



Will Trend to Limit Warehouse Production Quotas Go National? 3 Things Employers Should Know

Insights

5.23.24

Congress is currently considering a bill that would restrict production quotas for warehouse workers and mandate certain safety measures, following in the footsteps of several states that have implemented similar restrictions. Supporters say the proposal would promote transparency and improve working conditions, but business groups fear it would create unnecessary burdens and empower labor unions to join workplace investigations. Moreover, the bill would require many employers to overhaul their systems for tracking production and managing workers. While the bill faces an uphill battle in Congress, some states have already taken matters into their own hands by introducing – and even passing – similar laws. Here are three things you need to know about this new trend and how it could impact your operations.

1. Key Aspects of the Federal Proposal

Significant Limits on Quotas. The federal proposal, which was introduced in the Senate on May 2, would cover employees at large warehouse distribution centers who must meet certain performance quotas. While the proposed legislation would not ban production quotas altogether, it would set significant limitations aimed at keeping workers safe. Among other requirements, S.4260 would prohibit quotas that:

- Prevent workers from taking meal, rest, and other breaks that are required under federal, state, or local law.
- Prevent compliance with health and safety laws.
- Prevent employees from taking bathroom breaks that allow for a reasonable time to travel to and from the facilities.
- Interfere with a covered employee's right to reasonable accommodations or nondiscrimination.
- Set performance targets that measures total output for the covered employee in increments shorter than one day.
- Measure and evaluate output or performance during an employee's entitled breaks.
- Prevent or discourage employees from exercising their rights under the National Labor Relations Act (NLRA), other federal laws, or a collective bargaining agreement.

- Violate the principles of work measurement found in the Code of Work Measurement Ethics of the American Institute of Industrial Engineers.

Hurdles to Disciplining Workers. Although worker safety is critical for all businesses, the proposal would create substantial red tape for employers that want to take disciplinary action, even for legitimate reasons that are unrelated to production quotas. When a covered employee is disciplined or fired within 90 days of engaging in protected activity under the act, the bill would create a presumption that the adverse action was taken in violation of the act. Employers would have to show clear and convincing evidence that the action was taken for other permissible reasons and that the protected activity was not a motivating factor.

More Tools for Labor Unions. The proposal would also create a new unfair labor practice under the NLRA if an employer's quota significantly discourages or prevents – or is intended to significantly discourage or prevent – an employee from exercising their right to organize under Section 7 of the NLRA. In fact, setting a quota within 90 days of the employee exercising Section 7 rights would establish a rebuttable presumption that the quota violates the NLRA. Additionally, the Warehouse Worker Protection Act would create a Quota Task Force allowing labor unions and worker advocacy groups to assist in enforcement, train employees on their rights, and provide recommendations on how to implement related regulations.

Additional Requirements. The bill would also create certain disclosure, notice, and recordkeeping requirements, as well as anti-retaliation rules. Notably, employers would need to keep records of work speed data, provide a written description of quota requirements and any changes to those requirements, and provide written explanations of disciplinary and termination decisions, with some exceptions.

Steep penalties for violations. Depending on the type of violation, employers could pay \$10,000, \$25,000, or \$76,987 per violation – and even up to \$769,870 for each violation that is repeat or willful.

2. Some States Already Have Mandates

You should note that some states already have their own versions of the Warehouse Worker Protection Act. Laws in California, New York, Oregon, Washington, and Minnesota have common themes, such as:

- Transparency requirements.
- Limits on production quotas.
- Notice, recordkeeping, and anti-retaliation provisions.

In California, New York, Oregon, and Washington, the laws apply to employers that control the wages, hours, and working conditions of at least 100 employees at a single warehouse distribution

center or 1,000 warehouse workers in the state overall. Minnesota's law covers employers with at least 1,000 employees at one or more warehouse distribution center in the state.

3. More States Are Considering Warehouse Worker Protections

Even if you don't operate in a state with a Warehouse Worker Protection Act, you should keep an eye on developments in this area, as quite a few states are considering similar measures. For example, [Arizona](#), [Illinois](#), [Rhode Island](#), and [Massachusetts](#) all have pending legislation. Although recent efforts failed in Nebraska, Mississippi, and Connecticut, we may see revived efforts in the coming legislative sessions in these states and more.

What Should Warehouse Employers Do?

Whether your warehouse distribution centers are located in California, New York, or Minnesota where these laws already apply; Washington or Oregon, where laws will soon take effect; or a location that's considering similar legislation for the future, you can take steps now to get you programs in order:

- **Review related policies and practices** including your recordkeeping, data collection, and data storage infrastructure practices.
- **Build in compliant break periods.** Rest and meal period locations and procedures should also be examined to ensure that employees can meaningfully receive required breaks where applicable.
- **Focus on efficiency.** Develop compliant policies and strategies that still allow you to remain flexible and respond to business needs as they arise.
- **Review with counsel.** Some warehouse employers may be deterred from continuing to use quotas in locations with such laws, given the rather onerous requirements they place 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 issues may impact your business, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Transportation and Supply Chain Team](#).

Related People





Christopher J. Boman

Partner

949.851.2424

Email



Benjamin M. Ebbink

Partner

916.210.0400

Email



Braden Lawes

Senior Government Affairs Analyst
202.916.7176
Email

Service Focus

Government Relations

Labor Relations

Wage and Hour

Workplace Safety and Catastrophe Management

Industry Focus

Transportation and Supply Chain