STATE OF NEW YORK

8922--A

IN SENATE

April 28, 2022

Introduced by Sens. RAMOS, BAILEY, CLEARE, GAUGHRAN, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, KAVANAGH, KENNEDY, PERSAUD, REICHLIN-MELNICK, RIVERA, SALAZAR, SAVINO, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to establishing the warehouse worker protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "warehouse worker protection act".

§ 2. Legislative findings. The legislature finds and declares that:

(a) The rapid growth of just-in-time logistics and same- and next-day consumer package delivery, and advances in technology used for tracking employee productivity, have led to a rise in the number of warehouse and distribution center workers who are subject to quantified work quotas.

(b) Warehouse and distribution center employees who work under such quotas are expected to complete a quantified number of tasks within specific time periods, often measured down to the minute or second, and face adverse employment action, including suspension or termination, if they fail to do so.

(c) Those quotas generally do not allow for workers to comply with safety guidelines or to recover from strenuous activity during productive work time, leaving warehouse and distribution center employees who work under them at high risk of injury and illness.

(d) The quotas under which warehouse and distribution center employees regularly work also affect their compensation. Warehouse and distribution center employees who work under a quota may not receive the full benefit of minimum wages if their quota is increased to make up for the direct or indirect effect of a minimum-wage increase.

(e) Quotas in occupations that are already physically demanding incentivize unsafe work, resulting in an increase in injuries. The workforce in warehouse and logistics is largely comprised of people of color who

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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depend upon these jobs to provide for their families and often see no alternative but to prioritize quota compliance over their own safety. These workers end up working faster than is healthy in order to keep their jobs.

(f) Workplace injuries can take a terrible toll on workers, their families and their communities, and can create substantial costs for employers. According to the most recent data (2020) released by the Bureau of Labor Statistics, the warehouse industry itself reports a rate of serious work-related injuries involving lost time or restricted duty (4.0 cases/100 full-time workers) that is more than twice the average injury rates for all private industry (1.7 cases/100 full-time workers). The most common types of work-related serious injury reported by employers in the warehouse sector are musculoskeletal injuries, which often require workers to miss work and can force workers permanently out of the job and even out of the workforce.

§ 3. The labor law is amended by adding a new article 21-A to read as follows:

ARTICLE 21-A

WAREHOUSE WORKER PROTECTION ACT

Section 780. Definitions.
781. Quotas.
782. Protection from quotas.
783. Time on task.
784. Recordkeeping.
785. Right to request.
786. Unlawful retaliation.
787. Enforcement.
788. Other powers.

§ 780. Definitions. As used in this article:

1. "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

2. "Designated employee representative" means any employee representative, including but not limited to an authorized employee representative that has a collective bargaining relationship with the employer.

3. "Employee" means a nonexempt and non-administrative employee who works at a warehouse distribution center and is subject to a quota as defined in this section.

4. (a) "Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.

(b) "Aggregated data" means information that an employer has combined or collected together in summary or other form such that the data cannot be identified with any individual.

5. "Employer" means a person 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, at any time in the prior twelve months, employs or exercises control over the wages, hours, or working conditions of one hundred or more employees at a single warehouse distribution center or five hundred or more employees at one or more warehouse distribution centers in the state.

For the purposes of this subdivision: (a) all employees employed directly or indirectly, or through an agent or any other person, as described in the opening paragraph of this subdivision, as well as any employee employed by a member of a controlled group of corporations of which the employer is a member, shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state; and (b) all agents or other persons, as described in the opening paragraph of this subdivision, and all members of a controlled group of corporations of which the employer is a member, shall be deemed to be employers and shall be jointly and severally responsible for compliance with this article. For purposes of this subdivision, the term "controlled group of corporations" shall be defined as provided under Section 1563 of the Internal Revenue Code, 26 U.S.C. section 1563, except that fifty percent shall be substituted for eighty percent where eighty percent is specified in that definition.

6. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

7. "Quota" means a work standard which:

(a) an employee is assigned or required to perform: (i) at a specified productivity speed; or a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period; or

(b) an employee's actions are categorized between time performing tasks and not performing tasks, and the employee's failure to complete a task performance standard or recommendation may have an adverse impact on the employee's continued employment or the conditions of such employment.

8. "Warehouse distribution center" means an establishment as defined by any of the following North American industry classification system ("NAICS") codes, however such establishment is denominated:

(a) four hundred ninety-three for warehousing and storage;

(b) four hundred twenty-three for merchant wholesalers, durable goods;

(c) four hundred twenty-four for merchant wholesalers, nondurable goods;

(d) four hundred fifty-four thousand one hundred ten for electronic shopping and mail-order houses; or

(e) four hundred ninety-two thousand one hundred ten for couriers and express delivery services.

