

118TH CONGRESS  
2D SESSION

# S. 5208

To establish protections for warehouse workers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

Mr. MARKEY (for himself, Mr. CASEY, Ms. SMITH, Mr. HAWLEY, Mr. BROWN, Mr. SANDERS, Mr. PADILLA, Mrs. GILLIBRAND, Mr. BLUMENTHAL, Mr. WELCH, Ms. WARREN, and Ms. BUTLER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To establish protections for warehouse workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Warehouse Worker  
5 Protection Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—WAREHOUSE WORKER PROTECTIONS

- Sec. 101. Warehouse worker protections.  
 Sec. 102. Referral of complaints.  
 Sec. 103. Enforcement by the FTC.

TITLE II—NATIONAL LABOR RELATIONS ACT

- Sec. 201. Amendments to National Labor Relations Act.  
 Sec. 202. National Labor Relations Board report.

TITLE III—OSHA STANDARDS

- Sec. 301. Standard protecting covered employees from occupational risk factors causing musculoskeletal disorders.  
 Sec. 302. Standard for protecting covered employees from delays in medical treatment referrals following injuries or illnesses.  
 Sec. 303. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.  
 Sec. 304. Definitions.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Severability.  
 Sec. 402. Preemption.  
 Sec. 403. Authorization of appropriations.

1 **TITLE I—WAREHOUSE WORKER**  
 2 **PROTECTIONS**

3 **SEC. 101. WAREHOUSE WORKER PROTECTIONS.**

4 The Fair Labor Standards Act of 1938 is amended—  
 5 (1) by inserting after section 4 (29 U.S.C. 204)  
 6 the following:

7 **“SEC. 5. ESTABLISHMENT OF FAIRNESS AND TRANS-**  
 8 **PARENCY OFFICE.**

9 “(a) IN GENERAL.—There is established in the Wage  
 10 and Hour Division of the Department of Labor the Fair-  
 11 ness and Transparency Office.

12 “(b) DIRECTOR OF THE FAIRNESS AND TRANS-  
 13 PARENCY OFFICE.—The President shall appoint a Direc-  
 14 tor of the Fairness and Transparency Office to head the  
 15 Fairness and Transparency Office.

1       “(c) EMPLOYEES AND ADVISORY BOARDS OF THE  
2 OFFICE.—

3           “(1) IN GENERAL.—The Director—

4               “(A) may select, appoint, and employ,  
5 without regard to the provisions of sections  
6 3309 through 3318 of title 5, United States  
7 Code, individuals directly to positions in the  
8 competitive service, as defined in section 2102  
9 of such title, to carry out the duties of the Di-  
10 rector under this Act; and

11               “(B) may fix the compensation of the indi-  
12 viduals described in subparagraph (A) without  
13 regard to chapter 51 and subchapter III of  
14 chapter 53 of title 5, United States Code, relat-  
15 ing to classification of positions and General  
16 Schedule pay rates, except that the rate of pay  
17 for such individuals may not exceed the rate  
18 payable for level V of the Executive Schedule  
19 under section 5316 of that title.

20           “(2) FAIRNESS AND TRANSPARENCY ADVISORY  
21 BOARD.—

22               “(A) IN GENERAL.—The Director shall es-  
23 tablish a Fairness and Transparency Advisory  
24 Board to advise and consult on the exercise of  
25 the functions of the Director under this Act.

1           “(B) COMPOSITION.—The Fairness and  
2           Transparency Advisory Board established under  
3           subparagraph (A) shall be composed of—

4                   “(i) as the Director determines appro-  
5                   priate, covered employers and covered em-  
6                   ployees or representatives of covered em-  
7                   ployers and covered employees; and

8                   “(ii) at least one of each of the fol-  
9                   lowing:

10                           “(I) Worker protection experts.

11                           “(II) Civil rights experts.

12                           “(III) Health and safety experts.

13                           “(IV) Workplace technology ex-  
14                           perts.

15                           “(V) Disability law experts.

16                           “(VI) Representatives of labor  
17                           organizations.

18                           “(VII) Representatives of worker  
19                           advocacy organizations.

20           “(C) APPOINTMENTS.—The Director  
21           shall—

22                   “(i) appoint members to the advisory  
23                   board established under subparagraph (A);  
24                   and

1                   “(ii) ensure a partisan balance in the  
2 membership of the advisory board.

3                   “(D) MEETINGS.—The advisory board es-  
4 tablished under subparagraph (A) shall meet—

5                   “(i) at the call of the Director; and

6                   “(ii) not less than 2 times annually.

7                   “(E) COMPENSATION AND TRAVEL EX-  
8 PENSES.—A member of the Fairness and  
9 Transparency Advisory Board established under  
10 subparagraph (A) who is not an officer or em-  
11 ployee of the Federal Government shall—

12                   “(i) be entitled to receive compensa-  
13 tion at a rate fixed by the Director while  
14 attending meetings of the advisory board,  
15 including travel time; and

16                   “(ii) receive travel expenses, including  
17 per diem in lieu of subsistence, in accord-  
18 ance with applicable provisions under sub-  
19 chapter I of chapter 57 of title 5, United  
20 States Code.

21                   “(F) EXEMPTION FROM THE FEDERAL AD-  
22 VISORY COMMITTEE ACT.—The Fairness and  
23 Transparency Advisory Board established under  
24 subparagraph (A) shall be exempt from chapter  
25 10 of title 5, United States Code (commonly

1 known as the ‘Federal Advisory Committee  
2 Act’).

3 “(3) USE OF VOLUNTARY SERVICES.—The Di-  
4 rector may, as may from time to time be needed, use  
5 any voluntary or uncompensated services.

6 “(4) ATTORNEYS.—Attorneys appointed under  
7 this subsection or the Solicitor of Labor may appear  
8 for and represent the Director in any litigation.

9 “(d) RULEMAKING.—

10 “(1) IN GENERAL.—The Secretary, acting  
11 through the Director and the Administrator of the  
12 Wage and Hour Office, may issue orders and guid-  
13 ance or promulgate regulations as may be necessary  
14 or appropriate to enable the Secretary to carry out  
15 the purposes and objectives of this section, and to  
16 prevent evasions thereof.

17 “(2) CONSULTATION.—In issuing orders and  
18 guidance or promulgating regulations under this  
19 subsection, the Secretary, acting through the Direc-  
20 tor and the Administrator of the Wage and Hour  
21 Office, may consult with the Occupational Safety  
22 and Health Administration and Federal agencies  
23 that have jurisdiction over labor and employment  
24 issues, including the Equal Employment Oppor-  
25 tunity Commission, the National Labor Relations

1 Board, the National Mediation Board, and the Merit  
2 Systems Protection Board.”;

3 (2) by inserting after section 7 (29 U.S.C. 207)  
4 the following:

5 **“SEC. 8. WAREHOUSE WORKER PROTECTIONS.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ADVERSE EMPLOYMENT ACTION.—The  
8 term ‘adverse employment action’, with respect to a  
9 covered employee, means a change by the covered  
10 employer of the covered employee in the compensa-  
11 tion, terms, conditions, or privileges of the job of the  
12 covered employee that, from the perspective of a rea-  
13 sonable person, puts the covered employee in a ma-  
14 terially adverse position than prior to the change, in-  
15 cluding termination, a reduction in benefits, discipli-  
16 nary action, demotion, promotion, transfer, imposi-  
17 tion of a work schedule more burdensome to the cov-  
18 ered employee, reduction of scheduled hours, adjust-  
19 ment in ability for promotion, or other modifications  
20 to compensation, terms, conditions, or privileges of  
21 employment.

22 “(2) AGGREGATED WORK SPEED DATA.—The  
23 term ‘aggregated work speed data’ means employee  
24 work speed data that a covered employer has com-  
25 bined, or collected together, in a summary or other

1 form so that the employee work speed data cannot,  
2 at any point, be identified or linked with any specific  
3 covered employee.

