88R10271 SCP-F

By:  Bryant H.B. No. 4394

A BILL TO BE ENTITLED

AN ACT

relating to increasing warehouse worker protections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Title 2, Labor Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. WORKER PROTECTIONS

CHAPTER 96. WAREHOUSE WORKER PROTECTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001.  DEFINITIONS. In this chapter:

(1)  "Adverse employment action" includes termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, reduction in compensation, and constructive discharge.

(2)  "Aggregated work speed data" means employee work speed data that an employer has combined or collected together in summary or other form such that the data cannot be identified with any individual.

(3)  "Commission" means the Texas Workforce Commission.

(4)  "Controlled group of corporations" means any group through which one or more chains of corporations are connected through stock ownership with a common parent corporation if:

(A)  stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one or more of the other corporations; and

(B)  the common parent corporation owns stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(5)  "Defined time period" means any time interval equal to or less than the duration of an employee's shift.

(6)  "Employee" means an individual who is employed by an employer for compensation. The term does not include an independent contractor.

(7)  "Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an employee's performance of a quota, including quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.

(8)  "Employer":

(A)  means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, at any time during the preceding 12 months, employs or exercises control over the wages, hours, or working conditions of:

(i)  100 or more workers, including workers employed by a member of a controlled group of corporations of which the person is a member, at a single warehouse distribution center; or

(ii)  500 or more workers, including workers employed by a member of a controlled group of corporations of which the person is a member, at one or more warehouse distribution centers in this state; and

(B)  includes any agent or other person, and any member of, a controlled group of corporations of which a person described by Paragraph (A) is a member.

(9)  "Quota" means a work standard by which:

(A)  an employee is assigned or required to perform at a specified productivity speed or complete a quantified number of tasks within a defined time period; or

(B)  an employee's actions are categorized between time performing tasks and not performing tasks and a performance standard or recommendation is applied to the employee's actions.

(10)  "Warehouse distribution center" means an entity described by any of the following North American Industry Classification System (NAICS) codes as they exist on September 1, 2023:

(A)  493 for warehousing and storage;

(B)  423 for merchant wholesalers, durable goods;

(C)  424 for merchant wholesalers, nondurable goods;

(D)  454110 for electronic shopping and mail-order houses; or

(E)  492110 for couriers and express delivery services.

Sec. 96.002.  APPLICABILITY TO EMPLOYEES. This chapter applies only to an employee who:

(1)  works at a warehouse distribution center in a non-administrative position; and

(2)  is subject to a quota described by Section 96.051.

Sec. 96.003.  RULES. The commission shall adopt rules as necessary for the administration of this chapter.

SUBCHAPTER B. EMPLOYER REQUIREMENTS

Sec. 96.051.  QUOTAS. (a) An employer shall provide to a new employee, not later than the 30th day after the date the employee is hired, a written description of:

(1)  each quota to which the employee is subject, including the number of tasks to be performed or materials to be produced or handled within the defined time period; and

(2)  any potential adverse employment action that could result from failure to meet a quota described by Subdivision (1).

(b)  For each change to a quota that occurs after the date an employee was hired, the employer shall provide an updated written description of each changed quota to which the employee is subject not later than the second business day before the date the changed quota takes effect.

(c)  An employer shall provide an employee with notice of the applicable quota for the employee before an employer takes an adverse employment action against an employee in relation to the employee's performance of a quota.

(d)  An employee may not be required to meet a quota that prevents compliance with meal or rest periods or use of bathroom facilities required by law, including reasonable travel time to and from bathroom facilities.

(e)  An employer may not take adverse employment action against an employee for failure to meet a quota that:

(1)  does not allow an employee to comply with meal and rest periods; or

(2)  has not been disclosed to the employee under this section.

(f)  Paid and unpaid breaks may not be considered productive time for the purpose of any quota or monitoring system unless the employee is required to remain on call during the paid or unpaid break.

Sec. 96.052.  POSTING OF WORKPLACE NOTICE. An employer shall post a public notice in the workplace informing employees of their rights under this chapter, including:

(1)  the amount of work in a prescribed time that constitutes a permissible quota; and

(2)  the right of an employee to:

(A)  request quota and speed data information; and

(B)  make a complaint to an applicable state authority regarding a violation of an employee's rights under this chapter.

Sec. 96.053.  RECORDKEEPING. (a) An employer that uses quotas or monitors work speed data shall maintain records of:

(1)  the individual work speed data of each employee;

(2)  the aggregated work speed data for similar employees at the same establishment; and

(3)  a written description of the quotas each employee was provided under Section 96.051.

