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**SUBSTITUTE SENATE BILL 5348**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Conway, Keiser, Saldaña, Stanford, Hasegawa, Schoesler, Valdez, and C. Wilson)

1 AN ACT Relating to protecting employees of warehouses; adding a  
2 new chapter to Title 49 RCW; prescribing penalties; and providing an  
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise.

8 (1) "Affiliate" means a person that directly or indirectly,  
9 through one or more intermediaries, controls, is controlled by, or is  
10 under common control with another person. For purposes of this  
11 subsection, "control" means the possession, directly or indirectly,  
12 of more than 50 percent of the power to direct or cause the direction  
13 of the management and policies of a person, whether through the  
14 ownership of voting shares, by contract, or otherwise.

15 (2) "Aggregated data" means information that an employer has  
16 combined or collected in summary or other form such that the data  
17 cannot be identified with any individual.

18 (3) "Defined time period" means any unit of time measurement  
19 equal to or less than the duration of an employee's shift, and  
20 includes hours, minutes, and seconds and any fraction thereof.

21 (4) "Department" means the department of labor and industries.

1 (5) "Designated employee representative" means any employee  
2 representative, including but not limited to an authorized employee  
3 representative that has a collective bargaining relationship with the  
4 employer.

5 (6) "Director" means the director of the department of labor and  
6 industries or the director's designee.

7 (7) "Employee" means an employee who is not exempt under RCW  
8 49.46.010(3)(c) and works at a warehouse distribution center.

9 (8)(a) "Employee work speed data" means information an employer  
10 collects, stores, analyzes, or interprets relating to an individual  
11 employee's performance of a quota including, but not limited to,  
12 quantities of tasks performed, quantities of items or materials  
13 handled or produced, rates or speeds of tasks performed, measurements  
14 or metrics of employee performance in relation to a quota, and time  
15 categorized as performing tasks or not performing tasks.

16 (b) Employee work speed data does not include qualitative  
17 performance assessments, personnel records, or itemized wage  
18 statements pursuant to department rules, except for any content of  
19 those records that includes employee work speed data as defined in  
20 this subsection.

21 (9)(a) "Employer" means a person who directly or indirectly, or  
22 through an agent or any other person, including through the services  
23 of a third-party employer, temporary services, or staffing agency,  
24 independent contractor, or any similar entity, at any time, employs  
25 or exercises control over the wages, hours, or working conditions of  
26 100 or more employees at a single warehouse distribution center in  
27 the state or 500 or more employees at one or more warehouse  
28 distribution centers in the state.

29 (b) For the purposes of determining the number of employees  
30 employed at a single warehouse distribution center or at one or more  
31 warehouse distribution centers, all employees employed directly or  
32 indirectly, or through an agency or any other person, and all  
33 employees employed by an employer and its affiliates, must be  
34 counted.

35 (c) For the purposes of determining responsible employers, all  
36 agents or other persons, and affiliates must be deemed employers and  
37 are jointly and severally responsible for compliance with this  
38 chapter.

39 (10) "Person" means an individual, corporation, partnership,  
40 limited partnership, limited liability partnership, limited liability

1 company, business trust, estate, trust, association, joint venture,  
2 agency, instrumentality, or any other legal or commercial entity,  
3 whether domestic or foreign.

4 (11) "Quota" means a work performance standard, whether required  
5 or recommended, where: (a) An employee is assigned or required to  
6 perform at a specified productivity speed, or perform a quantified  
7 number of tasks, or to handle or produce a quantified amount of  
8 material, within a defined time period and under which the employee  
9 may suffer an adverse employment action if they fail to complete the  
10 performance standard; or (b) an employee's actions are categorized  
11 between time performing tasks and not performing tasks, if the  
12 employee may suffer an adverse employment action if they fail to meet  
13 the performance standard.

14 (12) "Warehouse distribution center" means an establishment  
15 engaged in activities as defined by any of the following North  
16 American industry classification system codes, however such  
17 establishment is denominated:

- 18 (a) 493 for warehousing and storage;
- 19 (b) 423 for merchant wholesalers, durable goods;
- 20 (c) 424 for merchant wholesalers, nondurable goods;
- 21 (d) 454110 for electronic shopping and mail-order houses; or
- 22 (e) 492110 for couriers and express delivery services.

23 NEW SECTION. **Sec. 2.** (1) An employer must provide to each  
24 employee, upon hire, or within 30 days of the effective date of this  
25 section, a written description of:

- 26 (a) Each quota to which the employee is subject, including the  
27 quantified number of tasks to be performed or materials to be  
28 produced or handled within a defined time period;
- 29 (b) Any potential adverse employment action that could result  
30 from failure to meet each quota; and
- 31 (c) Any incentives or bonus programs associated with meeting or  
32 exceeding each quota.

