

LC 3350
2023 Regular Session
10/7/22 (JAS/ps)

D R A F T

SUMMARY

Requires Bureau of Labor and Industries to study issues related to working conditions of warehouse workers. Directs bureau to submit findings to interim committees of Legislative Assembly related to business and labor not later than September 15, 2024.

A BILL FOR AN ACT

1
2 Relating to protections for warehouse workers.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. The Bureau of Labor and Industries shall study issues**
5 **related to the working conditions of warehouse workers. The bureau**
6 **shall submit a report in the manner provided by ORS 192.245, and may**
7 **include recommendations for legislation, to the interim committees**
8 **of the Legislative Assembly related to business and labor no later than**
9 **September 15, 2024.**

10 **SECTION 2. Section 1 of this 2023 Act is repealed on January 2, 2025.**

11

Warehouse Worker Protection Act Bill Explainer

As Amazon has raked in billions of dollars in profits over the course of the pandemic, the company's obsession with speed has led to overwhelming injury rates in their warehouses, skyrocketing worker turnover, and downward pressure on the warehouse industry as whole, hurting responsible employers. In 2021, injury rates at Amazon facilities were more than double compared to rival companies¹, with turnover rates as high as 150%², churning through the workforce and decimating communities.

Currently in Amazon warehouses, as in many workplaces, workers are required to meet certain benchmarks and quotas while they work. However, unlike in union warehouses, where a negotiated contract makes it clear what to expect from both the worker and management's perspective, workers at Amazon are not told their quota. Workers are then forced to perform against an "invisible clock", under constant threat of discipline or termination, leading to physical injury and extreme mental stress. While full unionization is the ultimate remedy to Amazon's abuses, bills like the Warehouse Worker Protection Act (WWPA) are an important step in helping Amazon workers and protecting what has traditionally been a middle-class industry.

The WWPA helps workers, communities, and responsible businesses by doing the following:

1. Requiring employers to provide a written description of any quota and any potential adverse employment action upon the employee's hire date and anytime the quota is changed.
2. Not allowing adverse action against an employee who failed to meet a quota that was either not disclosed to the worker or that prevented compliance with meal breaks, rest periods, or use of bathroom facilities.
3. Allowing workers to request their work speed data along with aggregate data for similar employees in the facility.
4. Protecting workers against retaliation for requesting data or exercising any rights under the bill.
5. Providing a mechanism where if a facility has an annual injury rate of at least one-and-a-half times as high as the warehouse industry's average annual injury rate as published by the Bureau of Labor Statistics' most recent Fatal and Non-fatal Occupational Injuries and Illnesses data³, a state investigation will be triggered.
6. Permitting a private right of action for injunctive relief to obtain compliance with the bill and to recover any damages done by the employer.

The WWPA is based on legislation that was introduced in 2021-2022 in states across the country, including in CA, CT, MN, NH, NJ, NY, and WA. The bill has been signed into law in CA and is currently awaiting the Governor's signature in NY.

Amazon's abuses are only getting worse and have recently spurred federal investigations into unsafe working conditions⁴. State lawmakers are in a position to lead on this issue and take desperately needed action on behalf of workers across their state. The Teamsters will continue to lead efforts to pass legislation to help all workers impacted by these abuses and support elected officials who stand with us.

¹ <https://www.cnbc.com/2022/04/12/study-amazon-workers-suffer-serious-injuries-at-twice-rate-of-rivals.html>

<https://thesoc.org/what-we-do/the-injury-machine-how-amazons-production-system-hurts-workers/>

² <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html>

³ <https://www.bls.gov/lif/oshstate.htm>

⁴ <https://abcnews.go.com/Business/amazon-warehouses-investigation-federal-prosecutors-department-labor/story?id=87028901>



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Warehouse Worker Protection Act Fact Sheet

- Large warehouses run by billion-dollar companies, most notably Amazon, have seen a huge surge in online orders since the COVID-19 pandemic.
- While these companies make billions in profits, they abuse their employees through secret and unreasonable quotas in their warehouses.
- A 2021 study showed that Amazon's injury rates are **more than double** the injury rate of competing warehouses, with an increase of 20% from 2020 to 2021¹.
- At Amazon facilities, workers are judged by a quota rate that is not disclosed to them, being forced to work against an invisible clock every day.
- In turn, workers feel the pressure to meet this quota, risking their health and safety in order to not lose their job, creating a culture of fear in the workplace.
- Not surprisingly, these abusive quotas have led to skyrocketing injury and turnover rates of 150%². According to internal documents from Amazon, the company could exhaust the warehouse labor market by 2024³ and destroy what traditionally has been a middle-class industry.
- By allowing Amazon and other employers to get away with this practice, it creates a race to the bottom in the warehouse industry, putting pressure on employers who are doing the right thing.
- At Teamster/union facilities, where management and workers negotiate a fair contract, work expectations are known, safety is prioritized, and workers can have a long and healthy career.
- One way to protect both Amazon workers and the warehouse industry as a whole is through the Warehouse Worker Protection Act.
- The Warehouse Worker Protection Act has been passed in California, New York and was introduced in several other states across the country (CT, MN, NH, and WA) in 2021.
- The bill requires large warehouses to disclose quotas that workers are judged by, both upon a worker being hired and every time the quota is changed.
- The bill ensures that workers shall not be required to meet a quota that interferes with workers' health and safety, the ability to take breaks, and to use the bathroom.
- The bill also allows workers the ability to request a written description of the quota, their own work speed data, and aggregated work speed data for similar employees in the facility.
- The bill protects against retaliation for any of the above sections.

