

1 HOUSE BILL NO. 768
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4 DURAM

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE WAREHOUSE WORKER PROTECTION ACT;
 7 PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR EMPLOYER QUOTAS; REQUIRING
 8 RECORDKEEPING; PROVIDING THE RIGHT OF AN EMPLOYEE TO REQUEST CERTAIN DATA FROM AN
 9 EMPLOYER, INCLUDING QUOTA INFORMATION; PROHIBITING UNLAWFUL RETALIATION AGAINST THE
 10 EMPLOYEE; PROVIDING FOR WORKPLACE INSPECTIONS; PROVIDING RULEMAKING AUTHORITY;
 11 AND PROVIDING FOR A PRIVATE RIGHT OF ACTION."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Warehouse
 16 Worker Protection Act".

17
 18 NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 9], the following
 19 definitions apply:

20 (1) "Aggregated data" means information that an employer has combined or collected together in
 21 summary or other form so that the data cannot be identified with any individual.

22 (2) "Defined time period" means any unit of time measurement equal to or less than the duration of
 23 an employee's shift, including hours, minutes, and seconds and any fraction of hours, minutes, and seconds.

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

26 (4) "Employee" means a nonexempt and nonadministrative employee who works at a warehouse
 27 distribution center and is subject to a quota as defined in this section.

28 (5) "Employee work speed data" means information an employer collects, stores, analyzes, or

1 interprets relating to an individual employee's performance of a quota, including but not limited to quantities of
2 tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed,
3 measurements or metrics of employee performance in relation to a quota, and time categorized as performing
4 tasks or not performing tasks.

5 (6) (a) "Employer" means a person who, directly or indirectly or through an agent or any other
6 person, including through the services of a third-party employer, temporary services, a staffing agency, an
7 independent contractor, or any similar entity, at any time in the prior 12 months, employs or exercises control
8 over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution
9 center or 500 or more employees at one or more warehouse distribution centers in the state.

10 (b) For the purposes of this subsection (6):

11 (i) all employees employed directly or indirectly, or through an agent or any other person, as
12 described in subsection (6)(a), as well as any employee employed by a member of a controlled group of
13 corporations of which the employer is a member, must be counted in determining the number of employees
14 employed at a single warehouse distribution center or at one or more warehouse distribution centers in the
15 state; and

16 (ii) all agents or other persons as described in subsection (6)(a) and all members of a controlled
17 group of corporations of which the employer is a member are considered to be employers and must be jointly
18 and severally responsible for compliance with [sections 1 through 9].

19 (c) For the purposes of this subsection (6), the term "controlled group of corporations" must be
20 defined as provided under section 1563 of the Internal Revenue Code, 26 U.S.C. 1563, except that 50% must
21 be substituted for 80% where 80% is specified in that definition.

22 (7) "Person" means an individual, corporation, partnership, limited partnership, limited liability
23 partnership, limited liability company, business trust, estate, trust, association, joint venture, agency,
24 instrumentality, or any other legal or commercial entity, whether domestic or foreign.

25 (8) "Quota" means a work standard:

26 (a) that an employee is assigned or required to perform:

27 (i) at a specified productivity speed;

28 (ii) for a quantified number of tasks; or

- 1 (iii) to handle or produce a quantified amount of material within a defined time period; or
- 2 (b) in which an employee's actions are categorized between time performing tasks and not
- 3 performing tasks, and the employee's failure to complete a task performance standard or recommendation may
- 4 have an adverse impact on the employee's continued employment or the conditions of the employment.

5 (9) "Warehouse distribution center" means an establishment as described by any of the following

6 North American industry classification system codes, however the establishment is denominated:

- 7 (a) for warehousing and storage, 493;
- 8 (b) for merchant wholesalers and durable goods, 423;
- 9 (c) for merchant wholesalers and nondurable goods, 424;
- 10 (d) for electronic shopping and mail-order houses, 454,110; or
- 11 (e) for couriers and express delivery services, 492,110.

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13 **NEW SECTION. Section 3. Employer quotas -- disclosure -- requirements.** (1) An employer shall

14 provide to each employee on hire or within 30 days of October 1, 2023, a written description of each quota to

15 which the employee is subject, including the quantified number of tasks to be performed or materials to be

16 produced or handled, within the defined time period and any potential adverse employment action that may

17 result from failure to meet the quota. Each time the quota changes afterward, the employer shall provide an

18 updated written description of each quota to which the employee is subject within 2 business days of the quota

19 change. Each time an employer takes an adverse employment action against an employee, the employer shall

20 provide that employee with the applicable quota for the employee.

21 (2) An employee may not be required to meet a quota that prevents compliance with meal or rest

22 periods or the use of bathroom facilities, including reasonable travel time to and from bathroom facilities. An

23 employer may not take adverse employment action against an employee for failure to meet a quota that does

24 not allow a worker to comply with meal and rest periods or for failure to meet a quota that has not been

25 disclosed to the employee pursuant to this section.

26 (3) Consistent with existing law, paid and unpaid breaks may not be considered productive time for

27 the purpose of any quota or monitoring system unless the employee is required to remain on call.

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1 **NEW SECTION. Section 4. Recordkeeping.** (1) (a) Each employer shall establish, maintain, and
2 preserve contemporaneous, true, and accurate records of the following:

- 3 (i) each employee's own personal work speed data;
 - 4 (ii) the aggregated work speed data for similar employees at the same establishment; and
 - 5 (iii) the written descriptions of the quota the employee was provided pursuant to [section 3].
- 6 (b) These records must be maintained and preserved throughout the duration of each employee's
7 period of employment and made available to the department on request.

