STATE OF NEW YORK

5081--B

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sens. RAMOS, ADDABBO, CHU, FERNANDEZ, HOYLMAN-SIGAL, PARKER, SCARCELLA-SPANTON, SKOUFIS, STAVISKY, WEBB -- 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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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:

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

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

(a) Workplace injuries can take a terrible toll on workers, their families and their communities, and can create substantial costs for employers. According to recent data (2022) released by the bureau of labor statistics, the warehouse industry in New York state reports a rate of the most serious work-related injuries involving lost time or restricted duty (7.8 cases/100 full-time workers) that is more than five times the average rates of these types of injuries for all private industry in New York state (1.5 cases/100 full-time workers). In 2022 alone, there were 5,472 workers injured in the warehousing industry in New York state. 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.

(b) The amount and severity of injuries in New York's warehouses is having a direct impact on public health and safety. Each year, thousands of injured warehouse workers return to their communities with chronic

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

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back, neck, shoulder and wrist pain that is often remedied by opiates. This feeds into the opiate epidemic that is at crisis levels in our state.

(c) Many communities in New York are underserved by full-service supermarkets and other essential stores and lack access to transportation to buy these essential supplies. Online retail may be their only source of basic necessities, including medical supplies and food. The high rate of injuries at warehouses could lead to service disruptions, jeopardizing the health and safety of our communities. In fact, according to an internal Amazon memo leaked to the press in 2021, Amazon has concerns that given the injury rates in the industry, it will deplete the available warehouse labor supply in its U.S. network by 2024. This could impact the entire warehouse and distribution network, impacting the public health of our communities.

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

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

9. "Qualified ergonomist" means an ergonomist who is able to demonstrate proficiency in the core, minimum competencies of ergonomics and injury prevention, as defined by the commissioner. Until the commissioner defines such competencies and approves ergonomists in accordance with such competencies, consultants approved by the commissioner under 12 NYCRR 59 and 60 with a credential as a certified safety professional or certified industrial hygienist shall be deemed to qualify as an ergonomist.

§ 4. Section 786 of the labor law is amended by adding a new subdivision 3 to read as follows:

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

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

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

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

(a) Any worksite evaluations shall also determine whether any employees exposed to such risk factors are subject to either personnel action with the potential for adverse action, or adverse action or termination

themselves, arising in whole or in part from an employer's use of quotas to determine employee assignments.

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

(c) Copies of such worksite risk factor evaluations shall be made available to workers and their representatives upon request, at no cost, within one business day of such request. Workers and their representatives shall be notified in writing of the results of the worksite evaluation. Employers shall maintain accessible copies of such evaluations at locations within the warehouse and shall make such copies readily available to workers.

(d) An initial worksite evaluation shall be conducted. Worksite evaluations shall be reviewed and updated at least annually. A new analysis of risk factors shall be conducted in accordance with the provisions of subdivision one of this section whenever a new job, process, or operation is introduced which could increase the risk factors for musculoskeletal injuries and disorders. Such new analysis shall be conducted within thirty days of the creation or change of a job, process or operation.

(e) The commissioner shall form a task force chaired by a recognized academic leader in the field of ergonomics in New York state and including, but not limited to, representatives from the warehouse workforce, labor organizations active in the warehousing industry, and employers in the industry, to recommend the core competencies required for the certification of qualified ergonomists, as well as standardized worksite evaluations and controls.

(f) The commissioner shall adopt a standard and process for certifying qualified ergonomists, as well as standardized worksite evaluations and controls, based on the recommendations of the task force.

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

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

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

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

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

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

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

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

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

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

(d) The employer's program to identify risk factors as required under this section and prevent musculoskeletal injuries and disorders, including the summary protocols for medical treatment approved by the employer's medical consultant;

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

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

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

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

(b) In all warehouses with on-site medical or first aid providers for the treatment of musculoskeletal injuries and disorders, 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 on-site medical or first aid provider 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 on-site medical and first aid 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 ensure 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 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.

6. Employers shall ensure 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 ensure 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.

§ 6. 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.

§ 7. This act shall take effect immediately; provided, however that paragraph (d) of subdivision 2 of section 789 of the labor law as added by section five of this act shall take effect on the three hundred sixty-fifth day after it shall have become a law; provided further, however, that paragraph (e) of subdivision 2 of section 789 of the labor law as added by section five of this act shall take effect on the sixtieth day after it shall have become a law; and provided further, however, that paragraph (f) of subdivision 2 and subdivisions 4 and 5 of section 789 of the labor law as added by section five of this act shall take effect on the one hundred eightieth day after it shall have become a law.