

SENATE No. 1164

The Commonwealth of Massachusetts

PRESENTED BY:

Lydia Edwards

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting warehouse workers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>1/26/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/11/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/13/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/15/2023</i>

SENATE No. 1164

By Ms. Edwards, a petition (accompanied by bill, Senate, No. 1164) of Lydia Edwards, Paul W. Mark, James B. Eldridge, Patrick M. O'Connor and others for legislation to protect warehouse workers. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act protecting warehouse workers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Section 1 of Chapter 149 of the Massachusetts General Laws, as appearing
2 in the 2020 official edition, is hereby amended by adding the following definitions:

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

6 "Designated employee representative" means any employee representative, including but
7 not limited to an authorized employee representative that has a collective bargaining relationship
8 with the employer.

9 "Employee" means a nonexempt and non-administrative employee who works at a
10 warehouse distribution center and is subject to a quota as defined in this section.

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

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

18 "Employer" means a person who directly or indirectly, or through an agent or any other
19 person, including through the services of a third-party employer, temporary services, or staffing
20 agency, independent contractor, or any similar entity, at any time in the prior twelve months,
21 employs or exercises control over the wages, hours, or working conditions of one hundred or
22 more employees at a single warehouse distribution center or five hundred or more employees at
23 one or more warehouse distribution centers in the state.

24 (a) all employees employed directly or indirectly, or through an agent or any other
25 person, as described in the above definition, as well as any employee employed by a member of
26 a controlled group of corporations of which the employer is a member, shall be counted in
27 determining the number of employees employed at a single warehouse distribution center or at
28 one or more warehouse distribution centers in the state; and

29 (b) all agents or other persons, as described in the definition above, and all members of a
30 controlled group of corporations of which the employer is a member, shall be deemed to be
31 employers and shall be jointly and severally responsible for compliance with this article. For
32 purposes of this subdivision, the term "controlled group of corporations" shall be defined as

33 provided under Section 1563 of the Internal Revenue Code, 26 U.S.C. section 1563, except that
34 fifty percent shall be substituted for eighty percent where eighty percent is specified in that
35 definition.

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

40 "Quota" means a work standard which:

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

42 (i) at a specified productivity speed; or a quantified number of tasks, or to handle or
43 produce a quantified amount of material, within a defined time period; or

44 (b) an employee's actions are categorized between time performing tasks and not
45 performing tasks, and the employee's failure to complete a task performance standard or
46 recommendation may have an adverse impact on the employee's continued employment or the
47 conditions of such employment.

48 "Warehouse distribution center" means an establishment as defined by any of the
49 following North American industry classification system ("NAICS") codes, however such
50 establishment is denominated:

51 (a) four hundred ninety-three for warehousing and storage;

52 (b) four hundred twenty-three for merchant wholesalers, durable goods;

53 (c) four hundred twenty-four for merchant wholesalers, nondurable goods;

54 (d) four hundred fifty-four thousand one hundred ten for electronic shopping and mail-
55 order houses; or

56 (e) four hundred ninety-two thousand one hundred ten for couriers and express delivery
57 services.

58 Section 2: Chapter 149 of the Massachusetts General Laws, as appearing in the 2020
59 official edition, is hereby amended by adding the following section:

60 52C ½ : Quotas

61 Each employer shall provide to each employee, upon hire, or within thirty days of the
62 effective date of this article, a written description of each quota to which the employee is subject,
63 including the quantified number of tasks to be performed or materials to be produced or handled,
64 within the defined time period, and any potential adverse employment action that could result
65 from failure to meet the quota. Each time the quota changes thereafter, the employer shall
66 provide an updated written description of each quota to which the employee is subject within two
67 business days of such quota change. Each time an employer takes an adverse employment action
68 against an employee, the employer shall provide that employee with the applicable quota for the
69 employee.

70 An employee shall not be required to meet a quota that prevents compliance with meal or
71 rest periods or use of bathroom facilities, including reasonable travel time to and from bathroom
72 facilities. An employer shall not take adverse employment action against an employee for failure
73 to meet a quota that does not allow a worker to comply with meal and rest periods or for failure

74 to meet a quota that has not been disclosed to the employee pursuant to section seven hundred
75 eighty-one of this article.

76 Consistent with existing law, paid and unpaid breaks shall not be considered productive
77 time for the purpose of any quota or monitoring system unless the employee is required to
78 remain on call.

79 1. Each employer shall establish, maintain, and preserve contemporaneous, true, and
80 accurate records of the following:

81 (a) each employee's own personal work speed data;

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

83 (c) the written descriptions of the quota such employee was provided pursuant to section
84 seven hundred eighty-one of this article. Such records shall be maintained and preserved
85 throughout the duration of each employee's period of employment and made available to the
86 commissioner upon request.