¹ <https://www.cnn.com/2022/04/12/study-amazon-workers-suffer-serious-injuries-at-twice-rate-of-rivals.html>

<https://thesoc.org/what-we-do/the-injury-machine-how-amazons-production-system-hurts-workers/>

² <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html>

³ <https://www.vox.com/recode/23170900/leaked-amazon-memo-warehouses-hiring-shortage>



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Warehouse Worker Protection Act Bill Text

Definitions. As used in this article:

1. "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.
2. "Designated employee representative" means any employee representative, including but not limited to an authorized employee representative that has a collective bargaining relationship with the employer.
3. "Employee" means a nonexempt and non-administrative employee who works at a warehouse distribution center and is subject to a quota as defined in this section.
4. (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) "Aggregated data" means information that an employer has combined or collected together in summary or other form such that the data cannot be identified with any individual.
5. "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 services, or staffing agency, independent contractor, or any similar entity, at any time in the prior twelve months, employs or exercises control over the wages, hours, or working conditions of one hundred or more employees at a single warehouse distribution center or five hundred or more employees at one or more warehouse distribution centers in the state.

For the purposes of this subdivision: (a) all employees employed directly or indirectly, or through an agent or any other person, as described in the opening paragraph of this subdivision, as well as any employee employed by a member of a controlled group of corporations of which the employer is a member, shall 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; and (b) all agents or other persons, as described in the opening paragraph of this subdivision, and all members of a controlled group of corporations of which the employer is a member, shall be deemed to be employers and shall be jointly and severally responsible for compliance with this article. For purposes of this subdivision, the term "controlled group of corporations" shall be defined as provided under Section 1563 of the Internal Revenue Code, 26 U.S.C. section 1563, except that fifty percent shall be substituted for eighty percent where eighty percent is specified in that definition.
6. "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.

7. "Quota" means a work standard which:

(a) an employee is assigned or required to perform: (i) at a specified productivity speed; or a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period; or (b) an employee's actions are categorized between time performing tasks and not performing tasks, and the employee's failure to complete a task performance standard or recommendation may have an adverse impact on the employee's continued employment or the conditions of such employment.

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

- (a) four hundred ninety-three for warehousing and storage;
- (b) four hundred twenty-three for merchant wholesalers, durable goods;
- (c) four hundred twenty-four for merchant wholesalers, nondurable goods;
- (d) four hundred fifty-four thousand one hundred ten for electronic shopping and mail-order houses; or
- (e) four hundred ninety-two thousand one hundred ten for couriers and express delivery services.

Quotas. Each employer shall provide to each employee, upon hire, or within thirty days of the effective date of this article, a written description of 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, and any potential adverse employment action that could result from failure to meet the quota. Each time the quota changes thereafter, the employer shall provide an updated written description of each quota to which the employee is subject within two business days of such quota change. Each time an employer takes an adverse employment action against an employee, the employer shall provide that employee with the applicable quota for the employee.

Protection from quotas. An employee shall not be required to meet a quota that prevents compliance with meal or rest periods or use of bathroom facilities, including reasonable travel time to and from bathroom facilities. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods or for failure to meet a quota that has not been disclosed to the employee pursuant to section seven hundred eighty-one of this article.

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

Recordkeeping.

1. Each employer shall establish, maintain, and preserve contemporaneous, true, and accurate records of the following:

(a) each employee's own personal work speed data; (b) the aggregated work speed data for similar employees at the same establishment; and (c) the written descriptions of the quota such employee was provided pursuant to section seven hundred eighty-one of this article. Such records shall be maintained and preserved throughout the duration of each employee's period of employment and made available to the commissioner upon request.

2. Subsequent to any employee's separation from the employer, such records relating to the six month period prior to the date of the employee's separation from the employer shall be preserved for a period of time not less than three years subsequent to the date of such employee's separation and made

available to the commissioner upon request. Nothing in this section shall require an employer to keep such records if such employer does not use quotas as defined in this article or monitor work speed data.

