

# STATE OF NEW YORK

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3309--A

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

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Introduced by M. of A. JOYNER, GUNTHER, CRUZ, O'DONNELL, LEVENBERG, REYES, GIBBS, HEVESI, SILLITTI, GLICK, NOVAKHOV, DeSTEFANO, TAPIA, SIMON, WALKER, SHRESTHA, SIMONE, J. A. GIGLIO -- read once and referred 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 injury reduction program

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 injury reduction program".

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

4 (a) Workplace injuries can take a terrible toll on workers, their  
5 families and their communities, and can create substantial costs for  
6 employers. According to the most recent data (2020) released by the  
7 Bureau of Labor Statistics, the warehouse industry itself reports a rate  
8 of serious work-related injuries involving lost time or restricted duty  
9 (4.0 cases/100 full-time workers) that is more than twice the average  
10 injury rates for all private industry (1.7 cases/100 full-time workers).  
11 The most common types of work-related serious injury reported by employ-  
12 ers in the warehouse sector are musculoskeletal injuries, which often  
13 require workers to miss work and can force workers permanently out of  
14 the job and even out of the workforce.

15 (b) Warehouse companies often require workers to perform fast paced  
16 manual material handling tasks. These involve well-known risk factors  
17 for serious injury such as rapid pace, repetitive forceful exertions  
18 like lifting heavy packages, and awkward postures like twisting/bending,  
19 and combinations thereof that are likely to cause musculoskeletal inju-  
20 ries. Scientific evidence shows that effective ergonomic interventions,  
21 such as reducing the pace, package weights and stressful postures, can

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

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1 lower the incidence and severity of work-related musculoskeletal inju-  
2 ries. The research is clear that the most effective method for reducing  
3 or eliminating these risk factors is to implement an ergonomics program  
4 that includes well-informed analysis of the worksite, implementation of  
5 solutions to reduce the dangerous risk factors, professionally competent  
6 medical management, effective worker training, and meaningful involve-  
7 ment by workers and their representatives in all aspects of the program.

8 § 3. Section 780 of the labor law is amended by adding two new subdivi-  
9 sions 8 and 9 to read as follows:

10 8. "Musculoskeletal injuries and disorders" means work related inju-  
11 ries, or disorders, of the muscles, nerves, tendons, ligaments, joints,  
12 cartilage of the upper and lower limbs, neck and lower back (including  
13 spinal discs) that: (a) are caused by sudden or sustained physical  
14 exertion; or (b) are not the result of any instantaneous non-exertion  
15 event, such as slips, trips, or falls.

16 9. "Qualified ergonomist" means an ergonomist who is able to demon-  
17 strate proficiency in the core, minimum competencies of ergonomics and  
18 injury prevention, as defined by the commissioner. Until the commission-  
19 er defines such competencies and approves ergonomists in accordance with  
20 such competencies, consultants approved by the commissioner under 12  
21 NYCRR 59 and 60 with a credential as a certified safety professional or  
22 certified industrial hygienist shall be deemed to qualify as an ergonom-  
23 ist.

24 § 4. Section 786 of the labor law is amended by adding a new subdivi-  
25 sion 3 to read as follows:

26 3. Making a complaint related to section seven hundred eighty-nine of  
27 this article.

28 § 5. The labor law is amended by adding a new section 789 to read as  
29 follows:

30 § 789. Injury reduction program. 1. Every employer subject to this  
31 section shall establish and implement an injury reduction program  
32 designed to identify and minimize the risks of musculoskeletal injuries  
33 and disorders among workers involved in performing manual materials  
34 handling tasks. The program shall include: worksite evaluation; control  
35 of exposures, including pace, which have caused or have the potential to  
36 cause musculoskeletal injuries and disorders; employee training; on-site  
37 medical and first aid practices; and employee involvement.

38 2. The employer shall ensure that each job, process, or operation of  
39 work activity covered by this section or a representative number of such  
40 jobs, processes, or operations of identical work activities shall have a  
41 written work site evaluation by a qualified ergonomist for risk factors  
42 which have or are likely to cause musculoskeletal injuries and disor-  
43 ders. Such risk factors shall include, but are not limited to, rapid  
44 pace, forceful exertions, repetitive motions, twisting, bending, and  
45 awkward postures and combinations thereof that had caused or are likely  
46 to cause musculoskeletal injuries and disorders.

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

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

55 (c) Copies of such worksite risk factor evaluations shall be made  
56 available to workers and their representatives upon request, at no cost,

1 within one business day of such request. Workers and their represen-  
2 tatives shall be notified in writing of the results of the worksite  
3 evaluation. Employers shall maintain accessible copies of such evalu-  
4 ations at locations within the warehouse and shall make such copies  
5 readily available to workers.

6 (d) An initial worksite evaluation shall be conducted within three  
7 months after the effective date of this article. Worksite evaluations  
8 shall be reviewed and updated at least annually thereafter. A new analy-  
9 sis of risk factors shall be conducted in accordance with the provisions  
10 of subdivision one of this section whenever a new job, process, or oper-  
11 ation is introduced which could increase the risk factors for musculosk-  
12 keletal injuries and disorders. Such new analysis shall be conducted  
13 within thirty days of the creation or change of a job, process or opera-  
14 tion.

