability. If any provision of sections 1 to 11 of**  
10 **this 2023 Act, or any application of a provision of sections 1 to 11 of**  
11 **this 2023 Act, is held to be invalid, the invalidity does not affect other**  
12 **provisions or application of sections 1 to 11 of this 2023 Act which can**  
13 **be given effect without the invalid provision or application, and to this**  
14 **end the provisions of sections 1 to 11 of this 2023 Act are severable.**

15       **“SECTION 12. ORS 659A.825 is amended to read:**

16       **“659A.825. (1)(a) If the Attorney General or the Commissioner of the Bu-**  
17 **reau of Labor and Industries has reason to believe that any person has**  
18 **committed an unlawful practice, the Attorney General or the commissioner**  
19 **may file a complaint in the same manner as provided for a complaint filed**  
20 **by a person under ORS 659A.820.**

21       **“(b) If the Attorney General or the commissioner has reason to believe**  
22 **that a violation of ORS 659A.403, 659A.406 or 659A.409 has occurred, the**  
23 **Attorney General or the commissioner may file a complaint under this sec-**  
24 **tion against any person acting on behalf of a place of public accommodation**  
25 **and against any person who has aided or abetted in that violation.**

26       **“(c) If the Attorney General or the commissioner has reason to believe**  
27 **that an unlawful practice under ORS 659A.145 or 659A.421 or discrimination**  
28 **under federal housing law has occurred or is about to occur, the Attorney**  
29 **General or the commissioner may file a complaint in the same manner as a**  
30 **person filing a complaint under ORS 659A.820.**



1       **“(2) Upon receipt of a notice from the Director of the Department**  
2 **of Consumer and Business services under section 9 of this 2023 Act, the**  
3 **commissioner shall file a complaint in the same manner as provided**  
4 **for a complaint filed by a person under ORS 659A.820 against an em-**  
5 **ployer alleging a violation of sections 1 to 11 of this 2023 Act.**

6       “[(2)] (3) If the commissioner files a complaint under this section alleging  
7 an unlawful practice other than an unlawful employment practice, or if a  
8 person files a complaint under ORS 659A.820 alleging an unlawful practice  
9 under ORS 659A.145 or 659A.421 or discrimination under federal housing law,  
10 the commissioner may also issue a temporary cease and desist order requir-  
11 ing any respondent named in the complaint to refrain from the unlawful  
12 practice alleged. A temporary cease and desist order under this section may  
13 contain any provision that could be included in a cease and desist order is-  
14 sued after a hearing under ORS 659A.850.

15       **“SECTION 13. The section captions used in this 2023 Act are pro-**  
16 **vided only for the convenience of the reader and do not become part**  
17 **of the statutory law of this state or express any legislative intent in**  
18 **the enactment of this 2023 Act.”.**

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