Right to request.

1. A current employee has the right to request a written description of each quota to which the employee is subject, a copy of the employee's own personal work speed data, and a copy of the prior six months of aggregated work speed data for similar employees at the same establishment.
2. A former employee has the right to request, within three years subsequent to the date of his or her separation from the employer, a written description of the quota to which they were subject as of the date of their separation, a copy of the employee's own personal work speed data for the six months prior to their date of separation, and a copy of aggregated work speed data for similar employees at the same establishment for the six months prior to their date of separation.
3. Such requested records pursuant to this section shall be provided at no cost to the current or former employee.
4. The employer shall provide such requested records pursuant to this section as soon as practicable, provided that requested written descriptions of the quota shall be provided no later than two business days following the date of the receipt of the request and requested personal work speed data and aggregated work speed data shall be provided no later than seven business days following the date of the receipt of the request.
5. Nothing in this section shall require an employer to use quotas as defined in this article or monitor work speed data. An employer that does not monitor this data has no obligation to provide it.

Unlawful retaliation.

1. No person, including but not limited to an employer, his or her agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, shall discharge or in any way retaliate, discriminate or take adverse action against any person for exercising any rights conferred under this article, or for being perceived as exercising rights conferred by this article, including but not limited to:
 - (a) Initiating a request for information about a quota or personal work speed data pursuant to subdivision one of XXX of this article (Right to request section).
 - (b) Making a complaint related to a quota alleging any violation of section XXX (Quotas section), section XXX (Protection from quotas section), section XXX (Time on task section), or section XXX (Right to request section) to the commissioner, any other local, state, or federal governmental agency or official, or the employer.
2. An employee need not explicitly refer to this article or the rights enumerated herein to be protected from an adverse action. Protections of this section shall apply to former employees and to employees who mistakenly but in good faith allege violations of this article.
3. If a person takes adverse action against an employee within ninety days of the employee's engaging or attempting to engage in activities protected by this article, such conduct shall raise a rebuttable presumption that the action is an adverse action in violation of this article. Such presumption may be

rebutted by clear and convincing evidence that: (a) the action was taken for other permissible reasons; and (b) the engaging or attempting to engage in activities protected by this article was not a motivating factor in the adverse action.

Enforcement. The commissioner shall adopt rules and regulations implementing the provisions of this article. The commissioner shall be authorized to enforce the provisions of this article and to assess civil penalties in a manner consistent with state law.

Workplace inspections – If a particular worksite or employer is found to have an annual employee injury rate of at least one and one-half times as high as the warehousing industry's average annual injury rate as published by the Bureau of Labor Statistics' most recent Fatal and Non-fatal Occupational Injuries and Illnesses data, the commissioner shall conduct an investigation of violations pursuant to this article.

Private right of action – A current or former employee or his or her representative may bring an action for injunctive relief to obtain compliance with this article and may, upon prevailing in the action, recover costs and reasonable attorney's fees in such action. In any action involving a quota that prevented the compliance with applicable regulations on workplace safety and health or meal or rest break requirements, the injunctive relief shall be limited to suspension of the quota and restitution and injunctive relief to address any retaliation or other adverse action taken by the employer in relation to the complaint or its enforcement. In any action involving a retaliation in violation this article, in addition to the relief authorized above, a prevailing current or former employee or his or her representative shall be awarded damages equal to the greater of ten thousand dollars or three times the actual damages, including, but not limited to, unpaid wages and benefits.

Other powers. The attorney general, either upon his or her own complaint or the complaint of any person acting for themselves or the general public, has the authority to prosecute actions, either civil or criminal, for violations of this article, or to enforce the provisions thereof independently and without specific direction of the commissioner.

4. **Severability.** If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

5. This act shall take effect on the sixtieth day after it shall have become a law.

Below are suggested provisions that can be used to expand the bill.

Notice of Quota Changes – In addition to prohibition of discipline for failing to meet an undisclosed quota, another option would be to also set a penalty for failure to disclose, such as \$100 (or more) per employee per pay period in which an employee must work under the undisclosed quota – Could be difficult to prove if the quota has not been disclosed.

Posting of Notices in the workplace related to quotas – Require that employers subject to bill post a notice in the workplace regarding workers' rights under the bill, including what constitutes a permissible quota, and employees' right to request quota and speed date information, and to make a complaint to various state authorities regarding violation of an employee's quota rights.

Requirements for basing discipline on quota compliance – The provision could place procedural limitations on discipline that is based on a failure to meet a given quota. For example, could require that if the employer wishes to discipline an employee for work under quota, must provide a written explanation to the employee regarding the manner in which the employee failed to perform, including the applicable quota and comparison of work performance to that standard.