87 Subsequent to any employee's separation from the employer, such records relating to the
88 six month period prior to the date of the employee's separation from the employer shall be
89 preserved for a period of time not less than three years subsequent to the date of such employee's
90 separation and made available to the commissioner upon request. Nothing in this section shall
91 require an employer to keep such records if such employer does not use quotas as defined in this
92 article or monitor work speed data.

93 A current employee has the right to request a written description of each quota to which
94 the employee is subject, a copy of the employee's own personal work speed data, and a copy of

95 the prior six months of aggregated work speed data for similar employees at the same
96 establishment.

97 A former employee has the right to request, within three years subsequent to the date of
98 his or her separation from the employer, a written description of the quota to which they were
99 subject as of the date of their separation, a copy of the employee's own personal work speed data
100 for the six months prior to their date of separation, and a copy of aggregated work speed data for
101 similar employees at the same establishment for the six months prior to their date of separation.

102 Such requested records pursuant to this section shall be provided at no cost to the current
103 or former employee.

104 The employer shall provide such requested records pursuant to this section as soon as
105 practicable, provided that requested written descriptions of the quota shall be provided no later
106 than two business days following the date of the receipt of the request and requested personal
107 work speed data and aggregated work speed data shall be provided no later than seven business
108 days following the date of the receipt of the request.

109 5. Nothing in this section shall require an employer to use quotas as defined in this article
110 or monitor work speed data. An employer that does not monitor this data has no obligation to
111 provide it.

112 No person, including but not limited to an employer, his or her agent, or person acting as
113 or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation,
114 partnership, or limited liability company, shall discharge or in any way retaliate, discriminate or
115 take adverse action against any person for exercising any rights conferred under this article, or
116 for being perceived as exercising rights conferred by this article, including but not limited to:

117 (a) Initiating a request for information about a quota or personal work speed data
118 pursuant to subdivision one of XXX of this article (Right to request section).

119 (b) Making a complaint related to a quota alleging any violation of this section to the
120 commissioner, any other local, state, or federal governmental agency or official, or the employer.

121 An employee need not explicitly refer to this article or the rights enumerated herein to be
122 protected from an adverse action. Protections of this section shall apply to former employees and
123 to employees who mistakenly but in good faith allege violations of this article.

124 If a person takes adverse action against an employee within ninety days of the employee's
125 engaging or attempting to engage in activities protected by this article, such conduct shall raise a
126 rebuttable presumption that the action is an adverse action in violation of this article. Such
127 presumption may be rebutted by clear and convincing evidence that: (a) the action was taken for
128 other permissible reasons; and (b) the engaging or attempting to engage in activities protected by
129 this article was not a motivating factor in the adverse action.

130 The commissioner shall adopt rules and regulations implementing the provisions of this
131 article. The commissioner shall be authorized to enforce the provisions of this article and to
132 assess civil penalties in a manner consistent with state law.

133 If a particular worksite or employer is found to have an annual employee injury rate of at
134 least one and one-half times as high as the warehousing industry's average annual injury rate as
135 published by the Bureau of Labor Statistics' most recent Fatal and Non-fatal Occupational
136 Injuries and Illnesses data, the commissioner shall conduct an investigation of violations
137 pursuant to this section.

138 A current or former employee or his or her representative may bring an action for
139 injunctive relief to obtain compliance with this article and may, upon prevailing in the action,
140 recover costs and reasonable attorney's fees in such action. In any action involving a quota that
141 prevented the compliance with applicable regulations on workplace safety and health or meal or
142 rest break requirements, the injunctive relief shall be limited to suspension of the quota and
143 restitution and injunctive relief to address any retaliation or other adverse action taken by the
144 employer in relation to the complaint or its enforcement. In any action involving a retaliation in
145 violation this article, in addition to the relief authorized above, a prevailing current or former
146 employee or his or her representative shall be awarded damages equal to the greater of ten
147 thousand dollars or three times the actual damages, including, but not limited to, unpaid wages
148 and benefits.

149 The attorney general, either upon his or her own complaint or the complaint of any
150 person acting for themselves or the general public, has the authority to prosecute actions, either
151 civil or criminal, for violations of this article, or to enforce the provisions thereof independently
152 and without specific direction of the commissioner.

153 If any provision of this act, or any application of any provision of this act, is held to be
154 invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of
155 any other application of any provision of this act, which can be given effect without that
156 provision or application; and to that end, the provisions and applications of this act are severable.