

Enrolled House Bill 4127

Sponsored by Representative RUIZ, Senators MANNING JR, CAMPOS, GORSEK; Representatives BOWMAN, BYNUM, CHAICHI, EVANS, GAMBA, GRAYBER, HARTMAN, HELM, HOLVEY, HUDSON, LIVELY, MCLAIN, NGUYEN H, NOSSE, REYNOLDS, TRAN, WALTERS, Senators FREDERICK, GOLDEN, JAMA, PATTERSON, SOLLMAN (Presession filed.)

CHAPTER

AN ACT

Relating to protections for warehouse workers; creating new provisions; and amending ORS 653.256.

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

SECTION 1. Sections 2 to 5 of this 2024 Act are added to and made a part of ORS chapter 653.

SECTION 2. Definitions. As used in sections 2 to 5 of this 2024 Act:

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

(2)(a) **“Employee” means an employee who is subject to federal or state laws relating to minimum wage and overtime and who works at a warehouse distribution center.**

(b) **“Employee” does not include a driver or courier to or from a warehouse distribution center.**

(3) **“Employer” means a person who directly or indirectly, through an agent or any other person, including through the services of a third-party, temporary services or staffing agency or any other similar entity, employs or exercises control over the wages, hours or working conditions of the employees employed at a warehouse distribution center of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in this state.**

(4) **“Quota” means a work standard under which an employee is assigned or required to perform at a specified productivity or speed, perform a quantified number of tasks or handle or produce a quantified number of materials, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.**

(5)(a) **“Warehouse distribution center” means an establishment engaged in any services relating to:**

(A) **Warehousing and storage, as that term is used in the 2022 North American Industry Classification System code 493.**

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

(C) **Merchant wholesale of nondurable goods, as those terms are used in the 2022 North American Industry Classification System code 424.**

(D) Retailing using electronic shopping and mail-order houses, as those terms are used in the 2017 North American Industry Classification System code 454110.

(b) “Warehouse distribution center” does not mean an establishment engaged in any services relating to:

(A) Farm product warehousing and storage, as those terms are used in the 2022 North American Industry Classification System code 493130.

(B) Refrigerated warehousing and storage, as those terms are used in the 2022 North American Industry Classification System code 493120.

(C) Merchant wholesale of professional medical, dental and hospital equipment and supplies, as those terms are used in the 2022 North American Industry Classification System code 423450.

(D) Merchant wholesale distribution of drugs and druggists’ sundries, as those terms are used in the 2022 North American Industry Classification System code 424210.

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

(F) Merchant wholesale distribution of carbonated beverages, as those terms are used in the 2022 North American Industry Classification System code 424490.

(G) Merchant wholesale distribution of wine and distilled alcoholic beverages, as those terms are used in the 2022 North American Industry Classification System code 424820.

(H) Merchant wholesale distribution of beer and ale, as those terms are used in the 2022 North American Industry Classification System code 424810.

(6)(a) “Work speed data” includes any of the following information that is collected or maintained by an employer for purposes of evaluating an employee’s performance regarding meeting a quota to which the employee is subject:

(A) The quantity of tasks performed;

(B) The quantity of items or materials handled or produced;

(C) The rate or speed at which the employee performs assigned tasks;

(D) Measurements or metrics of employee performance in relation to an applicable quota; and

(E) Time categorized as performing tasks or not performing tasks.

(b) “Work speed data” does not include data or information that does not relate to the performance of a quota, including but not limited to:

(A) Qualitative performance assessments;

(B) Personnel records; and

(C) Itemized wage statements required under ORS 652.610.

SECTION 3. Quotas. (1) An employer shall provide each employee with written documentation summarizing any quota to which the employee is subject. The documentation must include:

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

(b) A description of the potential consequences, including any adverse employment actions, that an employee may face as a result of the employee’s failure to meet the applicable quota.

(2) The employer shall provide the written documentation required under subsection (1) of this section, in the language the employer regularly uses to communicate with the employee, as follows:

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

(b) To an existing employee within two business days following the date on which the employer makes a change to a quota to which the employee is subject.

(c) To an employee when an employer takes an adverse employment action against the employee for failing to meet the applicable quota.

(3)(a) An employer may not take an adverse employment action against an employee for failing to meet a quota for which an employee did not receive written documentation required under subsection (1) of this section.

(b) A person who alleges a violation of this section may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

SECTION 4. Employee right to request. (1) If a current or former employee of an employer believes that the employee has been disciplined for failing to meet a quota, the current or former employee shall have a right, upon request, to receive records as follows:

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

(A) The information described in section 3 (1) of this 2024 Act; and

(B) The employee's work speed data for the 90 days immediately preceding the date of the employee's request.

(b) If the requesting employee is a former employee, the employee shall have a right to make one request for a copy of a record that includes:

(A) The information described under section 3 (1) of this 2024 Act related to the quota to which the former employee was subject for the 90 days immediately preceding the date of the employee's separation from the employer; and

(B) The former employee's work speed data for the 90 days immediately preceding the date of the former employee's most recent separation from employment.

(2) A former employee has the right to request records under subsection (1) of this section within three years following the date of the employee's separation from employment.

(3) An employer shall provide records requested pursuant to this section free of charge and as soon as practicable upon request of a current or former employee, but not later than 21 calendar days from the date of the request.

(4) Nothing in this section may obligate an employer:

(a) To impose a quota or monitor work speed data.

(b) To provide the records described in this section if the employer does not monitor work speed data.

(5) The Commissioner of the Bureau of Labor and Industries may order an employer to produce the records described under this section.

(6) An employer's failure to comply with the requirements of this section shall subject the employer to a civil penalty under ORS 653.256.

SECTION 5. Effect of collective bargaining agreement. Sections 3 and 4 of this 2024 Act do not apply to an employer who is subject to a collective bargaining agreement:

(1) Under which employees are subject to a performance evaluation metric that is subject to review and negotiation according to the terms of the agreement; and

(2) That provides for rights to request records that are substantially equivalent to the rights provided under section 4 of this 2024 Act.

SECTION 6. Nothing in sections 2 to 4 of this 2024 Act relieves an employer of the obligation to comply with any other provision of law, including the provisions of ORS chapter 652, 653 or 654.

SECTION 7. ORS 653.256 is amended to read:

653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.272, 653.606, 653.611, 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, or section 4 of this 2024 Act, or any rule adopted thereunder.

(2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person that intentionally violates ORS 653.077 or any rule adopted thereunder.

(3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS 183.745.

(4)(a) All sums collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining the violations, conducting hearings under this section and addressing and collecting the penalties.

(b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner.

(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section shall be paid over by the commissioner to the Department of Human Services for the benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys to the commissioner.

SECTION 8. Notwithstanding any other provision of law, the General Fund appropriation made to the Bureau of Labor and Industries by section 1, chapter 471, Oregon Laws 2023, for the biennium ending June 30, 2025, is increased by \$234,274 for the purpose of addressing protections for warehouse employees under sections 3 and 4 of this 2024 Act.

SECTION 9. Section 3 of this 2024 Act becomes operative 30 days after the effective date of this 2024 Act.

SECTION 10. The section captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.

Passed by House March 6, 2024

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 7, 2024

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2024

Approved:

.....M.,....., 2024

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2024

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LaVonne Griffin-Valade, Secretary of State