

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 502**

Introduced by Cavanaugh, M., 6.

Read first time January 17, 2023

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to labor; to adopt the Warehouse Worker
- 2 Protection Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 12 of this act shall be known and may be  
2 cited as the Warehouse Worker Protection Act.

3           Sec. 2. For purposes of the Warehouse Worker Protection Act:

4           (1) Aggregated data means information that an employer has combined  
5 or collected together in summary or other form such that the data cannot  
6 be identified with any individual;

7           (2) Commissioner means the Commissioner of Labor;

8           (3) Controlled group of corporations has the same meaning as in 26  
9 U.S.C. 1563, except that fifty percent shall be substituted for eighty  
10 percent where eighty percent is specified in that definition;

11           (4) Defined time period means any unit of time measurement equal to  
12 or less than the duration of an employee's shift, and includes hours,  
13 minutes, and seconds and any fraction thereof;

14           (5) Designated employee representative means any employee  
15 representative, including, but not limited to, an authorized employee  
16 representative that has a collective bargaining relationship with the  
17 employer;

18           (6) Employee means a nonexempt and non-administrative employee who  
19 works at a warehouse distribution center and is subject to a quota as  
20 defined in this section;

21           (7) Employee work speed data means information an employer collects,  
22 stores, analyzes, or interprets relating to an individual employee's  
23 performance of a quota, including, but not limited to, quantities of  
24 tasks performed, quantities of items or materials handled or produced,  
25 rates or speeds of tasks performed, measurements or metrics of employee  
26 performance in relation to a quota, and time categorized as performing  
27 tasks or not performing tasks;

28           (8)(a) Employer means a person who directly or indirectly, or  
29 through an agent or any other person, including through the services of a  
30 third-party employer, temporary services, or staffing agency, independent  
31 contractor, or any similar entity, at any time in the prior twelve

1 months, employs or exercises control over the wages, hours, or working  
2 conditions of one hundred or more employees at a single warehouse  
3 distribution center or five hundred or more employees at multiple  
4 warehouse distribution centers in the state.

5 (b) All employees employed directly or indirectly, or through an  
6 agent or any other person, as described in subdivision (8)(a) of this  
7 section, as well as any employee employed by a member of a controlled  
8 group of corporations of which the employer is a member, shall be counted  
9 in determining the number of employees.

10 (c) All agents or other persons, as described in subdivision (8)(a)  
11 of this section, and all members of a controlled group of corporations of  
12 which the employer is a member, shall be deemed to be employers and shall  
13 be jointly and severally responsible for compliance with this article;

14 (9) Person means an individual, corporation, partnership, limited  
15 partnership, limited liability partnership, limited liability company,  
16 business trust, estate, trust, association, joint venture, agency,  
17 instrumentality, or any other legal or commercial entity, whether  
18 domestic or foreign;

19 (10) Quota means a work standard under which:

20 (a) An employee is assigned or required, within a defined time  
21 period, to:

22 (i) Perform at a specified productivity speed;

23 (ii) Perform a quantified number of tasks; or

24 (iii) Handle or produce a quantified amount of material; or

25 (b) An employee's actions are categorized between time performing  
26 tasks and not performing tasks, and the employee's failure to complete a  
27 task performance standard or recommendation may have an adverse impact on  
28 the employee's continued employment or the conditions of such employment;  
29 and

30 (11) Warehouse distribution center means an establishment as defined  
31 by any of the following North American Industry Classification System

1 (NAICS) codes, however such establishment is denominated:

2 (a) 493 for warehousing and storage;

3 (b) 423 for merchant wholesalers, durable goods;

4 (c) 424 for merchant wholesalers, nondurable goods; or

5 (d) 492110 for couriers and express delivery services.

6 Sec. 3. (1) Each employer shall provide to each employee, upon  
7 hire, or within thirty days of the effective date of this act, a written  
8 description of each quota to which the employee is subject, including,  
9 but not limited to:

10 (a) The quantified number of tasks to be performed or materials to  
11 be produced or handled within the defined time period;

12 (b) Any specified productivity speed; and

13 (c) Any potential adverse employment action that could result from  
14 failure to meet the quota.

15 (2) Any time an employer changes a quota, the employer shall provide  
16 an updated written description of such quota to each employee subject to  
17 the quota within two business days after the change.

18 (3) If an employer takes an adverse employment action against an  
19 employee the employer shall provide that employee with the applicable  
20 quota for the employee.

21 Sec. 4. An employee shall not be required to meet a quota that  
22 prevents compliance with meal or rest periods or use of bathroom  
23 facilities, including reasonable travel time to and from bathroom  
24 facilities. An employer shall not take adverse employment action against  
25 an employee for failure to meet a quota that:

26 (1) Does not allow a worker to comply with meal and rest periods as  
27 provided in this section; or

28 (2) Has not been disclosed to the employee as required by section 3  
29 of this act.

30 Sec. 5. Paid and unpaid breaks shall not be considered productive  
31 time for the purpose of any quota or monitoring system unless the

1 employee is required to remain on call.

2 Sec. 6. (1) Each employer shall establish, maintain, and preserve  
3 contemporaneous, true, and accurate records of the following:

4 (a) Each employee's employee work speed data;

5 (b) The aggregated work speed data for similar employees at the same  
6 establishment; and

7 (c) The written descriptions of quotas each employee has been  
8 provided pursuant to section 3 of this act.