33 (2) Whenever there is a change to the quota that results in a  
34 different quota than the most recent written description provided to  
35 the employee, the employer must: (a) Notify the employee verbally or  
36 in writing as soon as possible and before the employee is subject to  
37 the new quota; and (b) provide the employee with an updated written  
38 description of each quota to which the employee is subject within two  
39 business days of the quota change.

1 (3) Whenever an employer takes an adverse action against an  
2 employee in whole or in part for failure to meet a quota, the  
3 employer must provide that employee with the applicable quota for the  
4 employee and the personal work speed data for the employee that was  
5 the basis for the adverse action.

6 (4) The written description must be understandable, in plain  
7 language, and in the employee's preferred language. The department  
8 may adopt rules regarding the format, plain language, and language  
9 access requirements for the written description.

10 NEW SECTION. **Sec. 3.** (1) The time period considered in a quota,  
11 including time designated as productive time or time on task must  
12 include:

13 (a) Time for rest breaks and reasonable time to travel to  
14 designated locations for rest breaks;

15 (b) Reasonable travel time to on-site designated meal break  
16 locations. Meal breaks are not considered time on task or productive  
17 time unless the employee is required by the employer to remain on  
18 duty on the premises or at a prescribed worksite in the interest of  
19 the employer;

20 (c) Time to perform any activity required by the employer in  
21 order to do the work subject to any quota;

22 (d) Time to use the bathroom, including reasonable travel time;  
23 and

24 (e) Time to take any actions necessary for the employee to  
25 exercise the employee's right to a safe and healthful workplace  
26 pursuant to chapter 49.17 RCW, including but not limited to time to  
27 access tools or safety equipment necessary to perform the employee's  
28 duties.

29 (2) Reasonable travel time must include consideration of the  
30 architecture and geography of the facility and the location within  
31 the facility that the employee is located at the time.

32 NEW SECTION. **Sec. 4.** (1) Except as provided in section 5 of  
33 this act, a quota violates this chapter if the quota:

34 (a) Does not provide sufficient time as required under section  
35 3(1) (a) through (c) of this act; or

36 (b) Prevents the performance of any activity required by the  
37 employer for the employee to do the work subject to any quota.

1 (2) An employee is not required to meet a quota that violates  
2 this section.

3 (3) An employer may not take adverse action against an employee  
4 for failing to meet a quota that violates this section or that was  
5 not disclosed to the employee as required under section 2 of this  
6 act.

7 NEW SECTION. **Sec. 5.** (1) A quota violates chapter 49.17 RCW if  
8 the quota:

9 (a) Does not provide sufficient time as required under section  
10 3(1) (d) and (e) of this act;

11 (b) Prevents the performance of any activity related to  
12 occupational safety and health required by the employer for the  
13 employee to do the work subject to any quota; or

14 (c) Exposes an employee to occupational safety and health hazards  
15 in violation of the requirements of chapter 49.17 RCW and the  
16 applicable rules or regulations.

17 (2) An employee is not required to meet a quota that violates  
18 this section.

19 (3) An employer may not take adverse action against an employee  
20 for failing to meet a quota that violates this section.

21 (4) All provisions of section 8 of this act apply to any person  
22 who complains to the employer, the director, or any local, state, or  
23 federal governmental agency or official, related to a quota alleging  
24 any violations of this section.

25 (5) (a) This section must be implemented and enforced, including  
26 penalties, violations, citations, and other administrative  
27 procedures, pursuant to chapter 49.17 RCW.

28 (b) An employer who fails to allow adequate inspection of records  
29 in an inspection by the department within a reasonable time period  
30 may not use such records in any appeal to challenge the correctness  
31 of any citation and notice issued by the department.

32 NEW SECTION. **Sec. 6.** (1) An employer must establish, maintain,  
33 and preserve contemporaneous, true, and accurate records of the  
34 following:

35 (a) Each employee's own personal work speed data;

36 (b) The aggregated work speed data for similar employees at the  
37 same warehouse distribution center; and

1 (c) The written descriptions of each quota the employee was  
2 provided pursuant to section 2 of this act.

3 (2)(a) The required records must be maintained and preserved  
4 throughout the duration of each employee's period of employment and  
5 for the period required by this subsection.

6 (b) Except as required under (c) of this subsection, subsequent  
7 to an employee's separation from the employer, records relating to  
8 the six-month period prior to the date of the employee's separation  
9 from the employer must be preserved for at least three years from the  
10 date of the employee's separation.

11 (c) Where an employer has taken adverse action against an  
12 employee in whole or in part for failure to meet a quota, the  
13 employer must preserve the records relating to the basis for the  
14 adverse action for at least three years from the date of the adverse  
15 action.