§ 781. Quotas. Each employer shall provide to each employee, upon hire, or within thirty days of the effective date of this article, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. Each time the quota changes thereafter, the employer shall provide an updated written description of each quota to which the employee is subject within two business days of such quota change. Each time an employer takes an adverse employment action against an employee, the employer shall provide that employee with the applicable quota for the employee.

§ 782. Protection from quotas. An employee shall not be required to meet a quota that prevents compliance with meal or rest periods or use

of bathroom facilities, including reasonable travel time to and from bathroom facilities. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods or for failure to meet a quota that has not been disclosed to the employee pursuant to section seven hundred eighty-one of this article.

§ 783. Time on task. Consistent with existing law, paid and unpaid breaks shall not be considered productive time for the purpose of any quota or monitoring system unless the employee is required to remain on call.

§ 784. Recordkeeping. 1. Each employer shall establish, maintain, and preserve contemporaneous, true, and accurate records of the following: (a) each employee's own personal work speed data; (b) the aggregated work speed data for similar employees at the same establishment; and (c) the written descriptions of the quota such employee was provided pursuant to section seven hundred eighty-one of this article. Such records shall be maintained and preserved throughout the duration of each employee's period of employment and made available to the commissioner upon request.

2. Subsequent to any employee's separation from the employer, such records relating to the six month period prior to the date of the employee's separation from the employer shall be preserved for a period of time not less than three years subsequent to the date of such employee's separation and made available to the commissioner upon request. Nothing in this section shall require an employer to keep such records if such employer does not use quotas as defined in this article or monitor work speed data.

§ 785. Right to request. 1. A current employee has the right to request a written description of each quota to which the employee is subject, a copy of the employee's own personal work speed data, and a copy of the prior six months of aggregated work speed data for similar employees at the same establishment.

2. A former employee has the right to request, within three years subsequent to the date of his or her separation from the employer, a written description of the quota to which they were subject as of the date of their separation, a copy of the employee's own personal work speed data for the six months prior to their date of separation, and a copy of aggregated work speed data for similar employees at the same establishment for the six months prior to their date of separation.

3. Such requested records pursuant to this section shall be provided at no cost to the current or former employee.

4. The employer shall provide such requested records pursuant to this section as soon as practicable, provided that requested written descriptions of the quota shall be provided no later than two business days following the date of the receipt of the request and requested personal work speed data and aggregated work speed data shall be provided no later than seven business days following the date of the receipt of the request.

5. Nothing in this section shall require an employer to use quotas as defined in this article or monitor work speed data. An employer that does not monitor this data has no obligation to provide it.

§ 786. Unlawful retaliation. 1. No person, including but not limited to an employer, his or her agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, shall discharge or in any way retaliate, discriminate or take adverse action against any

person for exercising any rights conferred under this article, or for being perceived as exercising rights conferred by this article, including but not limited to:

(a) Initiating a request for information about a quota or personal work speed data pursuant to subdivision one of section seven hundred eighty-five of this article.

(b) Making a complaint related to a quota alleging any violation of section seven hundred eighty-one, seven hundred eighty-two, seven hundred eighty-three, or seven hundred eighty-five of this article to the commissioner, any other local, state, or federal governmental agency or official, or the employer.

2. An employee need not explicitly refer to this article or the rights enumerated herein to be protected from an adverse action. Protections of this section shall apply to former employees and to employees who mistakenly but in good faith allege violations of this article.

3. If a person takes adverse action against an employee within ninety days of the employee's engaging or attempting to engage in activities protected by this article, such conduct shall raise a rebuttable presumption that the action is an adverse action in violation of this article. Such presumption may be rebutted by clear and convincing evidence that: (a) the action was taken for other permissible reasons; and (b) the engaging or attempting to engage in activities protected by this article was not a motivating factor in the adverse action.

§ 787. Enforcement. The commissioner shall adopt rules and regulations implementing the provisions of this article. The commissioner shall be authorized to enforce the provisions of this article and to assess civil penalties in a manner consistent with sections two hundred thirteen, two hundred fifteen and two hundred eighteen of this chapter.

§ 788. Other powers. The attorney general, either upon his or her own complaint or the complaint of any person acting for themselves or the general public, has the authority to prosecute actions, either civil or criminal, for violations of this article, or to enforce the provisions thereof independently and without specific direction of the commissioner.

§ 4. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 5. This act shall take effect on the sixtieth day after it shall have become a law.