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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 36

- 01/04/2023 Authored by Greenman; Nelson, M.; Tabke; Noor; Hassan and others
The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy
- 01/18/2023 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law
- 02/06/2023 Adoption of Report: Amended and re-referred to the Committee on Ways and Means
- 03/30/2023 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
- 04/24/2023 Calendar for the Day, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act

1.2 relating to employment; establishing worker safety requirements; appropriating

1.3 money; proposing coding for new law in Minnesota Statutes, chapter 182.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. [182.6526] WAREHOUSE DISTRIBUTION WORKER SAFETY.

1.6 Subdivision 1. Definitions. (a) The terms defined in this subdivision have the meanings

1.7 given them.

1.8 (b) "Aggregated employee work speed data" means a compilation of employee work

1.9 speed data for multiple employees, in summary form, assembled in full or in another form

1.10 such that the data cannot be identified with any individual.

1.11 (c) "Commissioner" means the commissioner of labor and industry.

1.12 (d)(1) Except as provided in clause (2), "employee" means an employee who works at

1.13 a warehouse distribution center.

1.14 (2) For the purposes of subdivisions 2, 3, and 4 only, "employee" means a nonexempt

1.15 employee performing warehouse work occurring on the property of a warehouse distribution

1.16 center, and does not include a nonexempt employee performing solely manufacturing,

1.17 administrative, sales, accounting, human resources, or driving work at or to and from a

1.18 warehouse distribution center.

1.19 (e) "Employee work speed data" means information an employer collects, stores, analyzes,

1.20 or interprets relating to an individual employee's or group of employees' performance of a

1.21 quota, including but not limited to quantities of tasks performed, quantities of items or

1.22 materials handled or produced, rates or speeds of tasks performed, measurements or metrics

2.1 of employee performance in relation to a quota, and time categorized as performing tasks
2.2 or not performing tasks. Employee work speed data does not include itemized earnings
2.3 statements pursuant to chapter 181, except for any content of those records that includes
2.4 employee work speed data as defined in this paragraph.

2.5 (f) "Employer" means a person who directly or indirectly, or through an agent or any
2.6 other person, including through the services of a third-party employer, temporary service,
2.7 or staffing agency or similar entity, employs or exercises control over the wages, hours, or
2.8 working conditions of 250 or more employees at a single warehouse distribution center or
2.9 1,000 or more employees at one or more warehouse distribution centers in the state. For
2.10 purposes of this paragraph, all employees of an employer's unitary business, as that term is
2.11 defined in section 290.17, subdivision 4, shall be counted in determining the number of
2.12 employees employed at a single warehouse distribution center or at one or more warehouse
2.13 distribution centers in the state.

2.14 (g) "Warehouse distribution center" means an establishment as defined by any of the
2.15 following North American Industry Classification System (NAICS) codes:

2.16 (1) 493110 for General Warehousing and Storage;

2.17 (2) 423 for Merchant Wholesalers, Durable Goods;

2.18 (3) 424 for Merchant Wholesalers, Nondurable Goods;

2.19 (4) 454110 for Electronic Shopping and Mail-Order Houses; and

2.20 (5) 492110 for Couriers and Express Delivery Services.

2.21 (h) "Quota" means a work standard under which:

2.22 (1) an employee or group of employees is assigned or required to perform at a specified
2.23 productivity speed, or perform a quantified number of tasks, or handle or produce a quantified
2.24 amount of material, or perform without a certain number of errors or defects, as measured
2.25 at the individual or group level within a defined time period; or

2.26 (2) an employee's actions are categorized and measured between time performing tasks
2.27 and not performing tasks, and the employee's failure to complete a task performance standard
2.28 may have an adverse impact on the employee's continued employment.

2.29 Subd. 2. **Written description required.** (a) Each employer shall provide to each
2.30 employee a written description of each quota to which the employee is subject and how it
2.31 is measured, including the quantified number of tasks to be performed or materials to be
2.32 produced or handled or the limit on time categorized as not performing tasks, within the

3.1 defined time period, and any potential adverse employment action that could result from
3.2 failure to meet the quota.

3.3 (b) The written description must be understandable in plain language and in the language
3.4 identified by each employee as the primary language of that employee.

