

STATE OF NEW YORK

10020

IN ASSEMBLY

April 29, 2022

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Labor

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:

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

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

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

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

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

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

22 (e) Quotas in occupations that are already physically demanding incen-
23 tivize unsafe work, resulting in an increase in injuries. The workforce
24 in warehouse and logistics is largely comprised of people of color who
25 depend upon these jobs to provide for their families and often see no
26 alternative but to prioritize quota compliance over their own safety.
27 These workers end up working faster than is healthy in order to keep
28 their jobs.

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

LBD15159-02-2

(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.

(g) Warehouse companies often require workers to perform fast paced manual material handling tasks. These involve well-known risk factors for serious injury such as rapid pace, repetitive forceful exertions like lifting heavy packages, and awkward postures like twisting/bending, and combinations thereof that are likely to cause musculoskeletal injuries. Scientific evidence shows that effective ergonomic interventions, such as reducing the pace, package weights and stressful postures, can lower the incidence and severity of work-related musculoskeletal injuries. The research is clear that the most effective method for reducing or eliminating these risk factors is to implement an ergonomics program that includes well-informed analysis of the worksite, implementation of solutions to reduce the dangerous risk factors, professionally competent medical management, effective worker training, and meaningful involvement by workers and their representatives in all aspects of the program.

§ 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. Right to request.

785. Injury reduction program.

786. Unlawful retaliation.

787. Subpoena.

788. Enforcement.

789. Private right of action.

790. Records.

791. 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 employee who works at a warehouse distribution center.

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

1 employee performance in relation to a quota, and time categorized as
2 performing tasks or not performing tasks.

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

6 5. "Employer" means a person who directly or indirectly, or through an
7 agent or any other person, including through the services of a third-
8 party employer, temporary services, or staffing agency, independent
9 contractor, or any similar entity, at any time in the prior twelve
10 months, employs or exercises control over the wages, hours, or working
11 conditions of fifty or more employees at a single warehouse distribution
12 center or five hundred or more employees at one or more warehouse
13 distribution centers in the state.

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

30 6. "Musculoskeletal injuries and disorders" means work related inju-
31 ries, or disorders, of the muscles, nerves, tendons, ligaments, joints,
32 cartilage of the upper and lower limbs, neck and lower back (including
33 spinal discs) that (a) are caused by sudden or sustained physical
34 exertion, or (b) are not the result of any instantaneous non-exertion
35 event, such as slips, trips, or falls.

36 7. "Person" means an individual, corporation, partnership, limited
37 partnership, limited liability partnership, limited liability company,
38 business trust, estate, trust, association, joint venture, agency,
39 instrumentality, or any other legal or commercial entity, whether domes-
40 tic or foreign.

41 8. "Qualified ergonomist" means an ergonomist who is able to demon-
42 strate proficiency in the core, minimum competencies of ergonomics and
43 injury prevention, as defined by the commissioner. Until the commission-
44 er defines such competencies and approves ergonomists in accordance with
45 such competencies, consultants approved by the commissioner under 12
46 CRR-NY 59 and 60 with a credential as a certified safety professional or
47 certified industrial hygienist shall be deemed to qualify as an ergonom-
48 ist.

49 9. "Quota" means a work standard which:

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

54 (b) an employee's actions are categorized between time performing
55 tasks and not performing tasks, and the employee's failure to complete a
56 task performance standard or recommendation may have an adverse impact

1 on the employee's continued employment or the conditions of such employ-
2 ment.

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

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

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

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

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

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

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

26 § 782. Protection from quotas. An employee shall not be required to
27 meet a quota that prevents compliance with meal or rest periods, use of
28 bathroom facilities, including reasonable travel time to and from bath-
29 room facilities, or increases the risks of musculoskeletal injuries and
30 disorders. An employer shall not take adverse employment action against
31 an employee for failure to meet a quota that does not allow a worker to
32 comply with meal and rest periods, or minimize the risks of musculosk-
33 eletal injuries and disorders, or for failure to meet a quota that has
34 not been disclosed to the employee pursuant to section seven hundred
35 eighty-one of this article.

36 § 783. Time on task. 1. Any actions taken by an employee to minimize
37 the risks of musculoskeletal injuries and disorders and comply with
38 requirements of the injury prevention program shall be considered time
39 on task and productive time for purposes of any quota or monitoring
40 system.

41 2. Notwithstanding subdivision one of this section, consistent with
42 existing law, paid and unpaid breaks shall not be considered productive
43 time for the purpose of any quota or monitoring system unless the
44 employee is required to remain on call.