4 “(3) COVERED FACILITY.—The term ‘covered  
5 facility’ means any warehouse distribution center de-  
6 scribed in the North American Industry Classifica-  
7 tion System code—

8 “(A) 493, for warehousing and storage;

9 “(B) 423, for merchant wholesalers, dura-  
10 ble goods;

11 “(C) 424, for merchant wholesalers, non-  
12 durable goods;

13 “(D) 454110, for electronic shopping and  
14 mail-order houses; or

15 “(E) 492110, for couriers and express de-  
16 livery services.

17 “(4) COVERED EMPLOYEE.—The term ‘covered  
18 employee’ means an employee who—

19 “(A) is employed by an employer for the  
20 performance of work at a covered facility; and

21 “(B) is subject to a quota while performing  
22 work at such covered facility.

23 “(5) COVERED EMPLOYER.—

24 “(A) IN GENERAL.—The term ‘covered em-  
25 ployer’ means an employer that—



1           “(i) is engaged in commerce, in the  
2           production of goods for commerce, or in an  
3           enterprise engaged in commerce or in the  
4           production of goods for commerce, includ-  
5           ing such an employer that is a contractor,  
6           subcontractor, temporary service firm,  
7           staffing agency, independent contractor,  
8           employee leasing entity, or similar entity;

9           “(ii) employs a covered employee for  
10          the performance of work at a covered facil-  
11          ity; and

12          “(iii) employs more than a total of  
13          200 employees (including on a full- or  
14          part-time basis) for the performance of  
15          work at all covered facilities owned or op-  
16          erated by the employer.

17          “(B) RULE OF CONSTRUCTION.—For pur-  
18          poses of determining the number of employees  
19          under subparagraph (A)(iii), the total number  
20          of employees employed for the performance of  
21          work as described in such subparagraph shall  
22          include all employees of any affiliate of the em-  
23          ployer (as determined in accordance with sec-  
24          tion 121.103 of title 13, Code of Federal Regu-

1           lations, as in effect on the date of enactment of  
2           the Warehouse Worker Protection Act).

3           “(6) DEFINED TIME PERIOD.—The term ‘de-  
4           fined time period’ means any unit of time measure-  
5           ment equal to or less than one day, including hours,  
6           minutes, and seconds and any fraction thereof.

7           “(7) DESIGNATED EMPLOYEE REPRESENTA-  
8           TIVE.—The term ‘designated employee representa-  
9           tive’ means any representative designated by a cov-  
10          ered employee, including an employee representative  
11          that has a collective bargaining relationship with the  
12          covered employer of the covered employee.

13          “(8) DIRECTOR.—The term ‘Director’ means  
14          the Director of the Fairness and Transparency Of-  
15          fice established by section 5.

16          “(9) EGREGIOUS MISCONDUCT.—The term  
17          ‘egregious misconduct’, with respect to a covered  
18          employee, means deliberate or grossly negligent con-  
19          duct that endangers the safety or well-being of the  
20          covered employee, co-workers of the covered em-  
21          ployer, customers, or other persons, including dis-  
22          crimination against or harassment of co-workers,  
23          customers, or other persons.

24          “(10) EMPLOYEE WORK SPEED DATA.—The  
25          term ‘employee work speed data’ means information

1 a covered employer collects, stores, analyzes, or in-  
2 terprets relating to the performance of work by a  
3 covered employee of the covered employer for a  
4 quota, including information with respect to the—

5 “(A) quantities of tasks performed by the  
6 covered employee;

7 “(B) quantities of items or materials han-  
8 dled or produced by the covered employee;

9 “(C) rates or speeds of tasks performed by  
10 the covered employee;

11 “(D) measurements or metrics of covered  
12 employee performance in relation to a quota; or

13 “(E) time categorized with respect to the  
14 covered employee as performing tasks or not  
15 performing tasks.

16 “(11) QUOTA.—The term ‘quota’ means an ex-  
17 press or implied performance standard or perform-  
18 ance target, including such a standard or target  
19 used to rank or compare an employee in relation to  
20 the performance of another employee or in relation  
21 to the past performance of the employee, under  
22 which—

23 “(A)(i) an employee is actually or effec-  
24 tively assigned, required, or expected within a  
25 defined time period (with or without any rea-

1 sonable accommodation provided under Federal,  
2 State, or local law) to—

3 “(I) perform—

4 “(aa) a quantified number  
5 of tasks; or

6 “(bb) at a specified produc-  
7 tivity speed; or

8 “(II) handle or produce a quan-  
9 tified amount of material without a  
10 certain number of errors or defects;  
11 and

12 “(ii) such assignment, requirement, or ex-  
13 pectation is measured at the individual or group  
14 level for such defined time period;

15 “(B) actions by an employee are cat-  
16 egorized and measured between time per-  
17 forming tasks and not performing tasks within  
18 a defined time period; or

19 “(C) increments of time of a defined time  
20 period during which an employee is or is not  
21 doing a particular activity are measured, re-  
22 corded, or tallied.

23 “(12) SIMILARLY SITUATED COVERED EM-  
24 PLOYEE.—The term ‘similarly situated covered em-  
25 ployee’, with respect to a covered employee, means

1 another covered employee who holds the same job or  
2 responsibilities as the covered employee.

3 “(13) TRIBAL GOVERNMENT.—The term ‘Tribal  
4 government’ means the recognized governing body of  
5 an Indian Tribe.

6 “(14) WORKPLACE SURVEILLANCE.—The term  
7 ‘workplace surveillance’ means any employer surveil-  
8 lance (on- or off-duty) with respect to an employee,  
9 including the detection, monitoring, interception, col-  
10 lection, exploitation, preservation, protection, trans-  
11 mission, or retention of data concerning activities or  
12 communications with respect to the employee, in-  
13 cluding through the use of a product or service mar-  
14 keted, or that can be used, for such purposes, such  
15 as a computer, telephone, wire, radio, camera, sen-  
16 sor, electromagnetic, photoelectronic, handheld or  
17 wearable device, or photo-optical system.

18 “(15) WORK STATION.—The term ‘work sta-  
19 tion’ means the area of a covered facility within  
20 which a covered employee is assigned to perform  
21 tasks for the longest duration of time during a day.

22 “(b) COMMUNICATION WITH COVERED EMPLOYEES  
23 REGARDING QUOTAS AND WORKPLACE SURVEILLANCE.—

24 “(1) IN GENERAL.—On the later of the date a  
25 covered employee is hired by a covered employer or

1 180 days after the date of enactment of this section,  
2 each covered employer shall provide to each covered  
3 employee of the covered employer—

4 “(A) a written description of each quota to  
5 which the covered employee is subject, includ-  
6 ing—

7 “(i) as applicable, the quantified num-  
8 ber of tasks to be performed or of mate-  
9 rials to be produced or handled, or other  
10 performance measure, within the defined  
11 time period, for the quota;

12 “(ii) any potential discipline or ad-  
13 verse employment action that could result  
14 from failure to meet the quota;

15 “(iii) how performance targets or per-  
16 formance standards for the quota are cal-  
17 culated;

18 “(iv) whether there is any incentive or  
19 bonus program associated with meeting or  
20 exceeding the quota and, if applicable, how  
21 the incentive or bonus program operates;  
22 and

23 “(v) how the quota is monitored, in-  
24 cluding a description of—

1           “(I) what employee work speed  
2 data are being collected;

3           “(II) how the employee work  
4 speed data are being collected, includ-  
5 ing a description of any workplace  
6 surveillance technology used on the  
7 covered employee by the covered em-  
8 ployer;

9           “(III) where and when the em-  
10 ployee work speed data are being col-  
11 lected;

12           “(IV) the frequency of the collec-  
13 tion;

14           “(V) where the storage of the  
15 employee work speed data is located;

16           “(VI) the business purposes for  
17 which the employee work speed data  
18 are being used; and

19           “(VII) as applicable, the identity  
20 of any third party—

21           “(aa) used for such work-  
22 place surveillance;

23           “(bb) to which data from  
24 such workplace surveillance is  
25 transferred; and

1                   “(cc) from which data of the  
2                   covered individual is or may be  
3                   purchased or acquired; and

4                   “(B) a written description of and training  
5                   with respect to how the covered employee may  
6                   file a complaint regarding a violation of this  
7                   section or a standard promulgated under title  
8                   III of the Warehouse Worker Protection Act.