16 (d) The employer must make records available to the director upon  
17 request.

18 (3) Nothing in this section requires an employer to collect or  
19 keep such records if the employer does not use quotas or monitor work  
20 speed data.

21 (4) An employer who fails to allow adequate inspection of records  
22 in an inspection by the department within a reasonable time period  
23 may not use such records in any appeal to challenge the correctness  
24 of any citation and notice issued by the department.

25 NEW SECTION. **Sec. 7.** (1) An employee has the right to request,  
26 at any time, a written description of each quota to which the  
27 employee is subject, a copy of the employee's own personal work speed  
28 data for the prior six months, and a copy of the prior six months of  
29 aggregated work speed data for similar employees at the same  
30 warehouse distribution center.

31 (2) A former employee has the right to request, within three  
32 years subsequent to the date of their separation from the employer, a  
33 written description of the quota to which they were subject as of the  
34 date of their separation, a copy of the employee's own personal work  
35 speed data for the six months prior to their date of separation, and  
36 a copy of aggregated work speed data for similar employees at the  
37 same warehouse distribution center for the six months prior to their  
38 date of separation.

1 (3) An employer must provide records requested under this section  
2 at no cost to the employee or former employee.

3 (4) An employer must provide records requested under this section  
4 as soon as practicable and subject to the following:

5 (a) Requested records of written descriptions of a quota must be  
6 provided no later than two business days following the date of the  
7 receipt of the request; and

8 (b) Requested personal work speed data and aggregated work speed  
9 data must be provided no later than seven business days following the  
10 date of the receipt of the request.

11 (5) Nothing in this section requires an employer to use quotas or  
12 monitor work speed data. An employer that does not use quotas or  
13 monitor work speed data has no obligation to provide records under  
14 this section.

15 NEW SECTION. **Sec. 8.** (1) A person, including but not limited to  
16 an employer, his or her agent, or person acting as or on behalf of a  
17 hiring entity, or the officer or agent of any entity, business,  
18 corporation, partnership, or limited liability company, may not  
19 discharge or in any way retaliate, discriminate, or take adverse  
20 action against an employee or former employee for exercising any  
21 rights established in this chapter, or for being perceived as  
22 exercising rights established in this chapter including, but not  
23 limited to:

24 (a) Initiating a request for information about a quota or  
25 personal work speed data pursuant to section 7 of this act; and

26 (b) Making a complaint to the employer, the director, or any  
27 local, state, or federal governmental agency or official, related to  
28 a quota that is allegedly in violation of this chapter or chapter  
29 49.17 RCW.

30 (2) An employee or former employee need not explicitly refer to  
31 this section or the rights established in this chapter to be  
32 protected from an adverse action. The protection provided in this  
33 section applies to former employees and to employees who mistakenly  
34 but in good faith allege violations of this chapter.

35 (3) (a) If a person takes adverse action against an employee or  
36 former employee within 90 days of the employee engaging or attempting  
37 to engage in activities protected by this chapter, there is a  
38 rebuttable presumption that the adverse action is a retaliatory  
39 action in violation of this section.

1 (b) The presumption may be rebutted by clear and convincing  
2 evidence that: (i) The action was taken for other permissible  
3 reasons; and (ii) the engaging or attempting to engage in activities  
4 protected by this chapter was not a motivating factor in the adverse  
5 action.

6 (4) Except as provided for in section 5 of this act, the  
7 department must carry out and enforce the provisions of this section  
8 and section 4(3) of this act pursuant to procedures established under  
9 chapter 49.46 RCW and any applicable rules. The department may adopt  
10 new rules to implement or enforce this subsection.

11 NEW SECTION. **Sec. 9.** (1)(a) An employee may file a complaint  
12 with the department alleging a violation under this chapter or  
13 applicable rules, except for violations and enforcement of sections 5  
14 and 8 of this act. The department must investigate the complaint.

15 (b) The department may not investigate any such alleged violation  
16 of rights that occurred more than three years before the date that  
17 the employee filed the complaint.

18 (c) If an employee files a timely complaint with the department,  
19 the department must investigate the complaint and issue either a  
20 citation and notice of assessment or a closure letter within 90 days  
21 after the date on which the department received the complaint, unless  
22 the complaint is otherwise resolved. The department may extend the  
23 period by providing advance written notice to the employee and the  
24 employer setting forth good cause for an extension of the period and  
25 specifying the duration of the extension.

26 (d) The department must send the citation and notice of  
27 assessment or the closure letter to both the employer and the  
28 employee by service of process or using a method by which the mailing  
29 can be tracked or the delivery can be confirmed to their last known  
30 addresses.

31 (2) If the department's investigation finds that the employee's  
32 allegation cannot be substantiated, the department must issue a  
33 closure letter to the employee and the employer detailing such  
34 finding.