45 § 784. Right to request. 1. (a) A current or former employee has the
46 right to request, and the employer shall provide at no cost to the
47 employee, a written description of each quota to which the employee is
48 subject, a copy of the employee's own personal work speed data and a
49 copy of the prior six months of aggregated work speed data for similar
50 employees at the same establishment.

51 (b) If a former employee requests a written description of the quotas
52 to which they were subject and a copy of their own personal work speed
53 data pursuant to paragraph (a) of this subdivision, the employer shall
54 provide six months of the former employee's quotas and personal work
55 speed data for the six months prior to the date of the employee's sepa-
56 ration from the employer.

1 2. An employer that receives a written or oral request for information
2 pursuant to subdivision one of this section shall comply with the
3 request as soon as practicable, but no later than two business days
4 following the date of the request.

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

8 § 785. Injury reduction program. Every employer subject to this
9 section shall establish and implement an injury reduction program
10 designed to identify and minimize the risks of musculoskeletal injuries
11 and disorders among workers involved in performing manual materials
12 handling tasks. The program shall include: worksite evaluation; control
13 of exposures, including pace, which have caused or have the potential to
14 cause musculoskeletal injuries and disorders; employee training; medical
15 management; and employee involvement.

16 1. The employer shall assure that each job, process, or operation of
17 work activity covered by this section or a representative number of such
18 jobs, processes, or operations of identical work activities shall have a
19 written work site evaluation by a qualified ergonomist for risk factors
20 which have or are likely to cause musculoskeletal injuries and disorders.
21 Such risk factors shall include, but are not limited to, rapid
22 pace, forceful exertions, repetitive motions, twisting, bending, and
23 awkward postures and combinations thereof that had caused or are likely
24 to cause musculoskeletal injuries and disorders.

25 (a) Any worksite evaluations shall also determine whether any employ-
26 ees exposed to such risk factors are subject to either personnel action
27 with the potential for adverse action, or adverse action or termination
28 themselves, arising in whole or in part from an employer's use of quotas
29 to determine employee assignments.

30 (b) All such worksite evaluations shall obtain recommendations from
31 workers who regularly perform those jobs on the possible risk factors
32 and any workplace changes that can reduce such risk factors.

33 (c) Copies of such worksite risk factor evaluations shall be made
34 available to workers and their representatives upon request, at no cost,
35 within one business day of such request. Workers and their represen-
36 tative shall be notified in writing of the results of the worksite eval-
37 uation. Employers shall maintain accessible copies of such evaluations
38 at locations within the warehouse and shall make such copies readily
39 available to workers.

40 (d) An initial worksite evaluation shall be conducted within three
41 months after the effective date of this article. Worksite evaluations
42 shall be reviewed and updated at least annually thereafter. A new analy-
43 sis of risk factors shall be conducted in accordance with the provisions
44 of the opening paragraph of this subdivision whenever a new job, proc-
45 ess, or operation is introduced which could increase the risk factors
46 for musculoskeletal injuries and disorders. Such new analysis shall be
47 conducted within thirty days of the creation or change of a job, process
48 or operation.

49 (e) Within three months of the effective date of this article, the
50 commissioner shall form a task force chaired by a recognized academic
51 leader in the field of ergonomics in New York state and including, but
52 not limited to, representatives from the warehouse workforce, labor
53 organizations active in the warehousing industry, and employers in the
54 industry, to recommend the core competencies required for the certif-
55 ication of qualified ergonomists. Within six months of the effective
56 date of this article, the commissioner shall adopt a standard and proc-

1 ess for certifying qualified ergonomists based on the recommendations of
2 the task force.

3 2. The employer shall correct in a timely manner any risk factors
4 identified as having caused or being likely to cause musculoskeletal
5 injuries and disorders. For any corrections which require more than
6 thirty days to complete, the employer shall revise, as needed, and
7 provide a schedule for such proposed corrections. Such schedule shall be
8 included in the evaluations provided to workers and their represen-
9 tatives.

10 (a) Where the employer demonstrates that it is unable to eliminate
11 identified risk factors, the employer shall minimize the exposures to
12 the extent feasible.

13 (b) In reducing risk factors, the employer shall consider:

14 (i) engineering controls and redesigning work stations to change
15 shelving heights, provide adjustable fixtures or tool redesign; and

16 (ii) administrative controls, such as job rotation which reduces the
17 exposure to risk factors, reduced work pacing or additional work breaks.

18 (c) Employers shall maintain records of steps taken to eliminate or
19 reduce risk factors and shall make copies available to workers and their
20 representatives upon request.