9                   “(2) CHANGES TO QUOTA OR WORKPLACE SUR-  
10                  VEILLANCE.—Each covered employer shall provide  
11                  to any applicable covered employee an updated writ-  
12                  ten description of any information provided under  
13                  paragraph (1) not less than 2 business days before  
14                  any changes with respect to such information are  
15                  made.

16                  “(3) REQUIREMENTS FOR TAKING AN ADVERSE  
17                  EMPLOYMENT ACTION ON QUOTA COMPLIANCE.—

18                  “(A) IN GENERAL.—A covered employer  
19                  that takes an adverse employment action  
20                  against a covered employee for work perform-  
21                  ance that does not meet requirements with re-  
22                  spect to a quota shall provide—

23                  “(i) a written explanation to the cov-  
24                  ered employee regarding the manner in  
25                  which the covered employee failed to per-



1 form, including a description of the appli-  
2 cable quota and a comparison of such work  
3 performance to such quota; and

4 “(ii) if the adverse employment action  
5 was based on employee work speed data, a  
6 copy of the employee work speed data in a  
7 human-readable format that a reasonable  
8 individual can understand.

9 “(B) NOTICE FOR ACTIONS UNRELATED  
10 TO QUOTA.—A covered employer that, with re-  
11 spect to any covered employee who is subject to  
12 a quota, takes an adverse employment action  
13 against such covered employee for any reason  
14 that is unrelated to compliance with the quota  
15 shall provide to such covered employee a written  
16 confirmation that such action was unrelated to  
17 compliance with the quota.

18 “(4) TERMINATION.—

19 “(A) IN GENERAL.—Except as provided in  
20 clause (ii), a covered employer that seeks to ter-  
21minate a covered employee shall, regardless of  
22 whether the termination relates to work per-  
23formance with respect to a quota, provide to the  
24 covered employee a written notice of the intent  
25 to terminate the covered employee.

1           “(B) EGREGIOUS MISCONDUCT.—Notwith-  
2 standing subparagraph (A), a covered employer  
3 may terminate a covered employee without pro-  
4 viding such written notice if the covered em-  
5 ployee engaged in egregious misconduct.

6           “(5) DESCRIPTIONS.—Each covered employer  
7 shall—

8           “(A) provide any written description, no-  
9 tice, explanation, or confirmation described in  
10 paragraph (1), (2), (3), or (4) to a covered em-  
11 ployee—

12           “(i) through a human representative  
13 of the covered employer at the work station  
14 of the covered employee; and

15           “(ii) in a manner required by the Di-  
16 rector that—

17           “(I) is accessible;

18           “(II) allows the covered employee  
19 to transport the data in the descrip-  
20 tion, notice, explanation, or confirma-  
21 tion without hindrance;

22           “(III) is in plain language; and

23           “(IV) is in the primary language  
24 of the covered employee; and

1           “(B) make such description, notice, expla-  
2           nation, or confirmation available to the covered  
3           employee electronically.

4           “(c) PROTECTION FROM QUOTAS.—

5           “(1) PROHIBITED QUOTAS.—A covered em-  
6           ployer may not require any quota for a covered em-  
7           ployee that would—

8           “(A) prevent—

9           “(i) compliance with any required  
10          meal or rest period or any other break re-  
11          quired by Federal, State, or local law;

12          “(ii) compliance with health and safe-  
13          ty provisions required by Federal, State, or  
14          local law;

15          “(iii) the use by the covered employee  
16          of bathroom facilities, including reasonable  
17          travel time to and from bathroom facilities  
18          that takes into account the architecture of  
19          the covered facility; or

20          “(iv) compliance with a covered em-  
21          ployee’s right to reasonable accommoda-  
22          tions or nondiscrimination as required by  
23          Federal, State, or local law;

24          “(B) set a performance target or perform-  
25          ance standard that measures total output for

1 the covered employee over an increment of time  
2 that is shorter than one day;

3 “(C) measure and evaluate the output or  
4 performance of a covered employee during any  
5 paid or unpaid break to which the covered em-  
6 ployee is entitled under applicable law, contract,  
7 or industry standard, including breaks to use  
8 bathroom facilities and reasonable travel time  
9 to and from bathroom facilities;

10 “(D) prevent or discourage the covered  
11 employee from exercising any right under the  
12 National Labor Relations Act (29 U.S.C. 151  
13 et seq.) or any other Federal law;

14 “(E) prevent or discourage the covered em-  
15 ployee from exercising any right guaranteed in  
16 an applicable collective bargaining agreement;  
17 or

18 “(F) violate the generally accepted prin-  
19 ciples of work measurement as set forth in the  
20 Code of Work Measurement Ethics of the  
21 American Institute of Industrial Engineers and  
22 recognized by the Secretary.

23 “(2) ADVERSE EMPLOYMENT ACTION.—A cov-  
24 ered employer may not take adverse employment ac-

1 tion against a covered employee for failure to meet  
2 a quota that—

3 “(A) violates paragraph (1);

4 “(B) was not described to the covered em-  
5 ployee in accordance with subsection (b);

6 “(C) is based solely on ranking the per-  
7 formance of the covered employee in relation to  
8 the performance of another covered employee or  
9 in relation to the past performance of that cov-  
10 ered employee; or

11 “(D) is based on continuously measuring,  
12 recording, or tallying increments of time within  
13 a defined time period during which a covered  
14 employee is or is not doing a particular activity.

15 “(d) MINIMIZATION.—

16 “(1) COLLECTION.—In establishing, maintain-  
17 ing, or using employee work speed data with respect  
18 to a quota for a covered employee, a covered em-  
19 ployer may not collect, use, maintain, or transfer  
20 data on or of the covered employee except as strictly  
21 necessary to monitor the compliance of the covered  
22 employee with the quota.

23 “(2) EMPLOYEE ACCESS.—In establishing,  
24 maintaining, or using employee work speed data  
25 with respect to a quota for a covered employee, a

1 covered employer may not disclose any information  
2 collected on a covered employee with respect to the  
3 quota to any other covered employee of the covered  
4 employer except as strictly necessary to fulfill a spe-  
5 cific and reasonable business rationale of the covered  
6 employer.

7 “(e) RECORDKEEPING.—

8 “(1) IN GENERAL.—Each covered employer  
9 shall—

10 “(A) maintain contemporaneous records,  
11 with respect to each covered employee of the  
12 covered employer, of—

13 “(i) the employee work speed data of  
14 each such covered employee;

15 “(ii) the aggregated work speed data  
16 for similarly situated covered employees at  
17 the same place where each such covered  
18 employee performs work for the covered  
19 employer; and

20 “(iii) the written descriptions of the  
21 quota of each such covered employee pro-  
22 vided under subsection (b)(1);

23 “(B) maintain such records for the dura-  
24 tion of the employment of each relevant covered  
25 employee; and

1           “(C) make such records available to the  
2           Secretary upon request.

