

HB 1076 - AS INTRODUCED

2022 SESSION

22-2139

04/10

HOUSE BILL **1076**

AN ACT relative to illegal productivity quotas.

SPONSORS: Rep. Adjutant, Graf. 17; Rep. Perez, Hills. 23; Rep. Schultz, Merr. 18; Rep. Gallagher, Merr. 15; Rep. Caplan, Merr. 6

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill implements provisions regulating productivity quotas in workplaces.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to illegal productivity quotas.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Productivity Quotas. Amend RSA 275 by inserting after section 77 the following new subdivision:

Productivity Quotas

275:78 Definitions. In this subdivision:

I. "Commissioner" means the labor commissioner.

II. “Defined time period” means any unit of time measurement equal to or less than the duration of an employee’s shift, and includes hours, minutes, and seconds and any fraction thereof.

III. "Department" means the department of labor.

IV. “Employee” means an employee who works at a warehouse distribution center.

V. “Employee work speed data” means information an employer collects, stores, analyzes, or interprets relating to an individual employee’s performance of a quota, including, but not limited to, 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. “Employee work speed data” shall not include qualitative performance assessments, personnel records, or itemized wage statements, except for any content of those records that includes employee work speed data as defined in this subdivision.

VI. “Employer” 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 service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state.

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

VIII. “Quota” means a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.

IX.(a) "Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System (NAICS) Codes, however that establishment is denominated, and may include the following:

(1) 493110 for General Warehousing and Storage.

(2) 423 for Merchant Wholesalers, Durable Goods.

(3) 424 for Merchant Wholesalers, Nondurable Goods.

(4) 454110 for Electronic Shopping and Mail-Order Houses.

(b) The term "warehouse distribution center" shall not include NAICS Code 493130, Farm Product Warehousing and Storage.

275:79 Employer Disclosure of Productivity Quotas. Each employer shall provide to each employee, upon hire, a written description of each quota to which the employee is subject, including 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.

275:80 Productivity Quotas. An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in state law or department rules. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in state law or department rules, or for failure to meet a quota that has not been disclosed to the employee pursuant to RSA 275:79.

275:81 Productive Time. Any action taken by an employee to comply with occupational health and safety laws shall be considered time on task and productive time for purposes of any quota or monitoring system. Meal and rest breaks shall not be considered productive time unless the employee is required to remain on call.

275:82 Right to Request Quota Description.

I. If a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety laws in state law or department rules, they have the right to request, and the employer shall provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.

II. If a former employee requests a written description of the quotas to which they were subject and a copy of their own personal work speed data pursuant to paragraph I, the employer shall provide 90 days of the former employee's quotas and personal work speed data for the 90 days prior to the date of the employee's separation from the employer.

III. A former employee is limited to one request pursuant to this subdivision. An employer that receives a written or oral request for information pursuant to this section shall comply with the

request as soon as practicable, but no later than 21 calendar days from the date of the request. Nothing in this section shall require an employer to use quotas or monitor work speed data. An employer that does not monitor this data has no obligation to provide it.

275:83 Rebuttable Presumption of Unlawful Retaliation. For purposes of this subdivision, there shall be a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee doing either of the following:

I. Initiating the employee's first request in a calendar year for information about a quota or personal work speed data pursuant to RSA 275:82.

II. Making a complaint related to a quota alleging any violation of this subdivision, inclusive, to the commissioner, or another local or state governmental agency, or the employer.

275:84 Subpoena of Records. Upon receiving a complaint regarding a violation of this subdivision, a state or local enforcement entity may request or subpoena the records of warehouse distribution center quotas and employee work speed data.

275:85 Duties of the Commissioner. The commissioner shall:

I. Enforce this subdivision by engaging in coordinated and strategic enforcement efforts with the department. The commissioner shall have access to data from the department including employer-reported injury data and enforcement actions in warehouses, and the identity of uninsured employers, and employers who are committing workers' compensation fraud, wage theft, or other information relevant to the commissioner's authority.

II. Collaborate with interested parties to educate workers and employers about their rights and obligations under this subdivision, respectively, in order to increase compliance.

III.(a) Submit a report to the general court by January 1, 2023, and annually thereafter, on the number of claims filed with the commissioner under this subdivision, data on warehouse production quotas in warehouses in which the department of employment security has indicated that annual employee injury rates are above the industry average, and the number of investigations undertaken and enforcement actions initiated, per employer.

(b) If a particular work site or employer is found to have an annual employee injury rate of at least 1.5 times higher than the warehousing industry's average annual injury rate, the commissioner shall determine whether an investigation of violations pursuant to this subdivision, if relevant to the commissioner's authority, is appropriate. The commissioner may coordinate enforcement with other departments and agencies as may be needed.

(c) The commissioner shall adopt rules pursuant to RSA 541-A relating to the procedures for an employee to make a complaint alleging a violation of this subdivision.

(d) In any successful action brought by the commissioner to enforce this subdivision, the court may grant injunctive relief in order to obtain compliance with the subdivision, and shall award costs and reasonable attorney's fee.

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1 275:86 Injunctive Relief. A current or former employee may bring an action for injunctive relief
2 to obtain compliance with this subdivision and may, upon prevailing in the action, recover costs and
3 reasonable attorney's fees in that action. In any action involving a quota that prevented the
4 compliance with department rules, the injunctive relief shall be limited to suspension of the quota
5 and any adverse action that resulted from its enforcement.

6 275:87 Employer Right to Cure. In any action by a current or former employee that could be
7 brought for a violation of this subdivision, the employer shall have the right to a reasonable amount
8 of time to cure an alleged violation.

9 275:88 Enforcement. This subdivision shall not limit the authority of the attorney general, a
10 district attorney, or a city attorney, either upon their own complaint or the complaint of any person
11 acting for themselves or the general public, to prosecute actions, either civil or criminal, for
12 violations of this subdivision, or to enforce the provisions thereof independently and without specific
13 direction of the commissioner or the division.

14 275:89 Preemption. This subdivision shall not preempt any town or city ordinance that provides
15 equal or greater protection to employees who are covered by this subdivision.

16 2 Effective Date. This act shall take effect January 1, 2023.