21 3. All employers covered by this section shall provide injury
22 reduction training to all employees involved in performing manual mate-
23 rials handling jobs and tasks at the warehouse during normal work hours
24 and without suffering a loss of pay. Such training shall be provided in
25 a language and vocabulary that the workers understand and shall be
26 repeated annually. The training shall also be provided to the workers'
27 supervisors. Such training shall be in addition to the training required
28 under section twenty-seven-d of this chapter and shall include:

29 (a) The early symptoms of musculoskeletal injuries and disorders and
30 the importance of early detection;

31 (b) Musculoskeletal injury and disorder risk factors and exposures at
32 work, including the hazards posed by excessive rates of work;

33 (c) Methods to reduce risk factors for musculoskeletal injuries and
34 disorders, including both engineering controls and administrative
35 controls, such as limitations on work pace and increased scheduled and
36 unscheduled breaks;

37 (d) The employer's program to identify risk factors as required under
38 this section and prevent musculoskeletal injuries and disorders, includ-
39 ing the summary protocols for medical treatment approved by the employ-
40 er's medical consultant;

41 (e) The rights and function of workplace safety committees established
42 under section twenty-seven-d of this chapter and the rights of employees
43 to report any risk factors, other hazards, injuries or health and safety
44 concerns; and

45 (f) Training on the unlawful retaliation of any provision in this
46 section, including the disciplinary actions required when supervisors or
47 managers violate the law or policy, as well as the employer's policy
48 prohibiting any workplace discrimination.

49 4. Any on-site medical office or first aid station that sees workers
50 in warehouses covered by this section with symptoms of musculoskeletal
51 injuries and disorders shall be staffed with medical professionals oper-
52 ating within their legal scope of practice.

53 (a) Employers shall assure that staffing and the practice of any first
54 aid or medical station meets state requirements for physician super-
55 vision of nurses, emergency medical technicians or other non-physician
56 personnel.

(b) In all warehouses where employers require that workers with signs and symptoms of musculoskeletal injuries and disorders shall first be seen by an on-site medical or first aid provider or have the approval of the employer prior to being sent to a doctor, the employer shall consult with a medical consultant who is licensed by New York state and board certified in occupational medicine.

(i) The employer shall obtain from the medical consultant a written evaluation of the medical management program and protocols followed in the warehouse for identification and treatment of musculoskeletal injuries and disorders and shall include recommendations to ensure compliance with accepted medical practice of the staffing, supervision and documentation of medical treatment protocols.

(ii) The employer shall obtain from the medical consultant a summary of treatment protocols suitable for worker patients covering all aspects of the medical management practices, from early detection of musculoskeletal injuries and disorders through evaluation by a qualified physician and physician provision of appropriate work restrictions in languages understood by the employees.

(iii) The employer shall ensure that the medical consultant reviews the previous medical consultant evaluation, related materials and protocols on an annual basis, and recommends changes as appropriate.

(iv) The employer shall assure that all designated medical and first aid providers have observed, in person, the jobs involving manual materials handling within the warehouse and all risk factors identified in the evaluation conducted under the medical consultant evaluation.

(c) There shall be no unnecessary delays in the provision of adequate medical care to workers who report injuries to the on-site medical services.

(d) Each employer shall ensure that no supervisory or managerial employee or other person discriminates or retaliates against any current, former, or prospective employee or other person for reporting a work-related injury or illness, or health and safety concern.

5. Employers shall assure that employees and their designated representatives are consulted both before and during the development and implementation of all aspects of the program. Where employees have established a workplace safety committee in compliance with section twenty-seven-d of this chapter, the employer shall assure that the committee is consulted regarding the development and implementation of all aspects of the injury reduction program. Any record created by the employer according to this section shall be provided to the workplace safety committee prior to consultation. All documents provided to employees shall be provided in writing in English and in the language identified by each employee as the primary language of such employee.

§ 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 paragraph (a) of subdivision one of section seven hundred eighty-four 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

1 hundred eighty-three, or seven hundred eighty-four of this article to
2 the commissioner, any other local, state, or federal governmental agency
3 or official, or the employer.

4 (c) Making a complaint related to section seven hundred eighty-five of
5 this article.

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

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

18 § 787. Subpoena. Upon receiving a complaint regarding a violation of
19 this article, the commissioner may request or subpoena employer records
20 or data related to this article.

21 § 788. Enforcement. 1. The commissioner shall be authorized to enforce
22 the provisions of this article.