3           “(2) SUPPLEMENTATION AND DISPUTE OF  
4           RECORDS.—

5           “(A) SUPPLEMENTATION OF RECORDS.—

6           Each covered employer shall enable a covered  
7           employee, upon request of the covered employee  
8           at or after the time of any employee work speed  
9           data collection with respect to the covered em-  
10          ployee, to supplement the employee work speed  
11          data by recording any reason the covered em-  
12          ployee provides for any defined time period dur-  
13          ing which the covered employee was not per-  
14          forming work-related tasks, including because  
15          the covered employee was taking a paid or un-  
16          paid break, using a bathroom facility (including  
17          reasonable travel to and from the facility), re-  
18          porting an injury or receiving attention due to  
19          an injury, exercising a right guaranteed under  
20          the National Labor Relations Act (29 U.S.C.  
21          151 et seq.) or another Federal law, or exer-  
22          cising a right guaranteed under an applicable  
23          covered bargaining agreement.

24          “(B) DISPUTE PROCESS.—

1           “(i) IN GENERAL.—Each covered em-  
2           ployer shall enable a covered employee,  
3           upon request of the covered employee at or  
4           after the time of any data collection with  
5           respect to the covered employee, to review  
6           and request correction of the employee  
7           work speed data in accordance with clause  
8           (ii).

9           “(ii) CORRECTION OF EMPLOYEE  
10          WORK SPEED DATA.—A covered employer  
11          that receives a request by a covered em-  
12          ployee under clause (i) shall—

13                 “(I) investigate and determine  
14                 whether the employee work speed data  
15                 is inaccurate; and

16                 “(II) if determined to be inac-  
17                 curate—

18                         “(aa) promptly correct the  
19                         inaccurate data and notify the  
20                         covered employee of the covered  
21                         employer’s determination and  
22                         correction; and

23                         “(bb) review and adjust, as  
24                         appropriate, any adverse employ-  
25                         ment action that was, partially or



1 solely, based on the inaccurate  
2 data and notify the covered em-  
3 ployee of the adjustment.

4 “(3) RETENTION OF RECORDS.—

5 “(A) IN GENERAL.—After the termination  
6 of employment of a covered employee of a cov-  
7 ered employer, the covered employer shall—

8 “(i) for not less than 3 years after the  
9 date of such termination, retain the  
10 records described in paragraph (1) with re-  
11 spect to the 6-month period prior to such  
12 date; and

13 “(ii) make such records available to  
14 the Secretary upon request.

15 “(4) RULE OF CONSTRUCTION.—Nothing in  
16 this subsection shall require a covered employer to  
17 keep records described in paragraph (1) with respect  
18 to employee work speed data if such covered em-  
19 ployer does not otherwise monitor employee work  
20 speed data.

21 “(f) RIGHT TO REQUEST.—

22 “(1) IN GENERAL.—A covered employer shall,  
23 upon receiving a request under paragraph (2) or (3),  
24 provide the relevant copies described in such para-  
25 graphs to, as the case may be, the covered employee,

1 designated employee representative, or individual  
2 who was a covered employee—

3 “(A) except as provided in subparagraph  
4 (B)(ii), at no cost to the covered employee, des-  
5 ignated employee representative, or individual  
6 who was a covered employee;

7 “(B) with respect to—

8 “(i) a covered employee, by a human  
9 representative of the covered employer; or

10 “(ii) a designated employee represent-  
11 ative or an individual who was a covered  
12 employee, by a human representative of  
13 the covered employer or through the mail  
14 (at the cost of the designated employee  
15 representative or individual, respectively);  
16 and

17 “(C) as soon as practicable but not later  
18 than—

19 “(i) 7 business days after receipt of a  
20 request for such copies with respect to em-  
21 ployee work speed data or aggregate work  
22 speed data; or

23 “(ii) 2 business days after receipt of a  
24 request for any other copy.

1           “(2) REQUESTS DURING EMPLOYMENT.—A cov-  
2           ered employee, or a designated employee representa-  
3           tive of such covered employee at the request of the  
4           covered employee, may request from the covered em-  
5           ployer of the covered employee a copy of the written  
6           description described under subsection (b), a copy of  
7           the employee work speed data (in a human-readable  
8           format that a reasonable individual can understand)  
9           of the covered employee for the preceding 6-month  
10          period, and a copy of the aggregated work speed  
11          data (in a human-readable format that a reasonable  
12          individual can understand) for similarly situated cov-  
13          ered employees at the same place where the covered  
14          employee performs work for the covered employer  
15          for the preceding 6-month period.

16          “(3) REQUESTS AFTER EMPLOYMENT TERMI-  
17          NATION.—An individual who was a covered employee  
18          with respect to a covered employer, or a designated  
19          employee representative with respect to such an indi-  
20          vidual, may, not later than 3 years after the date of  
21          termination of employment of the covered employee  
22          with the covered employer, request from the covered  
23          employer a copy of—

1           “(A) the written description described  
2           under subsection (b) effective on the date of  
3           termination of the covered employee;

4           “(B) the employee work speed data (in a  
5           human-readable format that a reasonable indi-  
6           vidual can understand) of the covered employee  
7           for the 6-month period prior to such date of  
8           termination; and

9           “(C) the aggregated work speed data (in a  
10          human-readable format that a reasonable indi-  
11          vidual can understand) for similarly situated  
12          covered employees at the same place where the  
13          covered employee performs work for the covered  
14          employer for such 6-month period.

15          “(4) RULE OF CONSTRUCTION.—Nothing in  
16          this subsection shall require a covered employer to—

17                 “(A) monitor employee work speed data; or

18                 “(B) provide information related to em-  
19                 ployee work speed data if the covered employer  
20                 does not otherwise monitor such employee work  
21                 speed data.

22          “(g) POSTING OF NOTICES.—

23                 “(1) IN GENERAL.—Each covered employer  
24                 shall post, in a conspicuous and accessible location,  
25                 a notice in the covered facility of the covered em-

1       ployer regarding the rights of covered employees  
2       under this section, including what constitutes a per-  
3       missible quota, the right to request quota descrip-  
4       tions and employee speed data information, and the  
5       right to make a complaint to Federal authorities re-  
6       garding a violation of any right under this section.

7               “(2) REQUIREMENTS FOR NOTICES.—Each no-  
8       tice described in paragraph (1) shall be in a manner  
9       required by the Director that—

10                       “(A) is in plain language; and

11                       “(B) is in English, Spanish, and any other  
12       language that constitutes the primary language  
13       of any covered employee at the covered facility.

14       “(h) BREAKS FOR COVERED EMPLOYEES.—

15               “(1) IN GENERAL.—Each covered employer  
16       shall—

17                       “(A) with respect to each covered employee  
18       of such covered employer—

19                               “(i) provide, for every 4 hours of work  
20       by such a covered employee, to the covered  
21       employee not less than one 15-minute rest  
22       break paid at the regular rate at which the  
23       covered employee is employed; and

24                               “(ii) provide, at the time the covered  
25       employer hires such a covered employee,

1 notice to the covered employee, in plain  
2 language and the primary language of the  
3 covered employee, that—

4 “(I) the covered employee is enti-  
5 tled to the paid rest breaks described  
6 in clause (i);

7 “(II) retaliation by the covered  
8 employer against the covered employee  
9 for requesting or taking such paid  
10 rest breaks is prohibited; and

11 “(III) the covered employee, or a  
12 designated employee representative of  
13 the covered employee, has a right to  
14 file a complaint with the Secretary for  
15 any violation by the covered employer  
16 of this subsection; and

17 “(B) display, in a conspicuous and acces-  
18 sible location, a sign at each covered facility of  
19 the covered employer that includes, in English,  
20 Spanish, and any other language that con-  
21 stitutes the primary language of any covered  
22 employee at the covered facility, the information  
23 in the notice described in subparagraph (A)(ii).

24 “(2) NOTICE.—Not later than 180 days after  
25 the date of enactment of this section, the Secretary

1 shall issue regulations with respect to the design and  
2 content of the sign described in paragraph (1)(B),  
3 including a sample design.

