

# NEW WASHINGTON LAW TARGETS WAREHOUSE PRODUCTION QUOTAS: TOP 10 QUESTIONS FOR EMPLOYERS AND STAFFING AGENCIES

Insights  
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A new law in Washington state aims to protect warehouse employees by setting certain requirements for employers and warehouse staffing agencies. HB 1762, which Governor Inslee signed into law on May 4, defines and requires production quotas, sets communication requirements for them, and limits adverse actions against employees who fail to meet them. The new law will take effect on July 1, 2024, and it will radically alter the way warehouses and warehouse staffing agencies that use quotas can manage their workers. It will also carry civil penalties for non-compliance, so warehouse employers and staffing agencies should start taking steps now to prepare for this significant industry shift. Here are the answers to your top 10 questions about the new law.

## 1. Which Employers and Employees Will be Affected?

The new law applies only to “warehouse distribution centers,” which are defined using [NAICS codes](#). The law encompasses NAICS codes for warehouse and storage entities, merchant wholesalers, and electronic shopping and mail-order houses. Notably, not all warehouses will be affected, as the law applies only to employers that hire at least 100 workers in a single location or 1,000 warehouse workers in Washington state overall.

Additionally, the law defines “employer” broadly to cover any person or entity “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.” The

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law thus appears to regulate staffing agencies and gig economy employers the same way it regulates traditional warehouse employers, provided the other threshold criteria are met. The law specifically states that “all agents or other persons, and affiliates must be deemed employers and are jointly and severally responsible for compliance” with the law.

A covered employee is any non-exempt employee who works at a “warehouse distribution center” for a qualifying employer.

## **2. What is a Production Quota?**

A “quota” is defined as “a work performance standard” where either:

- the worker is required to perform at a specific speed, to complete a specific number of tasks, or handle or produce a quantified amount of material within a certain time period; or
- the worker’s time is “categorized” between time performing tasks and time not performing tasks.

Prong (b) should be concerning for employers, as it is written very broadly and could encompass standard timekeeping for meal and rest breaks if the employer is not careful.

Notably, such a standard is only a “quota” under the law if the employee may suffer an adverse employment action by failing to meet the standard. While undefined in the law, adverse employment actions typically include discipline, demotion, or separation of employment.

## **3. How Does the New Law Regulate Quotas?**

The new law imposes several procedural requirements on employers that use quotas or monitor work speed data, but it does not require employers to start using quotas or collecting work speed data if they do not already. You should note that the law includes some technical data collection and storage requirements. Specifically, it regulates how employers must notify workers of relevant quotas and how employers must collect and store work speed data. As set out below, the law states that a production quota violates the new law if employees are not

provided sufficient time to use a restroom or take meal breaks, or if the policy risks workplace safety standards.

#### **4. Does the Law Impose Any Limits on Setting Quotas?**

Yes, the new law will require employers to consider several factors when establishing a quota. Specifically, employers must consider the following:

- Time for rest breaks;
- Reasonable time to travel to designated locations for rest breaks;
- Reasonable time to travel to on-site designated meal break locations;
- Time to use the restroom, including travel time to the restroom;
- Time to perform any other activities required by the employer that are not covered by the quota; and
- Time to take any action necessary to maintain health and safety standards.

Employers must specifically consider the geography and architecture of the facility and the location when accounting for travel time to break locations.

If a quota does not meet these requirements, then the employee is not required to meet it. The employer cannot discipline, penalize, or separate an employee based on the failure to meet a non-conforming quota.

#### **5. What is Employee Work Speed Data?**

Employers who use quotas will now be required to collect and store employee work speed data. Work speed data includes quantities of tasks performed, quantity of items handled or materials produced, rates of speed with which tasks are performed, measurements or metrics of employee performance under the quota, and time categorized as performing tasks and not performing tasks. Work speed data does not include the documents normally stored in a personnel file, like employee handbook acknowledgements, I-9s, or wage statements.

Notably, employers subject to this law will also now need to establish *aggregated* employee work speed data for all workers in a given warehouse. Each individual worker's work speed data will need to be de-identified and aggregated with other similarly situated workers.

## **6. What are the Data Storage and Recordkeeping Requirements Under the Law?**

Employers subject to this law will be required to keep records of all written quotas, all work speed data, and all aggregated worker data. Records for each individual employee must be preserved for the entirety of each employee's employment and for three years after separation.

When an employee is separated from employment, you must maintain the employee's work speed data from their final six months of work for three years after the separation.

If an employer takes an adverse action against a worker based even partly on failure to meet a quota, then the employer needs to preserve the records on which that decision was based for three years following the adverse action.

## **7. What Notice Must the Employer Give to Employees?**

Employers must provide warehouse workers with written notice and a description of each applicable quota. The notice needs to describe the productivity goals, the consequences of failing to meet those goals, and any incentives or bonus programs associated with meeting or exceeding the quota. Importantly, all quotas must be "understandable, in plain language, and in the employee's preferred language."

You can still change the quota, but you must provide written or verbal notice as soon as possible describing the change — and you'll need to update the written quota within two business days. Employees also have the right to request the following at any time:

- A written description of each quota to which the employee is subject;
- A copy of the employee's own personal work speed data for the prior six months; and

- A copy of the prior six months of aggregated work speed data for similar employees at the same warehouse distribution center.

The employer must provide this information at no cost. Former employees have up to three years after their separation to request the same information.

## **8. Does the Law Have an Anti-Retaliation Provision?**

Yes, the law's anti-retaliation provision protects employees from adverse actions after they request records, complain to the employer about the quotas, or file a claim. The protection applies even to employees who mistakenly, but in good faith, engage in any of those protected activities.

Any adverse action taken against an employee within 90 days of the protected activity is presumptively unlawful. To rebut the presumption, the employer should have strong evidence that the adverse action was taken for another permissible reason and that the protected activity was not "a motivating factor" in the adverse action.

## **9. How Will the Law Be Enforced?**

The final version of the law does not explicitly authorize employees to file a lawsuit. Instead, the law will be enforced by Washington's Department of Labor and Industries, which will have broad discretion to investigate back to three years prior to the complaint being filed and will also have the right to inspect and subpoena records. The department will be able to enforce penalties for each violation, starting at \$1,000 for a first violation and up to \$10,000 per violation for subsequent infractions.

## **10. How Can Warehouse Employers Get Ready for the New Requirements?**

Warehouse employers will face an uphill compliance battle with these laws. Therefore, we suggest that you consider taking the following five steps now:

- **Review related policies and practices.** Start developing solid recordkeeping, data collection, and data storage infrastructure practices to avoid friction once the law takes effect.
- **Build in compliant break periods.** Rest and meal period locations and procedures should also be examined to

ensure that employees can meaningfully receive these required breaks.

- **Focus on efficiency.** Warehouse employers will need to develop policies and strategies to comply with the quota requirements so they can remain flexible and respond to business needs as they arise.
- **Address data privacy concerns.** Additionally, the data retention and storage requirements will raise questions related to data privacy and cybersecurity that will need to be addressed when implementing any quota program.
- **Review with counsel.** Some warehouse employers may be deterred from continuing to use quotas under this law given the rather onerous requirements it places on employers. Regardless of the worker management model that is right for your business, Fisher & Phillips attorneys are available to discuss compliance strategies to help avoid unnecessary risks and costs to your warehouse business.

## Conclusion

We'll monitor developments in this area and provide updates as warranted, so make sure you are subscribed to the [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have any questions about how these changes may impact your business, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Seattle office](#) or [Transportation and Supply Chain Team](#).