

STATE OF NEW YORK

5081--C

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sens. RAMOS, ADDABBO, BRESLIN, BRISPORT, CHU, COMRIE, FERNANDEZ, GONZALEZ, HOYLMAN-SIGAL, JACKSON, MANNION, MAY, PARKER, RIVERA, SALAZAR, SCARCELLA-SPANTON, SERRANO, 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 -- reported favorably from said committee and committed to the Committee on Finance -- 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 recent data (2022) released by the bureau of
7 labor statistics, the warehouse industry in New York state reports a
8 rate of the most serious work-related injuries involving lost time or
9 restricted duty (7.8 cases/100 full-time workers) that is more than five
10 times the average rates of these types of injuries for all private
11 industry in New York state (1.5 cases/100 full-time workers). In 2022
12 alone, there were 5,472 workers injured in the warehousing industry in
13 New York state. The most common types of work-related serious injury
14 reported by employers in the warehouse sector are musculoskeletal inju-

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

LBD08912-06-4

ries, 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 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

1 awkward postures and combinations thereof that had caused or are likely
2 to cause musculoskeletal injuries and disorders.

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

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

11 (c) Copies of such worksite risk factor evaluations shall be made
12 available to workers and their representatives upon request, at no cost,
13 within one business day of such request. Workers and their represen-
14 tatives shall be notified in writing of the results of the worksite
15 evaluation. Employers shall maintain accessible copies of such evalu-
16 ations at locations within the warehouse and shall make such copies
17 readily available to workers.

18 (d) An initial worksite evaluation shall be conducted. Worksite eval-
19 uations shall be reviewed and updated at least annually. A new analysis
20 of risk factors shall be conducted in accordance with the provisions of
21 subdivision one of this section whenever a new job, process, or opera-
22 tion is introduced which could increase the risk factors for musculosk-
23 eletal injuries and disorders. Such new analysis shall be conducted
24 within thirty days of the creation or change of a job, process or opera-
25 tion.

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

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

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

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

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

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

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

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

54 4. All employers covered by this section shall provide injury
55 reduction training to all employees involved in performing manual mate-
56 rials handling jobs and tasks at the warehouse during normal work hours

1 and without suffering a loss of pay. Such training shall be provided in
2 a language and vocabulary that the workers understand and shall be
3 repeated annually. The training shall also be provided to the workers'
4 supervisors. Such training shall be in addition to the training required
5 under section twenty-seven-d of this chapter and shall include:

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

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

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

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

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

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

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

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

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

48 (i) The employer shall obtain from the medical consultant a written
49 evaluation of the on-site medical or first aid provider program and
50 protocols followed in the warehouse for identification and treatment of
51 musculoskeletal injuries and disorders and shall include recommendations
52 to ensure compliance with accepted medical practice of the staffing,
53 supervision and documentation of medical treatment protocols.

54 (ii) The employer shall obtain from the medical consultant a summary
55 of treatment protocols suitable for worker patients covering all aspects
56 of the on-site medical and first aid practices, from early detection of

1 musculoskeletal injuries and disorders through evaluation by a qualified
2 physician and physician provision of appropriate work restrictions in
3 languages understood by the employees.

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

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

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

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

17 6. Employers shall ensure that employees and their designated repre-
18 sentatives are consulted both before and during the development and
19 implementation of all aspects of the program. Where employees have
20 established a workplace safety committee in compliance with section
21 twenty-seven-d of this chapter, the employer shall ensure that the
22 committee is consulted regarding the development and implementation of
23 all aspects of the injury reduction program. Any record created by the
24 employer according to this section shall be provided to the workplace
25 safety committee prior to consultation. All documents provided to
26 employees shall be provided in writing in English and in the language
27 identified by each employee as the primary language of such employee.

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

34 § 7. This act shall take effect on June 1, 2025; provided, however
35 that paragraph (d) of subdivision 2 of section 789 of the labor law as
36 added by section five of this act shall take effect on the one hundred
37 eightieth day after it shall have become a law; provided further, howev-
38 er, that paragraph (e) of subdivision 2 of section 789 of the labor law
39 as added by section five of this act shall take effect on the sixtieth
40 day after it shall have become a law; and provided further, however,
41 that paragraph (f) of subdivision 2 and subdivisions 4 and 5 of section
42 789 of the labor law as added by section five of this act shall take
43 effect on the sixtieth day after it shall have become a law.