4 “(3) INTERACTION WITH OTHER LAWS.—Noth-  
5 ing in this subsection shall be construed to super-  
6 sede or preempt any Federal, State, or local law or  
7 collective bargaining agreement requiring longer  
8 paid rest breaks than those required under para-  
9 graph (1)(A)(i).

10 “(i) UNLAWFUL RETALIATION.—

11 “(1) IN GENERAL.—A person, including a cov-  
12 ered employer, an agent of a covered employer, or  
13 person acting as or on behalf of a covered employer  
14 conducting hiring or any related activity, or an offi-  
15 cer or agent of any entity, business, corporation,  
16 partnership, or limited liability company, may not—

17 “(A) discharge or in any way retaliate, dis-  
18 criminate, or take any adverse employment ac-  
19 tion against any individual for exercising any  
20 right conferred under this section, or for being  
21 perceived as exercising such a right, including  
22 for—

23 “(i) requesting copies under sub-  
24 section (f);

1                   “(ii) filing a complaint under subpara-  
2                   graph (A) of section 16(f) regarding a vio-  
3                   lation of this section or designating a rep-  
4                   resentative in accordance with subpara-  
5                   graph (B) of such section to file such a  
6                   complaint; or

7                   “(iii) commencing a proceeding under  
8                   section 16(b) for a violation of this section;  
9                   or

10                  “(B) otherwise prevent an individual for  
11                  exercising such a right or take any action  
12                  against an individual that might deter a reason-  
13                  able employee from asserting a right conferred  
14                  under this section.

15                  “(2) PROTECTIONS FOR GOOD FAITH ALLEGA-  
16                  TIONS.—The protections under paragraph (1) shall  
17                  apply to any individual who mistakenly, but in good  
18                  faith, alleges a violation of a requirement of this sec-  
19                  tion.

20                  “(3) EXPLICIT REFERENCE NOT REQUIRED.—A  
21                  complaint or other communication by an individual,  
22                  including a covered employee, may be the exercise of  
23                  a right for purposes of paragraph (1) regardless of  
24                  whether the complaint or communication is in writ-  
25                  ing or makes explicit reference to this Act.



1           “(4) REBUTTABLE PRESUMPTION.—If a person  
2           takes adverse action against a covered employee  
3           within 90 days of the covered employee engaging, or  
4           attempting to engage in, activities protected by para-  
5           graph (1), such conduct shall establish a rebuttable  
6           presumption that the adverse action is an adverse  
7           action in violation of such paragraph. Such pre-  
8           sumption may be rebutted by clear and convincing  
9           evidence that—

10                   “(A) the action was taken for other per-  
11                   missible reasons; and

12                   “(B) the engaging or attempting to engage  
13                   in activities protected by paragraph (1) was not  
14                   a motivating factor in the adverse action.

15           “(j) QUOTA TASK FORCE.—Not later than 90 days  
16           after the date of the enactment of this section, the Direc-  
17           tor shall convene a task force with labor organizations,  
18           worker advocacy organizations, and covered employees to  
19           develop strategies for labor organizations and worker ad-  
20           vocacy organizations to—

21                   “(1) assist in the enforcement of this section;

22                   “(2) train covered employees with respect to  
23                   new rights provided through this section; and

1           “(3) provide the Director with recommendations  
2           on the implementation of regulations related to this  
3           section.”;

4           (3) in section 9 (29 U.S.C. 208), by striking  
5           “and investigation” and inserting “, investigation, or  
6           inspection”;

7           (4) by repealing section 10 (29 U.S.C. 210);

8           (5) in section 11 (29 U.S.C. 211), by adding at  
9           the end the following:

10          “(e)(1) The Secretary, acting through the Director  
11          of the Fairness and Transparency Division, shall, as pro-  
12          vided in subsection (a) and paragraph (2), investigate vio-  
13          lations of section 8, including any violations of any regula-  
14          tion or order issued with respect to that section.

15          “(2) In addition to powers otherwise provided to the  
16          Secretary under subsection (a), the Secretary, in inves-  
17          tigating violations of section 8, may upon presenting ap-  
18          propriate credentials to the owner, operator, or agent in  
19          charge—

20                 “(A) enter without delay and at reasonable  
21                 times any covered facility of a covered employer; and

22                 “(B) inspect and investigate during regular  
23                 working hours and at other reasonable times, and  
24                 within reasonable limits and in a reasonable manner,  
25                 any such covered facility and all pertinent condi-

1        tions, structures, machines, apparatus, devices,  
2        equipment, and materials therein, and to question  
3        privately any such covered employer, owner, oper-  
4        ator, agent, or covered employee.

5        “(3)(A) In conducting an inspection during an inves-  
6        tigation into a violation of section 8, the Secretary shall  
7        permit, at the request of a covered employee, a representa-  
8        tive of a labor organization or a worker advocacy organiza-  
9        tion, or another designee of the covered employee, to ac-  
10       company any inspectors during such inspection.

11       “(B) A covered employee may, regardless of the rela-  
12       tionship between the covered employee and the labor orga-  
13       nization, worker advocacy organization, or other designee,  
14       anonymously request to the Secretary that the Secretary  
15       permit a representative of such labor organization, worker  
16       advocacy organization, or other designee accompany in-  
17       spectors during an inspection in accordance with para-  
18       graph (1).

19       “(f)(1) Not later than 30 days after an event de-  
20       scribed in paragraph (2), the Secretary shall open an in-  
21       vestigation under this section (that includes an on-site in-  
22       spection) into any covered employer to determine if such  
23       covered employer is violating section 8.

24       “(2) An event described in this paragraph is, with  
25       respect to a covered employer, either of the following:

1           “(A) The Secretary determines that the covered  
2 employer—

3                   “(i) has an annual total of employee work  
4 hours that is not less than 40,000 hours; and

5                   “(ii) has an annual employee injury rate,  
6 overall or at a worksite, that is not less than  
7 1.5 times the warehousing industry’s average  
8 annual injury rate, as determined by the Bu-  
9 reau of Labor Statistics in the most recent (as  
10 of such determination) publication regarding  
11 fatal and nonfatal occupational injuries and ill-  
12 nesses data.

13           “(B) The Secretary receives, during any one-  
14 year period, not less than—

15                   “(i) 5 credible complaints from covered  
16 employees of the covered employer, individuals  
17 who were covered employees of the covered em-  
18 ployer, or designated representatives of such  
19 covered employees or individuals, about viola-  
20 tions under section 8 at a worksite; or

21                   “(ii) 10 credible complaints from covered  
22 employees of the covered employer, individuals  
23 who were covered employees of the covered em-  
24 ployer, or designated representatives of such  
25 covered employees or individuals, about such

1           violations at multiple worksites operated by the  
2           covered employer.

3           “(3) In conducting an investigation under paragraph  
4 (1), the Secretary shall select representatives of a labor  
5 organization or a worker advocacy organization who have  
6 specific knowledge of the relevant industry to conduct out-  
7 reach to workers with respect to such investigation and  
8 aid and accompany investigators in such investigation.

