

EMPLOYER FAQs ON OREGON'S NEW WAREHOUSE WORKERS LAW

Insights

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An Oregon law that took effect January 1 gives new protections to certain warehouse employees, and noncompliance could subject your business to civil penalties or an administrative complaint. While HB 4127, which Governor Kotek signed into law last year, does not ban or limit productivity quotas, it does impose new notice and record requirements on certain warehouse distribution centers that use them. We'll break down the new rules through a series of frequently asked questions and give you the steps you should take to comply.

The Basics

What is HB 4127?

[HB 4127](#) protects certain Oregon warehouse workers by requiring covered employers that use quotas to comply with certain notice and record requirements. The new state law, which took effect January 1, applies only to warehouse distribution centers above a certain headcount.

- An employer uses a "quota" if an employee may suffer an adverse employment action for failing 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."
- A "warehouse distribution center" is an establishment engaged in any services relating to warehousing and storage, merchant wholesale of durable or nondurable goods, or retailing using electronic shopping and mail-order houses (as those terms are used in the [NAICS codes](#)), subject to limited exceptions.

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Limited exceptions. Warehouse distribution centers do **not** include establishments engaged in any services relating to farm product or refrigerated warehousing and storage; merchant wholesale of professional medical, dental, and hospital equipment and supplies; couriers and express delivery services; or merchant wholesale distribution of drugs and druggists' sundries, carbonated beverages, wine and distilled alcoholic beverages, or beer and ale.

Who must comply?

An employer must comply with the new state law if it, whether directly or indirectly (such as through a staffing agency), employs or exercises control over the wages, hours, and working conditions of at least:

- **100 employees** at a single warehouse distribution center in Oregon; or
- **1,000 employees** at one or more warehouse distribution centers statewide.

Who counts as an employee?

The law defines “employee” as any non-exempt employee who works at a warehouse distribution center, excluding drivers or couriers.

Are there any exceptions for union employers?

HB 4127 does not apply to any employer that is subject to a collective bargaining agreement that provides:

- an employee **performance evaluation metric** that is subject to review and negotiation according to the terms of the agreement; and
- **rights to request records** that are substantially equivalent to the law's record requirements.

What is not required?

HB 4127 does not require employers to start using quotas or monitor work speed data if they do not do so already. It also does not impose any limits on the quotas employers can set.

Notice Requirements

What are the notice requirements?

Under the new state law, employers are:

- **required to provide a written summary of any applicable quota to each employee subject to that quota (and the notice must meet certain content and timing requirements as detailed in the sections below); and**
- **prohibited from taking adverse action against an employee for failing to meet a quota unless the employee received the written summary for the relevant quota.**

Adverse action. According to this [employer resource](#) from the Oregon Bureau of Labor and Industries (BOLI), “adverse action” in this context can include demotions, reassignments, shift changes, discipline, termination, or other negative impacts on the terms and conditions of someone’s employment.

The notice provisions became operative on January 31.

What content must be included in the notice?

The content of the notice must include:

- **the quantified number of tasks to be performed, or materials to be produced or handled, within a defined period; and**
- **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.**

What are the timing requirements for the notice?

An employer must provide such notice to an employee:

- **at the time of hire;**
- **within two business days after making a change to a quota applicable to the employee; and**
- **when taking an adverse employment action against the employee for failing to meet the applicable quota.**

Record Requirements

What are the record requirements?

The record requirements apply only to employers that monitor **work speed data**. Such employers must, upon request, timely provide certain types of records (as detailed in a section below) to current employees – and to former employees who make a request within three years after separating from employment – who believe they have been disciplined for failing to meet a quota.

How is “work speed data” defined?

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 related to meeting a quota:

- the **quantity of tasks** performed;
- the **quantity of items** or materials handled or produced;
- the **rate or speed** at which the employee performs assigned tasks;
- **measurements or metrics of employee performance** in relation to an applicable quota; and
- **time categorized** as performing tasks or not performing tasks.

Work speed data does **not** include data or information that does not relate to the performance of a quota, such as qualitative performance assessments, personnel records, or itemized wage statements.

What types of records must be provided upon request?

Upon a proper request, employers must provide a free copy of a record that includes:

- **the information required to be included in the quota notice** described above (or, in the case of a former employee, such information related to the applicable quota for the 90 days immediately preceding the employee’s separation from employment); and
- **the employee’s work speed data** for the 90 days immediately preceding the date of the employee’s request (or, in the case of a former employee’s timely request, their work speed data for the 90 days immediately preceding their most recent separation from employment).

How quickly must an employer respond to such requests?

An employer must provide a copy of any such requested record as soon as practicable, but not later than **21 calendar days** from the request date.

Enforcement

HB 4127 states that BOLI will address alleged violations of the law.

- **Notice violations.** An employee or former employee who alleges a violation of the notice requirements may file a complaint with BOLI.
- **Disclosure violations.** BOLI may order an employer to produce the records required to be disclosed. An employer that willfully violates the disclosure requirements may face a civil penalty of up to \$1,000.

Employer Best Practices

What should Oregon warehouse employers do?

If you have employees at warehouse distribution centers in Oregon, you should:

- **determine if you meet the employee threshold** and must comply with HB 4127;
- make sure you **timely provide any required notices** to each employee subject to a work standard that qualifies as a “quota” under the law;
- if you monitor work speed data, **keep records** of the information employees are entitled to receive upon request and **store it for at least 90 days** (plus an **additional three years** following an employee’s separation from employment); and
- **provide copies of such records** upon request as soon as practicable and within **21 days**.

In addition, while HB 4127 does not require it, you might want to consider evaluating the impact of your quotas on employees’ well-being, such as whether your policy gives employees sufficient time to take rest and meal breaks or whether it risks workplace safety standards.

What about other states?

Other states have their own versions of warehouse worker protection laws, including [California](#), [New York](#), [Washington](#), and [Minnesota](#). A handful of other states recently considered similar laws, and last year we asked [whether the trend to regulate warehouse quotes would go national](#). You should stay tuned for any developments in this area and work with counsel to determine your compliance obligations.

Conclusion

Regardless of the worker management model that is right for your business, our FP attorneys are available to discuss compliance strategies to help avoid unnecessary risks and costs to your warehouse business.

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, any attorney in [our Portland office](#), or any attorney on our [Transportation and Supply Chain Team](#).