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CALIFORNIA VOTES TO REGULATE WAREHOUSE DISTRIBUTION CENTER PERFORMANCE QUOTAS FOR NONEXEMPT EMPLOYEES

Article

9.21.21

In the first legislation of its kind, California's AB 701, will require employers running warehouse distribution centers to report productivity and performance quotas assigned to their workforce. The stated purpose behind the new legislation is to hold warehouse distribution center employers accountable for ensuring proper meal and rest periods for their employees, to increase workplace safety, and ensure employees receive the full benefit of relevant minimum wage laws when quotas are in play. The bill passed the California Senate and will undergo a final "concurrence" vote in the Assembly before it is presented to the Governor for his signature. The Governor has until October 20, 2021 to either sign or veto the bill.

WHY THIS LEGISLATION IS IMPORTANT

AB 701 bars employers from mandating quotas that circumvent workers' ability to take their legally protected meal, rest, or bathroom breaks. Employers who utilize quotas to measure employee performance will also be prohibited from using them in such a way that employees fail to adhere to standards set by occupational health and safety laws because they feel forced to work at an overly fast pace. Under the provisions of the bill, warehouse employers must disclose productivity quotas to employees, their representatives, and other government agencies under certain circumstances and as requested.

NEW CALL FOR TRANSPARENCY

This new legislation seeks to force transparency regarding employers productivity and performance quotas. All warehouse distribution employers will now need to provide employees a written description of all quotas used to measure job performance and productivity within 30 days of hiring or this law taking effect. In addition, the employer must lay out what adverse actions may be taken by the employer if the employee fails to meet the quotas. Notably, the bill gives employees the right to request a written description of each quota required by the employer, as

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well as any reports on that workers' individual productivity output within the prior 90 days if the employee believes any quota is interfering with their ability to take meal or rest breaks, use the restroom, or meet workplace safety regulations. Government officials such as the Labor Commissioner have the right to request and review these records as well as enforcing the provisions of this bill.

VIOLATIONS & ENFORCEMENT

Under part of this bill, there is a rebuttable presumption of retaliation if an adverse employment action is taken against an employee within 90 days of either their first request for quota information or personal productivity in a calendar year, or within 90 days of a complaint alleging a violation of this bill's new requirements. The bill allows former or current employees claiming violations to sue for injunctive relief, and to recover their costs and attorneys' fees if they prevail. Although there is no private right of action to sue for damages, employees may also initiate suit under the California Labor Code's Private Attorneys General Act ("PAGA") and seek civil penalties for alleged violations. In addition, the legal requirements of this law will be enforced by the Labor Commissioner, who has the authority to request access to employer data regarding quotas, workplace injuries, or enforcement actions taken against employees who do not meet quotas.

WAREHOUSE DISTRIBUTION CENTER EMPLOYER TAKEAWAYS:

- Upon hiring an employee, or within 30 days of the law's effective date, employers must provide a written description of each quota the employee is responsible for maintaining, including the number of tasks to be performed, and the materials to be produced or handled, within a specified time period.
- This written disclosure must also identify the potential adverse employment actions that could result as a consequence of the employee's failure to meet any required quotas.
- Employer may not require employee to skip mandated rest periods, meal or bathroom breaks for the purpose of meeting a quota. Employers also may not take any adverse employment action for failure to meet any quota not so disclosed in writing.
- Employer may not require or encourage any employees to expose themselves to added risk of injury or conduct their work in such a way that violates health and safety laws in an effort to meet employer-mandated quotas.
- Any action taken by an employee as a means to comply with occupational health and safety laws or standards must be counted as on task and productive time as it relates to quotas or as part of any monitoring system.
- An employee may request a copy of their productivity and quota output from the employer if they feel their rights under this provision have been circumvented. The employer, within 21 days, must comply with such request and provide the employee with written documentation of their personal work speed data within the preceding 90 days.
- A former or current employee may file a lawsuit for injunctive relief including reinstatement back to their prior job position, and seek their attorneys' fees and costs upon prevailing. In this regard, the law creates a rebuttable presumption of retaliation in the above-noted manners.
- A former or current employee may also file and pursue a PAGA claim against the employer for any alleged violation. However, an employer is entitled to advance notice of any such claim, and has a statutory entitlement to cure any alleged deficiencies. Notably, this bill's PAGA-related provisions may contradict the PAGA statute itself, which precludes any such action "for any violation of a ... notice ... requirement"
- The Labor Commissioner is tasked with the remaining enforcement of this law and has the authority to request access to employer data regarding quotas, workplace injuries, or enforcement actions taken against employees who do not meet quotas.

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The attorneys at WSHB stand ready to inform and advise all clients on the implication of this new law on their business operations. Please do not hesitate to reach out to a member of our team with any questions or concerns.