

# STATE OF NEW YORK

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5081--A

2023-2024 Regular Sessions

## IN SENATE

February 22, 2023

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Introduced by Sens. RAMOS, HOYLMAN-SIGAL, SKOUFIS -- 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 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  
22 lower the incidence and severity of work-related musculoskeletal inju-  
23 ries. The research is clear that the most effective method for reducing

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

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1 or eliminating these risk factors is to implement an ergonomics program  
2 that includes well-informed analysis of the worksite, implementation of  
3 solutions to reduce the dangerous risk factors, professionally competent  
4 medical management, effective worker training, and meaningful involve-  
5 ment by workers and their representatives in all aspects of the program.

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

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

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

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

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

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

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

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

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

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

53 (c) Copies of such worksite risk factor evaluations shall be made  
54 available to workers and their representatives upon request, at no cost,  
55 within one business day of such request. Workers and their represen-  
56 tatives shall be notified in writing of the results of the worksite

1 evaluation. Employers shall maintain accessible copies of such evalu-  
2 ations at locations within the warehouse and shall make such copies  
3 readily available to workers.

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

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

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

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

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

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

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

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

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

49 (a) The early symptoms of musculoskeletal injuries and disorders and  
50 the importance of early detection;

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

53 (c) Methods to reduce risk factors for musculoskeletal injuries and  
54 disorders, including both engineering controls and administrative  
55 controls, such as limitations on work pace and increased scheduled and  
56 unscheduled breaks;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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