15 (e) Within three months of the effective date of this article, the  
16 commissioner shall form a task force chaired by a recognized academic  
17 leader in the field of ergonomics in New York state and including, but  
18 not limited to, representatives from the warehouse workforce, labor  
19 organizations active in the warehousing industry, and employers in the  
20 industry, to recommend the core competencies required for the certif-  
21 ication of qualified ergonomists. Within six months of the effective  
22 date of this article, the commissioner shall adopt a standard and proc-  
23 ess for certifying qualified ergonomists based on the recommendations of  
24 the task force.

25 3. The employer shall correct in a timely manner any risk factors  
26 identified as having caused or being likely to cause musculoskeletal  
27 injuries and disorders. For any corrections which require more than  
28 thirty days to complete, the employer shall revise, as needed, and  
29 provide a schedule for such proposed corrections. Such schedule shall be  
30 included in the evaluations provided to workers and their represen-  
31 tatives.

32 (a) Where the employer demonstrates that it is unable to eliminate  
33 identified risk factors, the employer shall minimize the exposures to  
34 the extent feasible.

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

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

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

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

43 4. All employers covered by this section shall provide injury  
44 reduction training to all employees involved in performing manual mate-  
45 rials handling jobs and tasks at the warehouse during normal work hours  
46 and without suffering a loss of pay. Such training shall be provided in  
47 a language and vocabulary that the workers understand and shall be  
48 repeated annually. The training shall also be provided to the workers'  
49 supervisors. Such training shall be in addition to the training required  
50 under section twenty-seven-d of this chapter and shall include:

51 (a) The early symptoms of musculoskeletal injuries and disorders and  
52 the importance of early detection;

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

55 (c) Methods to reduce risk factors for musculoskeletal injuries and  
56 disorders, including both engineering controls and administrative

1 controls, such as limitations on work pace and increased scheduled and  
2 unscheduled breaks;

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

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

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

15 5. Any on-site medical office or first aid station that sees workers  
16 in warehouses covered by this section with symptoms of musculoskeletal  
17 injuries and disorders shall be staffed with medical professionals oper-  
18 ating within their legal scope of practice. Nothing in this section  
19 shall infringe on the rights of workers under the opening paragraph of  
20 subdivision (a) of section thirteen of the workers' compensation law to  
21 either select an authorized physician to treat employees and render  
22 medical care or to select the continuance of any medical treatment or  
23 care by an authorized physician selected by the employee. All examina-  
24 tions and treatments by any medical personnel employed or selected by  
25 the employer under section seven hundred eighty-one of this article  
26 shall be performed for the purposes of the injury reduction program and  
27 shall not interfere with the rights of employees to receive any medical  
28 treatment or any other benefits under the workers' compensation law.

29 (a) Employers shall ensure that staffing and the practice of any first  
30 aid or medical station meets state requirements for physician super-  
31 vision of nurses, emergency medical technicians or other non-physician  
32 personnel.

33 (b) In all warehouses with on-site medical or first aid providers for  
34 the treatment of musculoskeletal injuries and disorders, the employer  
35 shall consult with a medical consultant who is licensed by New York  
36 state and board certified in occupational medicine.

37 (i) The employer shall obtain from the medical consultant a written  
38 evaluation of the on-site medical or first aid provider program and  
39 protocols followed in the warehouse for identification and treatment of  
40 musculoskeletal injuries and disorders and shall include recommendations  
41 to ensure compliance with accepted medical practice of the staffing,  
42 supervision and documentation of medical treatment protocols.

43 (ii) The employer shall obtain from the medical consultant a summary  
44 of treatment protocols suitable for worker patients covering all aspects  
45 of the on-site medical and first aid practices, from early detection of  
46 musculoskeletal injuries and disorders through evaluation by a qualified  
47 physician and physician provision of appropriate work restrictions in  
48 languages understood by the employees.

49 (iii) The employer shall ensure that the medical consultant reviews  
50 the previous medical consultant evaluation, related materials and proto-  
51 cols on an annual basis, and recommends changes as appropriate.

52 (iv) The employer shall ensure that all designated medical and first  
53 aid providers have observed, in person, the jobs involving manual mate-  
54 rials handling within the warehouse and all risk factors identified in  
55 the evaluation conducted under the medical consultant evaluation.

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

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

7 6. Employers shall ensure that employees and their designated repre-  
8 sentatives are consulted both before and during the development and  
9 implementation of all aspects of the program. Where employees have  
10 established a workplace safety committee in compliance with section  
11 twenty-seven-d of this chapter, the employer shall ensure that the  
12 committee is consulted regarding the development and implementation of  
13 all aspects of the injury reduction program. Any record created by the  
14 employer according to this section shall be provided to the workplace  
15 safety committee prior to consultation. All documents provided to  
16 employees shall be provided in writing in English and in the language  
17 identified by each employee as the primary language of such employee.

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

24 § 7. This act shall take effect on the sixtieth day after it shall  
25 have become a law; provided, however, that if chapter 722 of the laws of  
26 2022 shall not have taken effect on or before such date then sections  
27 three and four of this act shall take effect on the same date and in the  
28 same manner as such chapter of the laws of 2022 takes effect.