

Publications

Warehouse Distribution Center Employees Get New Protections under New York Law

Related Professionals

Liana R. Hollingsworth

Related Services

Labor and Employment

CLIENT ALERT | 4.26.2023

New York's Warehouse Worker Protection Act (WWPA) regulates the use of work-related quotas for employees in warehouse distribution centers. The WWPA is similar to the distribution center quota law in California that took effect in January 2022 ([New Law Targets California Distribution Centers That Use Quotas \(vorys.com\)](#)). The WWPA becomes effective on June 19, 2023.

Who is covered by the WWPA?

The WWPA covers employers with 100 or more employees at a single "warehouse distribution center" or 1,000 or more employees at one or more "warehouse distribution centers" in New York. This includes employees indirectly retained through third-party employers, temporary services, and staffing agencies if the employer exercises control over their wages, hours, or working conditions. Further, all employees of a controlled group of corporations are counted in determining the number employed at a single warehouse distribution center or at one or more warehouse distribution centers. However, employees who are exempt from minimum wage and overtime under New York law are not included.

A "warehouse distribution center" is an establishment defined by the North American Industry Classification System Codes as warehousing and storage (excluding farm product warehousing); merchant wholesalers, durable goods; merchant wholesalers, nondurable goods; electronic shopping and mail-order houses; and couriers and express delivery services.

What is a quota?

Under the WWPA, a quota is a work standard which:

1. an employee is required to perform at a specified productivity speed; or a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period; or under which the employee may suffer an adverse employment

action if they fail to complete the performance standard; or

2. an employee's actions are categorized between time performing tasks and not performing tasks, and the employee's failure to complete a task performance standard may have an adverse impact on the employee's continued employment or the conditions of such employment.

Employers must keep records establishing compliance with the WWPA's requirements for three years.

What are the rights of employees under the WWPA?

The WWPA provides employees with the right to receive notice of a quota and the right to inspect records relating to their quota.

Employers must provide each employee, upon hire, or by July 19, 2023, a written description of each quota to which the employee is subject. The description must include the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. Each time the quota changes, the employer must provide an updated written description within two business days. Each time an employer takes adverse action, the employer must provide the employee with the applicable quota.

A current employee may request a written description of their quota. If a current or former employee believes that they have been disciplined as the result of failing to meet a quota, or that meeting a quota caused a violation of their right to a meal or rest period or use of bathroom facilities (including reasonable travel time), they may request a written description of their quota, a copy of the most recent 90 days of their own personal "work speed data," and a copy of the aggregate work speed data for similar employees at the same establishment for the same time period. Work speed data is data relating to an employee's performance of a quota, such as quantities of tasks performed, quantities of items handled or produced, rates or speeds of tasks performed, and time categorized as performing tasks or not performing tasks. An employer must comply with the request within 14 calendar days.

What are the penalties for violations?

The New York Department of Labor enforces the WWPA. Under the WWPA, there is a rebuttable presumption of unlawful retaliation if an employer discriminates, retaliates, or takes adverse action against an employee within 90 days of the employee initiating a first request in a calendar year for information about a quota or personal work speed data, or making a complaint alleging a WWPA violation to the New York Labor Commissioner, the Department of Labor, other local or state governmental agency, or the employer. An employer may be subject to civil penalties ranging from up to \$1,000 for the first violation, \$2,000 for the second violation, and \$3,000 for subsequent violations.

What should employers do now?

Warehouse distribution centers in New York should develop written disclosure documents and distribute them to every employee who is subject to a quota. The disclosure should describe the quota, including the quantified number of tasks to be performed or materials to be produced or handled within the defined time period, and the potential adverse actions that could result from failing to meet the quota. This

disclosure should also emphasize that the employer strictly prohibits any retaliation against an employee for reporting concerns regarding the quota and explain that the employer requires employees to report any concerns that their job requirements prevent them from taking compliant meal and rest breaks, using the restroom, or from complying with other health and safety protections.

Contact your Vorys lawyer if you have questions about the new law or other wage and hour compliance issues in New York.