23 2. (a) Any employee or representative of employees who believes that
24 an employer may violate the requirements of this article or that an
25 imminent danger exists, may request an inspection by giving notice to
26 the commissioner of such violation or danger. Such notice and request
27 shall:

28 (i) be in writing, either physical or electronic;

29 (ii) set forth with reasonable particularity the grounds for the
30 notice;

31 (iii) be signed by the employee or representative of employees;

32 (iv) be provided by the commissioner to the employer or the person in
33 charge no later than the time of inspection, except that the name of the
34 person giving notice to the commissioner and the names of individual
35 employees or representatives of employees shall be withheld unless such
36 employees or representatives have provided express written permission
37 for such information to be shared.

38 (b) Inspections pursuant to this subdivision shall be made within
39 three days of receipt of notice by the commissioner.

40 3. A representative of the employer and a designated employee repre-
41 sentative shall be given the opportunity to accompany the commissioner
42 during an inspection for the purpose of aiding such inspection. A labor
43 union having a collective bargaining relationship with the employer
44 shall be considered an employee representative for the purposes of this
45 section. Where there is no designated employee representative, the
46 commissioner shall consult with a reasonable number of employees
47 concerning matters of safety and health in the workplace.

48 4. The authority of the commissioner to inspect premises pursuant to
49 an employee complaint shall not be limited to the alleged violation
50 contained in such complaint. The commissioner may inspect any other area
51 of the premises in which he or she has reason to believe that a
52 violation of this article exists.

53 5. No employee or designated employee representative who accompanies
54 the commissioner on an inspection shall suffer any reduction in wages as
55 a result of his or her participation in such inspection.

1 6. The commissioner may, upon his or her own initiative, conduct an
2 inspection of any premises occupied by an employer if the commissioner
3 has reason to believe that a violation of this article has occurred or
4 if the commissioner has a basis for such inspection.

5 7. Notwithstanding any other provisions of law, when a request for an
6 inspection has been made in a situation where there is an allegation of
7 an imminent danger such that an employee would be subjecting himself or
8 herself to serious injury or death because of the hazardous condition in
9 the workplace, the inspection shall be carried out immediately.

10 8. If the commissioner determines that an employer has violated a
11 provision of this article, or a safety or health standard or regulation
12 promulgated pursuant to this article, he or she shall, within six months
13 of becoming aware of such violation, issue to the employer an order to
14 comply which shall describe particularly the nature of the violation,
15 including a reference to the provision of the section, standard, regu-
16 lation or order alleged to have been violated, fix a reasonable time for
17 compliance, and establish a penalty equivalent to the appropriate penal-
18 ties required pursuant to section 17 of the federal Occupational Safety
19 and Health Act (29 USC 666). An employer who fails to correct a non-ser-
20 ious violation by the time fixed for compliance may be assessed a civil
21 penalty pursuant to 29 USC 666 per day until the violation is corrected.
22 An employer who fails to correct a serious violation by the time fixed
23 for compliance may be assessed a civil penalty pursuant to 29 USC 666
24 until the violation is corrected. A serious violation shall be deemed to
25 exist in a place of employment if there is a substantial probability
26 that death or serious physical harm could result from a condition which
27 exists or from one or more practices, means, methods, operations, or
28 processes which have been adopted or are in use in such place of employ-
29 ment unless the employer did not, and could not with the exercise of
30 reasonable diligence, know of the presence of the violation. A non-seri-
31 ous violation shall be defined as any violation that does not fall under
32 the definition of serious violation.

33 9. Where the commissioner issues to an employer an order to comply,
34 the employer shall post such order or a copy thereof in a conspicuous
35 place at or near each place of violation cited in the order. The order
36 shall be placed where it is clearly visible to affected employees and
37 copies shall be provided to employees, on request, and to the designated
38 representatives of all affected employees. The commissioner shall make
39 such order available to employee representatives and provide a plain
40 English summary of the order to all workers.

41 10. Any employer or other party affected by a determination of the
42 commissioner issued pursuant to this section, including affected employ-
43 ees and their designated representatives, may petition the industrial
44 board of appeals for review of such determination in accordance with
45 section one hundred one of this chapter. Judicial review of the decision
46 of the industrial board of appeals may be obtained by any party affected
47 by such decision by commencing a proceeding pursuant to article seven-
48 ty-eight of the civil practice law and rules within sixty days after
49 such decision is issued. An appeal of any violation classified and cited
50 as serious, willful, repeated serious violation, or failure to abate a
51 serious violation shall not stay abatement dates and requirements.
52 Employees affected by the violation covered by such determination shall
53 be granted status as parties to: participate in the board's proceedings;
54 review any aspect of the commissioner's determinations; and request of
55 the issuance of subpoenas to compel the attendance of witnesses,
56 production of documents, permission to enter upon land, interrogatories

1 and depositions from affected employers and from the department pursuant
2 to section one hundred of this chapter. The board shall grant such
3 requests except that requests for depositions shall be granted by the
4 board upon a request stating good and just reasons.