3.5 (c) The written description must be provided:

3.6 (1) upon hire or within 30 days of the effective date of this section; and

3.7 (2) no fewer than one working day prior to the effective date of any increase of an
3.8 existing quota and no later than the time of implementation for any decrease of an existing
3.9 quota.

3.10 (d) An employer shall not take adverse employment action against an employee for
3.11 failure to meet a quota that has not been disclosed to the employee.

3.12 Subd. 3. **Breaks.** An employee shall not be required to meet a quota that prevents
3.13 compliance with meal or rest or prayer periods, use of restroom facilities, including
3.14 reasonable travel time to and from restroom facilities as provided under section 177.253,
3.15 subdivision 1, or occupational health and safety standards under this chapter or Minnesota
3.16 Rules, chapter 5205. An employer shall not take adverse employment action against an
3.17 employee for failure to meet a quota that does not allow a worker to comply with meal or
3.18 rest or prayer periods, or occupational health and safety standards under this chapter.

3.19 Subd. 4. **Employee work speed data.** (a) Employees have the right to request orally or
3.20 in writing from their direct supervisor or another representative designated by the employer,
3.21 and the employer shall provide within four business days: (1) a written description of each
3.22 quota to which the employee is subject; (2) a copy of the most recent 90 days of the
3.23 employee's own personal employee work speed data; and (3) a copy of the most recent 90
3.24 days of aggregated employee work speed data for similar employees at the same work site.
3.25 The written description of each quota must meet the requirements of subdivision 2, paragraph
3.26 (b), and the employee work speed data must be provided in a manner understandable to the
3.27 employee. An employee may make a request under this paragraph no more than four times
3.28 per year.

3.29 (b) If an employer disciplines an employee for failure to meet a quota, the employer
3.30 must, at the time of discipline, provide the employee with a written copy of the most recent
3.31 90 days of the employee's own personal employee work speed data. If an employer dismisses
3.32 an employee for any reason, they must, at the time of firing, provide the employee with a
3.33 written copy of the most recent 90 days of the employee's own personal employee work

4.1 speed data. An employer shall not retaliate against an employee for requesting data under
4.2 this subdivision. Discipline means taking a formal action, documented in writing, and does
4.3 not mean conversations surrounding performance improvement or training. An employer
4.4 must formally document any disciplinary action.

4.5 Subd. 5. **High rates of injury.** If a particular work site or employer is found to have an
4.6 employee incidence rate in a given year, based on data reported to the federal Occupational
4.7 Safety and Health Administration, of at least 30 percent higher than that year's average
4.8 incidence rate for the relevant NAICS code's nonfatal occupational injuries and illnesses
4.9 by industry and case types, released by the United States Bureau of Labor Statistics, the
4.10 commissioner shall open an investigation of violations under this section. The employer
4.11 must also hold its safety committee meetings as provided under section 182.676 monthly
4.12 until, for two consecutive years, the work site or employer does not have an employee
4.13 incidence rate 30 percent higher than the average yearly incidence rate for the relevant
4.14 NAICS code.

4.15 Subd. 6. **Enforcement.** (a) Subdivision 2, paragraphs (a) to (c), subdivision 4, and
4.16 subdivision 5 shall be enforced by the commissioner under sections 182.66, 182.661, and
4.17 182.669. A violation of this section is subject to the penalties provided under sections
4.18 182.666 and 182.669.

4.19 (b) A current or former employee aggrieved by a violation of this section may bring a
4.20 civil cause of action for damages and injunctive relief to obtain compliance with this section,
4.21 may receive other equitable relief as determined by a court, including reinstatement with
4.22 back pay, and may, upon prevailing in the action, recover costs and reasonable attorney
4.23 fees in that action. A cause of action under this section must be commenced within one year
4.24 of the date of the violation.

4.25 (c) Nothing in this section shall be construed to prevent local enforcement of occupational
4.26 health and safety standards that are more restrictive than this section.

4.27 Sec. 2. **APPROPRIATION.**

4.28 \$115,000 in fiscal year 2024 and \$91,000 in fiscal year 2025 are appropriated from the
4.29 workers' compensation fund to the commissioner of labor and industry for enforcement and
4.30 other duties regarding warehouse distribution workers safety under Minnesota Statutes,
4.31 section 182.6526.