9           “(g) For purposes of subsections (e) and (f), the  
10 terms ‘covered employee’, ‘covered employer’, and ‘covered  
11 facility’ have the meanings given such terms in section  
12 8(a).”;

13           (6) in section 15(a) (29 U.S.C. 215(a))—

14           (A) in paragraph (5), by striking “; and”  
15 and inserting a semicolon;

16           (B) in paragraph (6), by striking the pe-  
17 riod at the end and inserting “; and”; and

18           (C) by adding at the end the following:

19           “(7) to violate any of the provisions of section  
20 8.”; and

21           (7) in section 16 (29 U.S.C. 216)—

22           (A) in subsection (b)—

23           (i) by striking “15(a)(3)” each place  
24 it appears and inserting “8, 15(a)(3),”;

1           (ii) in the second sentence, by insert-  
2           ing “and, in the case of a violation of sec-  
3           tion 8, of an amount for the direct or fore-  
4           seeable pecuniary harms resulting from the  
5           violation and an amount equal to \$10,000  
6           per violation of subsection (b), (d), (e), (f),  
7           or (g) of such section or an amount equal  
8           to \$25,000 per violation of subsection (c),  
9           (h), or (i) of such section” before the pe-  
10          riod at the end of the sentence; and

11           (iii) in the fifth sentence, by striking  
12          “No” and inserting “Except with respect  
13          to an action brought regarding a violation  
14          of section 8, no”;

15          (B) in subsection (e)—

16           (i) by redesignating paragraphs (3),  
17           (4), and (5) as paragraphs (4), (5), and  
18           (6), respectively;

19           (ii) by inserting after paragraph (2),  
20          the following:

21           “(3) Any person who violates section 8 shall be  
22          subject to a civil penalty—

23           “(A) in an amount not more than \$76,987  
24          per violation; or

1           “(B) for repeat or willful violations, in an  
2 amount not more than \$769,870 per viola-  
3 tion.”; and

4           (iii) in paragraph (4)(C), as so redesi-  
5 gnated, by striking “section 15(a)(4)” and  
6 inserting “paragraph (4) or (7) of section  
7 15(a)”;

8           (C) by adding at the end the following:

9           “(f) ADMINISTRATIVE COMPLAINTS REGARDING  
10 WAREHOUSE WORKER PROTECTIONS.—

11           “(1) IN GENERAL.—A covered employee or an  
12 individual who was a covered employee may—

13           “(A) file a complaint of a violation of sec-  
14 tion 8 with the Secretary; and

15           “(B) designate a representative of a labor  
16 organization or worker advocacy organization,  
17 regardless of the relationship between the cov-  
18 ered employee or individual and the labor orga-  
19 nization or worker advocacy organization, to—

20           “(i) file the complaint on behalf of the  
21 covered employee or individual; or

22           “(ii) represent the covered employee  
23 or individual for purposes of engagement  
24 with the Secretary regarding such com-  
25 plaint, including being present at employee

1 interviews and participating in workplace  
2 inspections, conferences, and settlement  
3 negotiations.

4 “(2) DEFINITION OF COVERED EMPLOYEE.—  
5 For purposes of paragraph (1), the term ‘covered  
6 employee’ has the meaning given such term in sec-  
7 tion 8(a).

8 “(g) EXEMPTION FROM THE FEDERAL ARBITRATION  
9 ACT REGARDING WAREHOUSE WORKER PROTECTIONS.—

10 “(1) IN GENERAL.—Notwithstanding chapter 1  
11 of title 9, United States Code (commonly known as  
12 the ‘Federal Arbitration Act’), no predispute arbitra-  
13 tion agreement or predispute joint-action waiver (as  
14 those terms are defined in section 401 of title 9,  
15 United States Code) shall be valid or enforceable  
16 with respect to claims arising under this Act for vio-  
17 lations of section 8.

18 “(2) ARBITRATION PURSUANT TO A COLLEC-  
19 TIVE BARGAINING AGREEMENT.—Nothing in this  
20 subsection shall limit the enforceability of any arbi-  
21 tration provision in a collective bargaining agree-  
22 ment between a covered employer (as defined in sec-  
23 tion 8(a)) and a labor organization.

24 “(h) EXCEPTION FROM CLASS ACTION PRE-  
25 REQUISITES FOR ACTIONS REGARDING WAREHOUSE



1 WORKER PROTECTIONS.—An employee who brings an ac-  
2 tion for a violation of section 8 on behalf of employees  
3 similarly situated shall be considered to have satisfied  
4 paragraphs (1) through (4) of rule 23(a) of the Federal  
5 Rules of Civil Procedure for purposes of such an action.”.

6 **SEC. 102. REFERRAL OF COMPLAINTS.**

7 (a) MEMORANDUM OF UNDERSTANDING.—The Di-  
8 rector of the Fairness and Transparency Office estab-  
9 lished by section 5 of the Fair Labor Standards Act of  
10 1938 (as added by section 101) and the Administrator of  
11 the Wage and Hour Office of the Department of Labor  
12 shall jointly enter into a memorandum of understanding  
13 with the Assistant Secretary of Labor for Occupational  
14 Safety and Health to encourage efficient enforcement of  
15 relevant labor laws, including through information shar-  
16 ing, referral of complaints, and cross-training of inspec-  
17 tors and investigators. The memorandum of under-  
18 standing shall encourage coordination of enforcement ac-  
19 tivity in States enforcing relevant labor law under a State  
20 plan that has been approved by the Secretary under sec-  
21 tion 18 of the Occupational Safety and Health Act of 1970  
22 (29 U.S.C. 667).

23 (b) REFERRAL OF COMPLAINTS AND CROSS-TRAIN-  
24 ING.—The Director of the Fairness and Transparency Of-  
25 fice shall, to the greatest extent possible—

1           (1) encourage the referral of relevant com-  
2           plaints from and to the Equal Employment Oppor-  
3           tunity Commission, the National Institute for Occu-  
4           pational Safety and Health, the Environmental Pro-  
5           tection Agency, the National Labor Relations Board,  
6           and other Federal and State agencies that may con-  
7           duct inspections related to occupational health and  
8           safety in covered facilities (as defined in section 8(a)  
9           of the Fair Labor Standards Act of 1938); and

10           (2) promote cross-training of inspectors and in-  
11           vestigators in the Equal Employment Opportunity  
12           Commission, National Institute for Occupational  
13           Safety and Health, Environmental Protection Agen-  
14           cy, and such other Federal and State agencies for  
15           inspections related to working conditions in such  
16           covered facilities.

17 **SEC. 103. ENFORCEMENT BY THE FTC.**

18           (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—  
19           A violation of section 8 of the Fair Labor Standards Act  
20           (as added by section 101) shall be treated as a violation  
21           of a rule defining an unfair or deceptive act or practice  
22           under section 18(a)(1)(B) of the Federal Trade Commis-  
23           sion Act (15 U.S.C. 57a(a)(1)(B)).

24           (b) POWERS OF THE FTC.—

1           (1) IN GENERAL.—The Federal Trade Commis-  
2           sion (in this section referred to as the Commission)  
3           shall enforce section 8 and the regulations promul-  
4           gated under this Act in the same manner, by the  
5           same means, and with the same jurisdiction, powers,  
6           and duties as though all applicable terms and provi-  
7           sions of the Federal Trade Commission Act (15  
8           U.S.C. 41 et seq.) were incorporated into and made  
9           a part of this Act.

10           (2) PRIVILEGES AND IMMUNITIES.—Any person  
11           who violates section 8 of the Fair Labor Standards  
12           Act shall be subject to the penalties and entitled to  
13           the privileges and immunities provided in the Fed-  
14           eral Trade Commission Act (15 U.S.C. 41 et seq.).

15           (3) AUTHORITY PRESERVED.—Nothing in this  
16           Act shall be construed to limit the authority of the  
17           Commission under any other provision of law.

18           (4) RULEMAKING.—The Commission may pro-  
19           mulgate in accordance with section 553 of title 5,  
20           United States Code, such rules as may be necessary  
21           to carry out this section.

1           **TITLE II—NATIONAL LABOR**  
2                           **RELATIONS ACT**

3   **SEC. 201. AMENDMENTS TO NATIONAL LABOR RELATIONS**  
4                           **ACT.**

5           (a) IN GENERAL.—Section 8(a) of the National  
6 Labor Relations Act (29 U.S.C. 158) is amended—

7                   (1) in paragraph (5) by striking the period at  
8                   the end and inserting “; and”; and

9                   (2) by adding at the end the following:

10                   “(6) to impose on an employee a quota that sig-  
11                   nificantly discourages or prevents, or is intended to  
12                   significantly discourage or prevent, an employee  
13                   from exercising the rights guaranteed in section 7.”.