9 (2) Records required to be maintained by this section shall be  
10 preserved throughout the duration of an employee's period of employment  
11 and, subsequent to an employee's separation from the employer, such  
12 records relating to the six-month period prior to the date of the  
13 employee's separation from the employer shall be preserved for at least  
14 three years.

15 (3) Nothing in this section shall require an employer to keep such  
16 records if such employer does not use quotas or otherwise monitor  
17 employee work speed data.

18 Sec. 7. (1) A current employee has the right to request a written  
19 description of each quota to which the employee is subject, a copy of the  
20 employee's own employee work speed data, and a copy of the prior six  
21 months of aggregated work speed data for similar employees at the same  
22 establishment.

23 (2) A former employee has the right to request, within three years  
24 after the date of such former employee's separation from the employer, a  
25 written description of the quota to which the former employee was subject  
26 as of the date of separation, a copy of the former employee's own  
27 employee work speed data for the six months prior to the date of  
28 separation, and a copy of aggregated work speed data for similar  
29 employees at the same establishment for the six months prior to such the  
30 date of separation.

31 (3) An employer shall provide any records required to be maintained

1 or disclosed by this section or section 3 of this act to the commissioner  
2 upon request.

3 (4) Records requested pursuant to this section shall be provided at  
4 no cost.

5 (5) An employer shall provide records requested pursuant to this  
6 section as soon as practicable. Requested written descriptions of quotas  
7 shall be provided no later than two business days after the date of the  
8 receipt of the request. Requested employee work speed data and aggregated  
9 work speed data shall be provided no later than seven business days after  
10 the date of the receipt of the request.

11 (6) Nothing in the Warehouse Worker Protection Act shall require an  
12 employer to use quotas or monitor employee work speed data. An employer  
13 that does not use quotas or monitor such data has no obligation under the  
14 act to preserve or provide related records.

15 Sec. 8. (1) No person, including, but not limited to, an employer,  
16 an employer's agent, or any person acting as or on behalf of a hiring  
17 entity, or the officer or agent of any entity, business, corporation,  
18 partnership, or limited liability company, shall discharge or in any way  
19 retaliate, discriminate, or take adverse action against any person for  
20 exercising any rights protected by the Warehouse Worker Protection Act or  
21 for being perceived as exercising such rights. Such exercise includes,  
22 but is not limited to:

23 (a) Initiating a request for information about a quota or employee  
24 work speed data pursuant to the act; or

25 (b) Making a complaint related to a quota alleging any violation of  
26 the act to the commissioner; any other local, state, or federal  
27 governmental agency or official; or the employer.

28 (2) An employee need not explicitly refer to the Warehouse Worker  
29 Protection Act or the rights enumerated in the act to be protected from  
30 adverse action as provided in this section. The protections of this  
31 section shall apply to former employees and to employees who mistakenly

1 but in good faith allege violations of the act.

2 (3) If a person takes adverse action against an employee within  
3 ninety days after the employee's engaging or attempting to engage in  
4 activities protected by the Warehouse Worker Protection Act, there shall  
5 be a rebuttable presumption that the adverse action constitutes  
6 retaliation in violation of this section. Such presumption may be  
7 rebutted by clear and convincing evidence that:

8 (a) The action was taken for other permissible reasons; and

9 (b) Engaging or attempting to engage in activities protected by the  
10 act was not a motivating factor in the adverse action.

11 Sec. 9. (1) The commissioner may subpoena records and witnesses  
12 related to the enforcement of the Warehouse Worker Protection Act. The  
13 commissioner or the commissioner's agents may conduct inspections of  
14 employers' facilities, inspect all related records, and gather testimony  
15 on any matter relative to the enforcement of the act.

16 (2) If the commissioner finds, after notice and hearing, that an  
17 employer has violated the Warehouse Worker Protection Act, the  
18 commissioner may order payment of a civil penalty of not more than one  
19 thousand dollars for each violation. Each day of continued violation  
20 shall constitute a separate violation.

21 (3) If a particular worksite or employer has an annual employee  
22 injury rate of at least one and one-half times as high as the warehousing  
23 industry's average annual injury rate as published by the federal Bureau  
24 of Labor Statistics' most recent fatal and non-fatal occupational  
25 injuries and illnesses data, the commissioner shall conduct an  
26 investigation of any potential violations of the Warehouse Worker  
27 Protection Act.

28 Sec. 10. (1) Any person aggrieved by a violation of the Warehouse  
29 Worker Protection Act may bring a civil action for appropriate relief.  
30 Except as otherwise provided in this section, appropriate relief  
31 includes:

1        (a) Such preliminary and other equitable or declaratory relief as  
2 may be appropriate; and

3        (b) Reasonable attorney's fees and other litigation costs reasonably  
4 incurred.

5        (2) When the relief sought relates to a quota that prevented the  
6 compliance with applicable laws or regulations on workplace safety and  
7 health or meal or rest break requirements, injunctive relief shall be  
8 limited to suspension of the quota and any equitable relief necessary to  
9 address any retaliation or other adverse action taken by the employer.

10       (3) If an employer is found to have retaliated in violation of  
11 section 8 of this act, appropriate relief shall also include an award of  
12 actual damages.

13       Sec. 11.    The commissioner may adopt and promulgate rules and  
14 regulations to carry out the Warehouse Worker Protection Act.

15       Sec. 12.    The Attorney General may take such action as may be  
16 necessary to enforce the Warehouse Worker Protection Act.

17       Sec. 13.    If any section in this act or any part of any section is  
18 declared invalid or unconstitutional, the declaration shall not affect  
19 the validity or constitutionality of the remaining portions.