(b)  The records described under Subsection (a) must be maintained for the duration of the employee's employment.

(c)  On an employee's separation from employment, the employer shall retain the employer's records regarding the employee for the six-month period preceding the date of the employee's separation. The employer must retain the records for not less than three years after the date of the employee's separation.

(d)  An employer is not required to maintain records under this section if the employer does not use quotas or monitor work speed data.

Sec. 96.054.  ACCESS TO RECORDS. (a) On request by the commission, an employer shall provide a copy of the records described by Section 96.053(a) to the commission.

(b)  On request, a current employee of an employer is entitled to receive from the employer:

(1)  a written description of each quota to which the employee is subject;

(2)  a copy of the employee's work speed data; and

(3)  a copy of the preceding six months of aggregated work speed data for similar employees at the same workplace.

(c)  Not later than the third anniversary of the date of an employee's separation from employment with an employer, the former employee is entitled to receive, on request:

(1)  a written description of each quota to which the employee was subject as of the date of the employee's separation;

(2)  a copy of the employee's work speed data for the six-month period preceding the date of the employee's separation from employment; and

(3)  a copy of aggregated work speed data for similar employees at the same establishment for the six-month period preceding the date of the employee's separation from employment.

(d)  A record requested under this section must be provided at no cost to the requestor.

(e)  An employer shall provide access to a record requested under this section not later than:

(1)  for a written description of each quota to which an employee was subject, the second business day after the date the employer receives the request; and

(2)  for all other records requested under this section, the seventh business day after the date the employer receives the request.

(f)  This section does not require an employer to use quotas or monitor work speed data. An employer that does not use quotas or monitor work speed data is not required to maintain or provide the records as described by this section.

SUBCHAPTER C. UNLAWFUL RETALIATION

Sec. 96.101.  UNLAWFUL RETALIATION. (a) An employer may not retaliate or otherwise take any adverse employment action against an employee for exercising any right conferred by this chapter, or for being perceived as exercising any right conferred by this chapter, including for:

(1)  making a request for information about a quota or personal work speed data under Section 96.054; or

(2)  making a complaint related to a quota or alleging a violation of this chapter to the employer, the commission, or a local, state, or federal governmental agency or official.

(b)  For each adverse employment action taken against an employee before the 90th day after the date the employee engages or attempts to engage in an activity protected under this chapter, there is a rebuttable presumption that the adverse employment action violates this chapter. The presumption may be rebutted by clear and convincing evidence that:

(1)  the adverse employment action was taken for other permissible reasons; and

(2)  the engaging or attempting to engage in an activity protected by this chapter was not a motivating factor in the adverse employment action.

SUBCHAPTER D. ENFORCEMENT

Sec. 96.151.  WORKPLACE INSPECTION BY COMMISSION; REFERRAL TO ATTORNEY GENERAL. (a) The commission shall investigate an employer for a violation of this chapter if the employer's worksite is found to have an annual employee injury rate of at least one and one-half times the warehousing industry's average annual injury or fatality rate as published by the Bureau of Labor Statistics' most recent Occupational Injuries and Illnesses and Fatal Injuries database.

(b)  Following an inspection under Subsection (a), the commission may refer the matter to the attorney general for enforcement if the commission has reason to believe that the employer has violated this chapter.

Sec. 96.152.  ATTORNEY GENERAL ACTION. The attorney general may bring a civil action against an employer for a violation of this chapter.

Sec. 96.153.  PRIVATE RIGHT OF ACTION. (a) A current or former employee or a representative of a current or former employee may bring an action for injunctive relief to obtain compliance with this chapter and may, on prevailing in the action, recover costs and reasonable attorney's fees in the action.

(b)  In an action involving a quota imposed by an employer that prevented compliance with any applicable law or regulation relating to workplace safety, employee health, or meal or rest break requirements, injunctive relief shall be limited to:

(1)  suspension of the quota; and

(2)  compensatory damages in the form of restitution to address any retaliation or other adverse employment action taken by the employer in relation to the complaint or its enforcement.

(c)  In an action involving retaliation in violation of this chapter, a prevailing current or former employee or a representative of a current or former employee may be awarded exemplary damages equal to the greater of $10,000 or three times the amount of any compensatory damages, including for unpaid wages and employment benefits. Damages awarded under this subsection are in addition to injunctive relief.

SECTION 2.  As soon as practicable after the effective date of this Act, the Texas Workforce Commission shall adopt rules necessary to implement Subtitle F, Title 2, Labor Code, as added by this Act.

SECTION 3.  The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act.

SECTION 4.  This Act takes effect September 1, 2023.