5 11. If the time for compliance with an order of the commissioner
6 issued pursuant to this section has elapsed and the employer has not
7 complied with the provisions of the order, the commissioner shall seek
8 judicial enforcement of such order by commencing a proceeding pursuant
9 to article seventy-eight of the civil practice law and rules.

10 12. (a) The state supreme court shall have jurisdiction, upon petition
11 of the commissioner, pursuant to the civil practice law and rules to
12 restrain any violations, conditions or practices prohibited by this
13 article in any employer covered by this article which are such that a
14 danger exists which could reasonably be expected to cause death or seri-
15 ous physical harm immediately or before the imminence of such danger can
16 be eliminated through the abatement procedures otherwise provided for by
17 this article. Such proceeding shall be brought in the county in which
18 the violation is alleged to exist. Any order issued under this section
19 may require such steps to be taken as may be necessary to avoid, correct
20 or remove such imminent danger and prohibit the employment or presence
21 of any individual in locations or under conditions where such imminent
22 danger exists, except individuals whose presence is necessary to avoid,
23 correct, or remove such imminent danger or to maintain the capacity of a
24 continuous process operation to resume normal operations without a
25 complete cessation of operations, or where a cessation of operations is
26 necessary, to permit such to be accomplished in a safe and orderly
27 manner. The employer may contest such order pursuant to the civil prac-
28 tice law and rules.

29 (b) Whenever and as soon as an inspector concludes that conditions or
30 practices described in paragraph (a) of this subdivision exist in any
31 place of employment covered by this article, the inspector shall inform
32 the affected employees and employers of the danger and of the recommen-
33 dation to the commissioner that relief be sought.

34 (c) If the commissioner fails to seek relief under this subdivision
35 within forty-eight hours of being notified of such condition, any
36 employee who may be injured by reason of such failure, or the authorized
37 employee representative of such employee, may seek injunctive relief as
38 provided in paragraph (a) of this subdivision.

39 13. The commissioner shall provide a report to the legislature one
40 year after the effective date of this section, and annually thereafter.
41 The report shall include all relevant information regarding implementa-
42 tion and enforcement of this article, including but not limited to the
43 number of claims filed with the commissioner under this article, data on
44 warehouse production quotas in warehouses in which annual employee inju-
45 ry rates are above the industry average, and the number of investi-
46 gations undertaken and enforcement actions initiated, per employer and
47 per worksite.

48 14. If a particular worksite or employer is found to have an annual
49 employee injury rate at least one and one-half times as high as the
50 warehousing industry's average annual injury rate, the commissioner
51 shall conduct an investigation of violations pursuant to this article.

52 15. The commissioner shall have the authority to adopt rules and regu-
53 lations relating to the procedures for an employee to make a complaint
54 alleging a violation of this article.

55 16. In any successful action brought by the commissioner to enforce
56 this article, the court may grant injunctive relief in order to obtain

1 compliance with this article and shall award costs and reasonable attor-
2 ney's fees.

3 § 789. Private right of action. A current or former employee or his or
4 her representative may bring an action for injunctive relief to obtain
5 compliance with this article and may, upon prevailing in the action,
6 recover costs and reasonable attorney's fees in such action. In any
7 action involving a quota that prevented the compliance with applicable
8 regulations on workplace safety and health or meal or rest break
9 requirements, the injunctive relief shall be limited to suspension of
10 the quota and restitution and injunctive relief to address any retali-
11 ation or other adverse action taken by the employer in relation to the
12 complaint or its enforcement. In any action involving a retaliation in
13 violation of section seven hundred eighty-six of this article, in addi-
14 tion to the relief authorized above, a prevailing current or former
15 employee or his or her representative shall be awarded damages equal to
16 the greater of ten thousand dollars or three times the actual damages,
17 including, but not limited to, unpaid wages and benefits.

18 § 790. Records. Any records collected by the state in any investi-
19 gations under this article shall be made public, without any restriction
20 regarding confidentiality, other than a restriction on the release of
21 personally identifiable information for individual non-supervisory
22 employees. All records maintained by the employer under this article
23 shall be made freely available to employees and their representatives on
24 request, within two business days of such request, at no cost to employ-
25 ees or their representatives.

26 § 791. Other powers. The attorney general, either upon his or her own
27 complaint or the complaint of any person acting for themselves or the
28 general public, has the authority to prosecute actions, either civil or
29 criminal, for violations of this article, or to enforce the provisions
30 thereof independently and without specific direction of the commission-
31 er.

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

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