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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Creech

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SUMMARY

- Regulates a covered employer's use of quotas to measure employee performance at warehouse distribution centers, including specifying the time the employer must count as productive time or time on task for purposes of the quota.
- Prohibits a covered employer from enforcing a quota at a warehouse distribution center unless the employer discloses a written description of the quota to an employee subject to it.
- Requires a covered employer who enforces a quota at a warehouse distribution center to maintain records of any information the employer collects to measure an employee's performance against the quota, including quantities of tasks performed, quantities of items or materials produced, and other performance metrics related to the quota.
- Requires a covered employer who enforces a quota at a warehouse distribution center to maintain records of any information the employer collects to measure aggregated work speed data for employees in similar positions at the same warehouse distribution center.
- Allows, under specified circumstances, an employee at a warehouse distribution center to access a written description of any quota to which the employee is subject and records of any information the employer collects to measure the employee's performance against the quota.
- Requires the Director of Commerce to administer and enforce the bill, including adopting rules to implement it.
- Prohibits a covered employer from discriminating against, retaliating against, or taking other adverse employment actions against an employee at a warehouse distribution center who requests access to records or files a complaint with the Director.

- Requires, no later than one year after the bill's effective date, the Director to submit a report to the General Assembly regarding the bill's application and enforcement.

DETAILED ANALYSIS

Warehouse Worker Protection Act

The bill, titled the "Warehouse Worker Protection Act,"¹ regulates the use of quotas to measure employee performance at a warehouse distribution center.

Under the bill, a "quota" is any performance standard requiring an employee to perform, within a defined time period or at a specified productivity speed, a quantified number of tasks or handle or produce a quantified amount of material. An "employee" is any individual who performs a service for a wage or other remuneration for the employer at a warehouse distribution center. A "warehouse distribution center" is any establishment classified in any of the following economic subsectors or industries as defined in the North American Industry Classification System (NAICS):

- Warehousing and storage;
- Merchant wholesalers, durable goods;
- Merchant wholesalers, nondurable goods;
- Electronic shopping and mail-order houses;
- Couriers and express delivery services.²

The NAICS is a standard used by federal agencies to classify different businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.³

Covered employers

The bill applies to any employer who directly, indirectly, or through an agent or any other person employs, retains, or exercises control over the wages, hours, or working conditions of either of the following:

- 100 or more employees at a warehouse distribution center located in Ohio;
- 500 or more employees at more than one warehouse distribution center located in Ohio.

¹ Section 3.

² R.C. 4145.01.

³ U.S. Census Bureau, [North American Industry Classification System](https://www.census.gov/naics), which may be accessed on the U.S. Census Bureau's NAICS website: [census.gov/naics](https://www.census.gov/naics).

For purposes of the bill, the number of employees employed at one or more warehouse distribution centers in Ohio includes all employees of a controlled group of corporations.⁴

Productive time under a quota

If an employer adopts and enforces a quota, the bill requires the employer to count all the following time as productive time or time on task for purposes of the quota:

- The time an employee takes for any action necessary to exercise the employee's right to a safe and healthful workplace pursuant to law, including time for the employee to access the tools or equipment the employee needs to perform the employee's duties;
- The time an employee takes for any action required by the employer to perform work subject to a quota;
- The time an employee takes to travel to and use the restroom facilities;
- The time an employee takes for a rest break granted by the employer, if any, and the employee's reasonable travel time to the employer's designated location to take the rest break;
- The employee's reasonable travel time to the meal break location designated by the employer;
- The time an employee takes for a meal break, provided the employer requires the employee to remain on call during the meal break or remain on duty on the employer's premises at a designated worksite in the interest of the employer.

In determining the reasonableness of an employee's travel time for restroom facilities, breaks, and meals the employer must consider the architecture and geography of the employer's warehouse distribution center. The employer also must consider the location within the center at which the employee is located at the time the employee begins traveling from one location to another.

The bill does not require an employer to provide a meal or rest break during the time an employee is performing services for the employer.⁵

Written description of quota

Under the bill, an employer who adopts and enforces a quota must disclose a written description of the quota to any employee subject to it. The description must be plainly written in the employee's preferred language. Each description must include both of the following:

- The number of tasks the employee is required to perform or materials the employee is required to produce or handle within a defined time period or at a specified productivity speed;

⁴ R.C. 4145.01(B) and 4145.02.

⁵ R.C. 4145.04.

- Any potential adverse employment action the employer may take against the employee for failing to comply with the quota.

The employer must disclose the written description of the quota to an employee employed on the bill's effective date no later than 30 days after the bill's effective date. For any employee hired after the bill's effective date, the employer must disclose the written description no later than the date the employee commences employment.

If an employer modifies a quota after disclosing it, the employer must disclose an updated written description to each affected employee no later than two days after the modification.

The bill also requires an employer to provide the written description of the quota to an employee whenever the employer takes an adverse employment action against the employee for failing to comply with the quota.⁶

Record keeping

The bill also requires an employer who adopts and enforces a quota to maintain records of all the following information:

- The written description of each quota the employer is required to disclose under the bill;
- If the employer collects it, any information measuring an employee's individual performance against a quota (defined as "work speed data"), including quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, and measurements or metrics of employee performance against a quota;
- The aggregated work speed data for employees in similar positions at the same warehouse distribution center (if the employer collects employee work speed data).