8 (2) Subsequent to any employee's separation from the employer, the records relating to the 6-
9 month period prior to the date of the employee's separation from the employer must be preserved for a period
10 of time not less than 3 years subsequent to the date of the employee's separation and made available to the
11 department on request. Nothing in this section may require an employer to keep the records if the employer
12 does not use quotas as defined in [sections 1 through 9] or monitor work speed data.

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14 **NEW SECTION. Section 5. Right to request information by employee.** (1) A current employee has
15 the right to request a written description of each quota to which the current employee is subject, a copy of the
16 current employee's own personal work speed data, and a copy of the prior 6 months of aggregated work speed
17 data for similar employees at the same establishment.

18 (2) A former employee has the right to request, within 3 years subsequent to the date of the former
19 employee's separation from the employer, a written description of the quota to which the former employee was
20 subject as of the date of their separation, a copy of the former employee's own personal work speed data for
21 the 6 months prior to the date of the former employee's separation, and a copy of aggregated work speed data
22 for similar employees at the same establishment for the 6 months prior to the former employee's date of
23 separation.

24 (3) The records requested pursuant to this section must be provided at no cost to the current or
25 former employee.

26 (4) The employer shall provide the records requested pursuant to this section as soon as
27 practicable, provided that requested written descriptions of the quota must be provided no later than 2 business
28 days following the date of the receipt of the request and requested personal work speed data and aggregated

1 work speed data must be provided no later than 7 business days following the date of the receipt of the request.

2 (5) Nothing in this section requires an employer to use quotas as defined in [sections 1 through 9]
3 or monitor work speed data. An employer that does not monitor this data has no obligation to provide it.

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5 **NEW SECTION. Section 6. Retaliation prohibited.** (1) A person, including but not limited to an
6 employer, the employer's agent, a person acting as or on behalf of a hiring entity, or the officer or agent of an
7 entity, business, corporation, partnership, or limited liability company, may not discharge or in any way retaliate,
8 discriminate, or take adverse action against any person for exercising any rights conferred under [sections 1
9 through 9] or for being perceived as exercising rights conferred by [sections 1 through 9], including but not
10 limited to:

11 (a) initiating a request for information about a quota or personal work speed data pursuant to
12 [section 5(1)]; or

13 (b) making a complaint related to a quota alleging a violation of [section 3, 4, or 5] to the
14 department, any other local, state, or federal government agency or official, or the employer.

15 (2) An employee need not explicitly refer to this section or the rights enumerated in [sections 1
16 through 9] to be protected from an adverse action. Protections of [sections 1 through 9] apply to former
17 employees and to employees who mistakenly but in good faith allege violations of [sections 1 through 9].

18 (3) If a person takes adverse action against an employee within 90 days of the employee's
19 engaging or attempting to engage in activities protected by [sections 1 through 9], the conduct raises a
20 rebuttable presumption that the action is an adverse action in violation of this section. This presumption may be
21 rebutted by clear and convincing evidence that:

22 (a) the action was taken for other permissible reasons; and

23 (b) the engaging or attempting to engage in activities protected by [sections 1 through 9] was not a
24 motivating factor in the adverse action.

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26 **NEW SECTION. Section 7. Enforcement -- workplace inspections -- rulemaking.** (1) The
27 department shall adopt rules and regulations implementing the provisions of [sections 1 through 9]. The
28 department is authorized to enforce the provisions of [sections 1 through 9] and to assess civil penalties in a

1 manner consistent with this title.

2 (2) If a particular worksite or employer is found to have an annual employee injury rate of at least 1
3 1/2 times as high as the warehousing industry's average annual injury rate as published by the bureau of labor
4 statistics' most recent fatal and nonfatal occupation injuries and illnesses data, the department shall conduct an
5 investigation of violations pursuant to [sections 1 through 9].

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7 **NEW SECTION. Section 8. Private right of action.** A current or former employee or the employee's
8 representative may bring an action for injunctive relief to obtain compliance with [sections 1 through 9] and
9 may, on prevailing in the action, recover costs and reasonable attorney fees in the action. In any action
10 involving a quota that prevented the compliance with applicable regulations on workplace safety and health,
11 meal, or rest break requirements, the injunctive relief must be limited to suspension of the quota and restitution
12 and injunctive relief to address any retaliation or other adverse action taken by the employer in relation to the
13 complaint or its enforcement. In any action involving retaliation in violation of [sections 1 through 9] in addition
14 to the relief authorized above, a prevailing current or former employee or the employee's representative must
15 be awarded damages equal to the greater of \$10,000 or three times the actual damages, including but not
16 limited to unpaid wages and benefits.

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18 **NEW SECTION. Section 9. Other powers.** The attorney general, on complaint or the complaint of
19 any person acting for themselves or the general public, has the authority to prosecute actions, either civil or
20 criminal, for violations of [sections 1 through 9] or to enforce the provisions of [sections 1 through 9]
21 independently and without specific direction of the department.

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23 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 9] are intended to be
24 codified as a new chapter in Title 39, and the provisions of Title 39 apply to [sections 1 through 9].

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26 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
28 the part remains in effect in all valid applications that are severable from the invalid applications.