14           (b) PRESUMPTION OF RETALIATION.—Section 8 of  
15 the such Act (29 U.S.C. 158) is amended by adding at  
16 the end the following:

17                   “(h) PRESUMPTION OF RETALIATION RELATED TO  
18 A QUOTA.—Any action to impose a quota on an employee  
19 that is taken against the employee within 90 days of an  
20 employee exercising the rights guaranteed in section 7  
21 shall establish a rebuttable presumption that the action  
22 is discrimination against the employee in violation of sub-  
23 section (a)(6).”.

24           (c) DEFINITIONS.—Section 2 such Act (29 U.S.C.  
25 152) is amended by adding at the end the following:

1           “(15) QUOTA.—

2                   “(A) IN GENERAL.—The term ‘quota’  
3 means a performance standard or performance  
4 target, including such a standard or target used  
5 to rank an employee in relation to the perform-  
6 ance of another employee or in relation to the  
7 past performance of the employee, under  
8 which—

9                           “(i)(I) an employee is actually or ef-  
10                           fectively assigned, required, or expected  
11                           within a defined time period (with or with-  
12                           out any reasonable accommodation pro-  
13                           vided under Federal, State, or local law)  
14                           to—

15   “(aa) perform—

16   “(AA) a quantified  
17   number of tasks; or

18   “(BB) at a specified  
19   productivity speed; or

20   “(bb) handle or produce a  
21   quantified amount of material  
22   without a certain number of er-  
23   rors or defects; and

24   “(II) such assignment, requirement,  
25   or expectation is measured at the indi-

1           vidual or group level for such defined time  
2           period;

3           “(ii) actions by an employee are cat-  
4           egorized and measured between time per-  
5           forming tasks and not performing tasks  
6           within a defined time period; or

7           “(iii) increments of time of a defined  
8           time period during which an employee is or  
9           is not doing a particular activity are meas-  
10          ured, recorded, or tallied.

11          “(B) DEFINED TIME PERIOD.—For pur-  
12          poses of subparagraph (A), the term ‘defined  
13          time period’ means any unit of time measure-  
14          ment equal to or less than one day, including  
15          hours, minutes, and seconds and any fraction  
16          thereof.”.

17 **SEC. 202. NATIONAL LABOR RELATIONS BOARD REPORT.**

18          The National Labor Relations Board shall—

19               (1) examine cases in which a quota (as such  
20               term is defined in section 2 of the National Labor  
21               Relations Act (29 U.S.C. 152)) was used as a rea-  
22               son to deny a worker rights under the National  
23               Labor Relations Act; and

24               (2) as often as practicable, submit a report on  
25               such cases to—

1 (A) the Committee on Health, Education,  
2 Labor, and Pensions of the Senate; and

3 (B) the Committee on Education and the  
4 Workforce of the House of Representatives.

### 5 **TITLE III—OSHA STANDARDS**

#### 6 **SEC. 301. STANDARD PROTECTING COVERED EMPLOYEES** 7 **FROM OCCUPATIONAL RISK FACTORS CAUS-** 8 **ING MUSCULOSKELETAL DISORDERS.**

9 (a) PROPOSED STANDARD.—Not later than 3 years  
10 after the date of enactment of this Act, the Secretary  
11 shall, pursuant to section 6 of the Occupational Safety and  
12 Health Act of 1970 (29 U.S.C. 655), publish in the Fed-  
13 eral Register a proposed standard for ergonomic program  
14 management for covered employers with respect to covered  
15 employees, including requirements for—

16 (1) hazard identification and ergonomic job  
17 evaluations for covered employees, including require-  
18 ments for covered employee and designated employee  
19 representative participation in such identification  
20 with the aim of maximizing such participation;

21 (2) hazard control at covered facilities, which  
22 may rely on the principles of the hierarchy of con-  
23 trols and which may include measures such as equip-  
24 ment and workstation redesign, work pace reduc-

1 tions, or job rotation to less forceful or repetitive  
2 jobs;

3 (3) training for covered employees regarding  
4 covered employer activities, occupational risk factors,  
5 and training on controls and recognition of symp-  
6 toms of musculoskeletal disorders; and

7 (4) medical management for covered employees  
8 that includes—

9 (A) encouraging early reporting of mus-  
10 culoskeletal disorder symptoms;

11 (B) first aid delivered by those operating  
12 under State licensing requirements; and

13 (C) systematic evaluation and early refer-  
14 ral for medical attention.

15 (b) FINAL STANDARD.—Not later than 4 years after  
16 the date of enactment this Act, the Secretary shall, pursu-  
17 ant to section 6 of the Occupational Safety and Health  
18 Act of 1970 (29 U.S.C. 655), publish in the Federal Reg-  
19 ister a final standard based on the proposed standard  
20 under subsection (a).



1 **SEC. 302. STANDARD FOR PROTECTING COVERED EMPLOY-**  
2 **EES FROM DELAYS IN MEDICAL TREATMENT**  
3 **REFERRALS FOLLOWING INJURIES OR ILL-**  
4 **NESSES.**

5 (a) PROPOSED STANDARD.—Not later than 1 year  
6 after the date of enactment of this Act, the Secretary  
7 shall, pursuant to section 6 of the Occupational Safety and  
8 Health Act of 1970 (29 U.S.C. 655), publish in the Fed-  
9 eral Register a proposed standard requiring that—

10 (1) all covered employers have a person readily  
11 available at the covered facility of the covered em-  
12 ployer who is adequately trained to render first aid  
13 and ensure that such person provides first aid to any  
14 injured or ill covered employee and, without delay,  
15 refers any such covered employee who reports an in-  
16 jury or illness that requires further medical treat-  
17 ment to an appropriate medical professional for such  
18 treatment; and

19 (2) all covered employers provide to the covered  
20 employees of the covered employer occupational med-  
21 icine consultation services through a physician who  
22 is board certified in occupational medicine, which  
23 services shall include—

24 (A) regular review of any health and safety  
25 program, medical management program, or  
26 ergonomics program of the covered employer;

1 (B) review of any work-related injury or  
2 illness of a covered employee;

3 (C) providing onsite health services for  
4 treatment of such injury or illness; and

5 (D) consultation referral to a local health  
6 care provider for treating such injury or illness.

7 (b) FINAL STANDARD.—Not later than 3 years after  
8 the date of enactment of this Act, the Secretary shall, pur-  
9 suant to section 6 of the Occupational Safety and Health  
10 Act of 1970 (29 U.S.C. 655), publish in the Federal Reg-  
11 ister a final standard based on the proposed standard  
12 under subsection (a).

13 **SEC. 303. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
14 **PEATED VIOLATIONS PENDING CONTEST AND**  
15 **PROCEDURES FOR A STAY.**

16 (a) IN GENERAL.—Section 10 of the Occupational  
17 Safety and Health Act of 1970 (29 U.S.C. 659) is amend-  
18 ed by adding at the end the following:

19 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-  
20 PEATED VIOLATIONS PENDING CONTEST AND PROCE-  
21 DURES FOR A STAY.—

22 “(1) PERIOD PERMITTED FOR CORRECTION OF  
23 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—

24 For each violation which the Secretary designates as  
25 serious, willful, or repeated, the period permitted for

1 the correction of the violation shall begin to run  
2 upon receipt of the citation.

3 “(2) FILING OF A MOTION OF CONTEST.—The  
4 filing of a notice of contest by an employer shall not  
5 operate as a stay of the period for correction of a  
6 violation designated as serious, willful, or repeated.

7 “(3) CRITERIA AND RULES OF PROCEDURE FOR  
8 STAYS.—

9 “(A) MOTION FOR A STAY.—An employer  
10 that receives a citation alleging a violation des-  
11 ignated as serious, willful, or repeated and that  
12 files a notice of contest to the citation asserting  
13 that the time set for abatement of the alleged  
14 violation is unreasonable or challenging the ex-  
15 istence of the alleged violation may file with the  
16 Commission a motion to stay the period for the  
17 abatement of the violation.

