

# STATE OF NEW YORK

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5081

2023-2024 Regular Sessions

## IN SENATE

February 22, 2023

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Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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  
24 or eliminating these risk factors is to implement an ergonomics program  
25 that includes well-informed analysis of the worksite, implementation of

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

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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-B to read as follows:

ARTICLE 21-B

WAREHOUSE WORKER INJURY REDUCTION ACT

Section 790. Definitions.

791. Injury reduction program.

792. Unlawful retaliation.

793. Subpoena.

794. Enforcement.

795. Private right of action.

796. Records.

797. Other powers.

§ 790. Definitions. As used in this article:

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

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

2. "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.

3. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

4. "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

1 NYCRR 59 and 60 with a credential as a certified safety professional or  
2 certified industrial hygienist shall be deemed to qualify as an ergonom-  
3 ist.

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

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

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

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

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

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

15 § 791. Injury reduction program. 1. Every employer subject to this  
16 section shall establish and implement an injury reduction program  
17 designed to identify and minimize the risks of musculoskeletal injuries  
18 and disorders among workers involved in performing manual materials  
19 handling tasks. The program shall include: worksite evaluation; control  
20 of exposures, including pace, which have caused or have the potential to  
21 cause musculoskeletal injuries and disorders; employee training; medical  
22 management; and employee involvement.

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

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

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

40 (c) Copies of such worksite risk factor evaluations shall be made  
41 available to workers and their representatives upon request, at no cost,  
42 within one business day of such request. Workers and their represen-  
43 tatives shall be notified in writing of the results of the worksite  
44 evaluation. Employers shall maintain accessible copies of such evalu-  
45 ations at locations within the warehouse and shall make such copies  
46 readily available to workers.

47 (d) An initial worksite evaluation shall be conducted within three  
48 months after the effective date of this article. Worksite evaluations  
49 shall be reviewed and updated at least annually thereafter. A new analy-  
50 sis of risk factors shall be conducted in accordance with the provisions  
51 of subdivision one of this section whenever a new job, process, or oper-  
52 ation is introduced which could increase the risk factors for musculosk-  
53 keletal injuries and disorders. Such new analysis shall be conducted  
54 within thirty days of the creation or change of a job, process or opera-  
55 tion.

(e) Within three months of the effective date of this article, 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. Within six months of the effective date of this article, the commissioner shall adopt a standard and process for certifying qualified ergonomists 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.

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

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

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

15 (i) The employer shall obtain from the medical consultant a written  
16 evaluation of the medical management program and protocols followed in  
17 the warehouse for identification and treatment of musculoskeletal inju-  
18 ries and disorders and shall include recommendations to ensure compli-  
19 ance with accepted medical practice of the staffing, supervision and  
20 documentation of medical treatment protocols.

21 (ii) The employer shall obtain from the medical consultant a summary  
22 of treatment protocols suitable for worker patients covering all aspects  
23 of the medical management practices, from early detection of musculosk-  
24 eletal injuries and disorders through evaluation by a qualified physi-  
25 cian and physician provision of appropriate work restrictions in  
26 languages understood by the employees.

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

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

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

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

41 6. Employers shall ensure that employees and their designated repre-  
42 sentatives are consulted both before and during the development and  
43 implementation of all aspects of the program. Where employees have  
44 established a workplace safety committee in compliance with section  
45 twenty-seven-d of this chapter, the employer shall ensure that the  
46 committee is consulted regarding the development and implementation of  
47 all aspects of the injury reduction program. Any record created by the  
48 employer according to this section shall be provided to the workplace  
49 safety committee prior to consultation. All documents provided to  
50 employees shall be provided in writing in English and in the language  
51 identified by each employee as the primary language of such employee.

52 § 792. Unlawful retaliation. 1. No person, including but not limited  
53 to an employer, his or her agent, or person acting as or on behalf of a  
54 hiring entity, or the officer or agent of any entity, business, corpo-  
55 ration, partnership, or limited liability company, shall discharge or in  
56 any way retaliate, discriminate or take adverse action against any



1 person for exercising any rights conferred under this article, or for  
2 being perceived as exercising rights conferred by this article, includ-  
3 ing, but not limited to, making a complaint related to section seven  
4 hundred ninety-one of this article.

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

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

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

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

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

27 (i) be in writing, either physical or electronic;  
28 (ii) set forth with reasonable particularity the grounds for the  
29 notice;  
30 (iii) be signed by the employee or representative of employees;  
31 (iv) be provided by the commissioner to the employer or the person in  
32 charge no later than the time of inspection, except that the name of the  
33 person giving notice to the commissioner and the names of individual  
34 employees or representatives of employees shall be withheld unless such  
35 employees or representatives have provided express written permission  
36 for such information to be shared.

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

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

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

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

55 6. The commissioner may, upon his or her own initiative, conduct an  
56 inspection of any premises occupied by an employer if the commissioner

1 has reason to believe that a violation of this article has occurred or  
2 if the commissioner has a basis for such inspection.

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

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

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

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

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

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

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

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

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

38 13. The commissioner shall provide a report to the legislature one  
39 year after the effective date of this section and annually thereafter.  
40 The report shall include all relevant information regarding implementa-  
41 tion and enforcement of this article, including, but not limited to, the  
42 number of claims filed with the commissioner under this article and the  
43 number of investigations undertaken and enforcement actions initiated,  
44 per employer and per worksite.

45 14. If a particular worksite or employer is found to have an annual  
46 employee injury rate at least one and one-half times as high as the  
47 warehousing industry's average annual injury rate, the commissioner  
48 shall conduct an investigation of the facility to assess whether the  
49 employer is adequately protecting workers from musculoskeletal injuries  
50 and disorders according to section seven hundred ninety-one of this  
51 article and 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 § 795. 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 ninety-two 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 § 796. Records. Any record collected by the state in any investigation  
19 under this article shall be made public, without any restriction regard-  
20 ing 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 § 797. 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.