An employer must preserve the records for a period of not less than three years from the date they are created. The employer also must make the records available at the request of an employee under the circumstances described under "**Access to records**," below.⁷

Prohibited conduct

Under the bill, an employer cannot require an employee to comply with a quota unless the employer disclosed a description of the quota to the employee as described under "**Written description of quota**," above. The bill also prohibits an employer from enforcing a quota that does any of the following:

- Prevents compliance with any laws or collective bargaining agreements governing employee meal breaks, rest breaks, or use of restroom facilities;
- Measures an employee's total productivity over a time period that is shorter than a 24-hour period;

⁶ R.C. 4145.03.

⁷ R.C. 4145.01(E) and 4145.05.

- Measures and categorizes increments of time during which an employee is performing tasks and increments of time during which the employee is not performing tasks;
- Ranks an employee in relation to the productivity of other employees.⁸

Additionally, the bill prohibits an employer from discriminating against, retaliating against, or taking other adverse employment actions against an employee for doing either of the following:

- Submitting a request for documentation as described below;
- Filing a complaint to the Director of Commerce as described under “**Enforcement,**” below.

If an employer takes an adverse employment action against an employee within 90 days of the employee submitting a request for documentation or filing a complaint with the Director, there is a rebuttable presumption that the employer violated the bill’s prohibition against retaliation. An employer may rebut the presumption by proving both of the following through clear and convincing evidence:

- That the employer took the adverse action described for a reason other than the reasons listed above;
- That an employee’s request for documentation or complaint was not a motivating factor in the employer’s decision to take the action.

An employee is not required to refer to the bill or the rights granted by it to be protected from retaliation. The prohibition against retaliation applies to an employee who mistakenly but in good faith alleges a violation of the bill.⁹

Access to records

Under the bill, an employee may request the employee’s employer disclose a written description of each quota to which the employee is subject.

If an employee believes an employer (1) disciplined the employee for failing to comply with a quota, (2) prevented compliance with a law or collective bargaining agreement governing employee breaks, or (3) failed to count time an employee took to travel to and use the restroom facilities as productive time, then the employee may request the employer disclose any of the following records:

- The written description of each quota that applies to the employee;
- A copy of the employee’s work speed data covering the three-month period that immediately precedes the date the employee submits the request;

⁸ R.C. 4145.04(A).

⁹ R.C. 4145.08.

- A copy of the aggregated work speed data for employees in similar positions at the same warehouse distribution center covering the three-month period that immediately precedes the date the employee submits the request.¹⁰

The bill also allows a former employee who separated from employment after the bill's effective date who believes an employer took any of the three actions listed above to make a one-time request for the former employer to disclose the documentation listed above. In the case of a former employee, disclosed work speed data and aggregated work speed data for similarly situated employees must cover the three-month period immediately preceding the date the former employee separated from employment.¹¹

If an employer who has adopted and enforces a quota receives a request for documentation from a current or former employee, the employer must do all the following:

- Disclose the requested documentation at no cost to the employee or former employee;
- Disclose the requested documentation as soon as practicable, but not later than 14 days after the date the request is submitted;
- Provide the requested documentation in English and in the employee's preferred language.

The bill specifies that it does not require an employer to adopt or enforce a quota or to collect employee work speed data. If an employer does not collect work speed data and receives a request to disclose such data, the employer is not required to disclose anything relating to that data.¹²

Enforcement

The Director of Commerce administers and enforces the bill. The Director must adopt rules in accordance with the Administrative Procedure Act to implement the bill. The rules the Director adopts must include format and language access requirements for the written description of a quota an employer is required to disclose to an employee.¹³

An employee or former employee who separates from employment after the bill's effective date may submit a complaint with an employer or the Director alleging the employer has violated the bill.¹⁴

The bill requires the Director to independently investigate whether an employer has violated the bill under specific circumstances. The Director must investigate whether an

¹⁰ R.C. 4145.06.

¹¹ R.C. 4145.06(B). In what appears to be a drafting error, R.C. 4145.06, as enacted by the bill, appears to include two instances of division "(B)." A technical amendment may be necessary to correct the apparent error.

¹² R.C. 4145.06(C) and (D).

¹³ R.C. 4145.03(E) and 4145.09, by reference to R.C. Chapter 119, not in the bill.

¹⁴ R.C. 4145.07.

employer has violated the bill if, based on data reported to the Occupational Safety and Health Administration (OSHA) for the previous year, the incidence rate of occupational injuries at the employer's warehouse distribution center is at least 30% higher than the average annual rate for other warehouse distribution centers classified in the same NAICS subsector or industry.¹⁵

If the Director determines an employer has violated the bill, the Director may sue the employer in any court of competent jurisdiction for all the following:

- Damages sustained due to the employer's violation;
- Injunctive relief compelling the employer to comply with the bill;
- Court costs and reasonable attorney's fees.

An employee or former employee who separates from employment after the bill's effective date who believes an employer violated the bill also may sue for the remedies listed above.¹⁶

Report to General Assembly

No later than one year after the bill's effective date, the Director must submit a report to the General Assembly that includes all the following information:

- The number of complaints submitted to the Director since the bill's effective date;
- Since the bill's effective date, the number of warehouse distribution centers at which employee injuries have occurred at a rate that exceeds the average injury rate for the same industry;
- Any information the Director has collected since the bill's effective date regarding quotas employers have adopted and enforced for employees performing services at warehouse distribution centers;
- The number of investigations and enforcement actions the Director has commenced under the bill categorized by employer.¹⁷

HISTORY

Action	Date
Introduced	09-26-24

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¹⁵ R.C. 4145.10.

¹⁶ R.C. 4145.11.

¹⁷ Section 2.