35 (3) The director may initiate an investigation without an  
36 employee's complaint to ensure compliance with this chapter.

37 (4) For complaints filed under this section, an employer who is  
38 found to have violated a requirement of this chapter and the rules  
39 adopted under this chapter, is subject to a civil penalty of not less



1 than \$1,000 for each violation. Civil penalties must be collected by  
2 the department and deposited into the supplemental pension fund  
3 established under RCW 51.44.033.

4 (5) Except as provided under subsection (1) of this section, an  
5 employer who is found to have violated a requirement of this chapter  
6 and the rules adopted under this chapter resulting in a rest or meal  
7 period violation, must pay the employee one additional hour of pay at  
8 the employee's regular rate of pay for each day there is a violation.

9 (6) Upon receiving a complaint, the department may request or  
10 subpoena the records of the warehouse distribution center.

11 (7) For enforcement actions under this section, if any person  
12 fails to pay an assessment under this chapter, or under any rule  
13 under this chapter, after it has become a final and unappealable  
14 order, or after the court has entered final judgment in favor of the  
15 agency, the director may initiate collection procedures in accordance  
16 with the collection procedures under RCW 49.48.086.

17 NEW SECTION. **Sec. 10.** (1) For enforcement actions under section  
18 9 of this act, a person, firm, or corporation aggrieved by a citation  
19 and notice of assessment by the department or any rules adopted under  
20 this chapter may appeal the citation and notice of assessment to the  
21 director by filing a notice of appeal with the director within 30  
22 days of the department's issuance of the citation and notice of  
23 assessment. A citation and notice of assessment not appealed within  
24 30 days is final and binding, and not subject to further appeal.

25 (2) A notice of appeal filed with the director under this section  
26 stays the effectiveness of the citation and notice of assessment  
27 pending final review of the appeal by the director as provided in  
28 chapter 34.05 RCW.

29 (3) Upon receipt of a notice of appeal, the director must assign  
30 the hearing to an administrative law judge of the office of  
31 administrative hearings to conduct the hearing and issue an initial  
32 order. The hearing and review procedures must be conducted in  
33 accordance with chapter 34.05 RCW, and the standard of review by the  
34 administrative law judge of an appealed citation and notice of  
35 assessment must be de novo. Any party who seeks to challenge an  
36 initial order must file a petition for administrative review with the  
37 director within 30 days after service of the initial order. The  
38 director must conduct an administrative review in accordance with  
39 chapter 34.05 RCW.

1 (4) The director must issue all final orders after appeal of the  
2 initial order. The final order of the director is subject to judicial  
3 review in accordance with chapter 34.05 RCW.

4 (5) Orders that are not appealed within the time period specified  
5 in this section and chapter 34.05 RCW are final and binding, and not  
6 subject to further appeal.

7 (6) An employer who fails to allow adequate inspection of records  
8 in an investigation by the department under this chapter within a  
9 reasonable time period may not use such records in any appeal under  
10 this section to challenge the correctness of any determination by the  
11 department of the penalty assessed.

12 NEW SECTION. **Sec. 11.** An employee or former employee or  
13 designated employee representative may bring an action for injunctive  
14 relief to obtain compliance with this chapter, except for provisions  
15 of this chapter pertaining to violations of chapter 49.17 RCW. Upon  
16 prevailing in the action, the employee or former employee or  
17 designated employee representative may recover costs and reasonable  
18 attorneys' fees.

19 (1) In any action involving a quota that is deemed a violation  
20 under section 4 of this act, injunctive relief is limited to  
21 suspension of the quota and restitution and injunctive relief to  
22 address any retaliation or other adverse action taken by the employer  
23 in relation to the complaint or its enforcement.

24 (2) In any action alleging retaliation, in addition to the  
25 injunctive relief authorized above, the prevailing employee or former  
26 employee or the representative must be awarded damages equal to the  
27 greater of \$10,000 or three times the actual damages, including but  
28 not limited to unpaid wages and benefits.

29 NEW SECTION. **Sec. 12.** The attorney general, either upon the  
30 attorney general's own complaint or the complaint of any person  
31 acting for themselves or the general public, may bring a civil or  
32 criminal action for violations of this chapter, except for provisions  
33 of this chapter pertaining to violations of chapter 49.17 RCW, or to  
34 enforce this chapter, independently and without specific direction of  
35 the director.

36 NEW SECTION. **Sec. 13.** The department may adopt and implement  
37 rules to carry out and enforce the provisions of this chapter.

1        NEW SECTION.    **Sec. 14.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 15.**    Sections 1 through 14 of this act  
6 constitute a new chapter in Title 49 RCW.

7        NEW SECTION.    **Sec. 16.**    This act takes effect July 1, 2024.

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