18 “(B) CRITERIA.—In determining whether  
19 a stay should be issued on the basis of a motion  
20 filed under subparagraph (A), the Commission  
21 may grant a stay only if the employer has dem-  
22 onstrated—

23 “(i) a substantial likelihood of success  
24 on the areas contested under subparagraph  
25 (A); and

1                   “(ii) that a stay will not adversely af-  
2                   fect the health and safety of employees.

3                   “(C) RULES OF PROCEDURE.—The Com-  
4                   mission shall develop rules of procedure for con-  
5                   ducting a hearing on a motion filed under sub-  
6                   paragraph (A) on an expedited basis. At a min-  
7                   imum, such rules shall provide the following:

8                   “(i) That a hearing before an admin-  
9                   istrative law judge shall occur not later  
10                  than 15 days following the filing of the  
11                  motion for a stay (unless extended at the  
12                  request of the employer), and shall provide  
13                  for a decision on the motion not later than  
14                  15 days following the hearing (unless ex-  
15                  tended at the request of the employer).

16                  “(ii) That a decision of an administra-  
17                  tive law judge on a motion for stay is ren-  
18                  dered on a timely basis.

19                  “(iii) That if a party is aggrieved by  
20                  a decision issued by an administrative law  
21                  judge regarding the stay, such party has  
22                  the right to file an objection with the Com-  
23                  mission not later than 5 days after receipt  
24                  of the administrative law judge’s decision.  
25                  Within 10 days after receipt of the objec-

1           tion, a Commissioner, if a quorum is seat-  
2           ed pursuant to section 12(f), shall decide  
3           whether to grant review of the objection.  
4           If, within 10 days after receipt of the ob-  
5           jection, no decision is made on whether to  
6           review the decision of the administrative  
7           law judge, the Commission declines to re-  
8           view such decision, or no quorum is seated,  
9           the decision of the administrative law  
10          judge shall become a final order of the  
11          Commission. If the Commission grants re-  
12          view of the objection, the Commission shall  
13          issue a decision regarding the stay not  
14          later than 30 days after receipt of the ob-  
15          jection. If the Commission fails to issue  
16          such decision within 30 days, the decision  
17          of the administrative law judge shall be-  
18          come a final order of the Commission.

19                 “(iv) For notification to employees or  
20                 representatives of affected employees of re-  
21                 quests for such hearings, and to provide an  
22                 opportunity for affected employees or rep-  
23                 resentatives of affected employees to par-  
24                 ticipate as parties to such hearings.”.

25           (b) CONFORMING AMENDMENTS.—

1           (1) IN GENERAL.—The Occupational Safety  
2           and Health Act of 1970 is amended—

3                   (A) in the first sentence of section 10(b)  
4                   (29 U.S.C. 659(b)), by inserting “, with the ex-  
5                   ception of violations designated as serious, will-  
6                   ful, or repeated,” after “(which period shall not  
7                   begin to run”; and

8                   (B) in section 17 (29 U.S.C. 666) by strik-  
9                   ing subsection (d) and inserting the following:

10           “(d) Any employer who fails to correct a violation  
11           designated by the Secretary as serious, willful, or repeated  
12           and for which a citation has been issued under section 9(a)  
13           within the period permitted for its correction (and a stay  
14           has not been issued by the Commission under section  
15           10(d)) may be assessed a civil penalty of not more than  
16           \$7,000 for each day during which such failure or violation  
17           continues. Any employer who fails to correct any other vio-  
18           lation for which a citation has been issued under section  
19           9(a) of this title within the period permitted for its correc-  
20           tion (which period shall not begin to run until the date  
21           of the final order of the Commission in the case of any  
22           review proceeding under section 10 initiated by the em-  
23           ployer in good faith and not solely for delay of avoidance  
24           of penalties) may be assessed a civil penalty of not more

1 than \$7,000 for each day during which such failure or vio-  
2 lation continues.”.

3 (2) ADJUSTMENT UNDER THE FEDERAL CIVIL  
4 PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—

5 (A) CATCH-UP.—Not later than 1 year  
6 after the date of enactment of this Act, the Sec-  
7 retary of Labor shall adjust the maximum  
8 amounts described in subsection (d) of section  
9 17 of the Occupational Safety and Health Act  
10 of 1970 (29 U.S.C. 666), as amended by para-  
11 graph (1)(B), so that each such amount equals  
12 the maximum amount of the civil penalty under  
13 such subsection (as in effect on the day before  
14 such date of enactment) as adjusted by section  
15 4 of the Federal Civil Penalties Inflation Ad-  
16 justment Act of 1990 (28 U.S.C. 2461 note).

17 (B) SUBSEQUENT ADJUSTMENTS.—Sub-  
18 paragraph (A) and the amendment made by  
19 this paragraph (1)(B) shall not be construed to  
20 affect the application of the Federal Civil Pen-  
21 alties Inflation Adjustment Act of 1990 (28  
22 U.S.C. 2461 note) to the civil penalty amount  
23 under section 17(d) of the Occupational Safety  
24 and Health Act of 1970 (29 U.S.C. 666) for  
25 any adjustment under section 4 of the Federal

1 Civil Penalties Inflation Adjustment Act of  
2 1990 (28 U.S.C. 2461 note) after the catch-up  
3 adjustment made by the Secretary of Labor  
4 under subparagraph (A).

5 **SEC. 304. DEFINITIONS.**

6 For purposes of sections 301 and 302, the terms  
7 “covered employee”, “covered employer”, “covered facil-  
8 ity”, and “designated employee representative” have the  
9 meanings given such terms in section 8(a) of the Fair  
10 Labor Standards Act of 1938 (as added by section 101).

11 **TITLE IV—MISCELLANEOUS**  
12 **PROVISIONS**

13 **SEC. 401. SEVERABILITY.**

14 If any provision of this Act (including an amendment  
15 made by this Act) or the application of such provision to  
16 any person, entity, government, or circumstance, is held  
17 to be unconstitutional, the remainder of this Act (includ-  
18 ing the amendments made by this Act), or the application  
19 of such provision to all other persons, entities, govern-  
20 ments, or circumstances, shall not be affected thereby.

21 **SEC. 402. PREEMPTION.**

22 (a) INTERACTION WITH OTHER LAWS.—Nothing in  
23 this Act (including the amendments made by this Act) or  
24 the regulations promulgated under this Act shall be con-  
25 strued to supersede or preempt any law or ordinance of



1 a State, or political subdivision of a State, that requires  
2 limitations on any quota for a covered employee of a cov-  
3 ered employer that are comparable to or greater than the  
4 protections provided in this Act.

5 (b) COLLECTIVE BARGAINING AGREEMENTS.—Noth-  
6 ing in this Act (including the amendments made by this  
7 Act) or the regulations promulgated under this Act shall  
8 be construed to supersede or preempt employment terms  
9 or conditions agreed upon in collective bargaining agree-  
10 ments that are more beneficial to a covered employee.

11 (c) OSHA.—No action by the Director under this Act  
12 (including the amendments made by this Act) shall be con-  
13 strued as an exercise of statutory authority within the  
14 meaning of section 4(b)(1) of the Occupational Safety and  
15 Health Act of 1970 (29 U.S.C. 653(b)(1)).

16 (d) DEFINITIONS.—For purposes of this section, the  
17 terms “Director”, “covered employee”, “covered em-  
18 ployer”, “designated employee representative”, and  
19 “quota” have the meanings given such terms in section  
20 8(a) of the Fair Labor Standards Act of 1938 (as added  
21 by section 101).

1 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriated to carry out  
3 this Act such sums as may be necessary for each of the  
4 fiscal years 2025 through 2035.

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