

As Introduced

**135th General Assembly
Regular Session
2023-2024**

H. B. No. 669

Representative Creech

A BILL

To enact sections 4145.01, 4145.02, 4145.03, 1
4145.04, 4145.05, 4145.06, 4145.07, 4145.08, 2
4145.09, 4145.10, and 4145.11 of the Revised 3
Code to regulate the use of quotas in measuring 4
employee performance at warehouse distribution 5
centers and to name this act the Warehouse 6
Worker Protection Act. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4145.01, 4145.02, 4145.03, 8
4145.04, 4145.05, 4145.06, 4145.07, 4145.08, 4145.09, 4145.10, 9
and 4145.11 of the Revised Code be enacted to read as follows: 10

Sec. 4145.01. As used in this chapter: 11

(A) "Employee" means an individual who performs a service 12
for a wage or other remuneration for an employer at a warehouse 13
distribution center. 14

(B) "Employer" means a person that meets the criteria 15
specified under section 4145.02 of the Revised Code. 16

(C) "Quota" means a performance standard under which an 17
employee is subject to a requirement that the employee, within a 18

defined time period or at a specified productivity speed, 19
perform a quantified number of tasks or handle or produce a 20
quantified amount of material. 21

(D) "Warehouse distribution center" means an establishment 22
that is classified in any of the following economic subsectors 23
or industries as defined in the North American industry 24
classification system: 25

(1) Warehousing and storage; 26

(2) Merchant wholesalers, durable goods; 27

(3) Merchant wholesalers, nondurable goods; 28

(4) Electronic shopping and mail-order houses; 29

(5) Couriers and express delivery services. 30

(E) "Work speed data" means any information an employer 31
collects that measures an employee's individual performance 32
against a quota. "Work speed data" includes quantities of tasks 33
performed, quantities of items or materials handled or produced, 34
rates or speeds of tasks performed, and measurements or metrics 35
of employee performance against a quota. 36

Sec. 4145.02. (A) A person is considered an employer for 37
purposes of this chapter if the person directly, indirectly, or 38
through an agent or any other person employs, retains, or 39
exercises control over the wages, hours, or working conditions 40
of either of the following: 41

(1) One hundred or more employees at a warehouse 42
distribution center located in this state; 43

(2) Five hundred or more employees at more than one 44
warehouse distribution center located in this state. 45

(B) For purposes of divisions (A) (1) and (2) of this 46
section, the number of employees employed at one or more 47
warehouse distribution centers located in this state includes 48
all employees of a controlled group of corporations. 49

Sec. 4145.03. (A) If an employer adopts and enforces a 50
quota, the employer shall disclose to each employee a written 51
description of the quota, including a written description of 52
both of the following regarding the quota: 53

(1) The number of tasks the employee is required to 54
perform or materials the employee is required to produce or 55
handle within a defined time period or at a specified 56
productivity speed; 57

(2) Any potential adverse employment actions the employer 58
may take against the employee if the employee fails to comply 59
with the quota. 60

(B) An employer shall make the disclosure required under 61
this section to each employee as follows: 62

(1) If the employee is employed on the effective date of 63
this section, not later than thirty days after the effective 64
date of this section; 65

(2) If the employee becomes employed after the effective 66
date of this section, not later than the date the employee 67
commences employment. 68

(C) If, after an employer discloses a quota as required 69
under this section, the employer modifies the quota, the 70
employer shall disclose an updated written description of the 71
modified quota to each employee subject to the quota not later 72
than two days after the quota is modified. 73

(D) If an employer takes an adverse employment action 74
against an employee because the employee failed to comply with a 75
quota to which the employee was subject, the employer shall 76
provide the employee with a written description of the quota and 77
of the information described under division (A) of this section. 78

(E) An employer shall make the written description of each 79
quota the employer is required to disclose under this section in 80
plain language and in the employee's preferred language. The 81
director of commerce shall adopt rules under section 4145.09 of 82
the Revised Code regarding the format and language access 83
requirements for the written descriptions an employer is 84
required to disclose under this section. 85

Sec. 4145.04. (A) No employer shall require an employee to 86
comply with a quota that has not been disclosed to the employee 87
as required under section 4145.03 of the Revised Code or that 88
does any of the following: 89

(1) Prevents compliance with any laws or collective 90
bargaining agreements governing employee meal breaks, rest 91
breaks, or use of restroom facilities; 92

(2) Measures the employee's total productivity over a time 93
period that is shorter than a twenty-four hour period; 94

(3) Measures and categorizes increments of time during 95
which the employee is performing tasks and increments of time 96
during which the employee is not performing tasks; 97

(4) Ranks the employee in relation to the productivity of 98
other employees. 99

(B) If an employer adopts and enforces a quota, the 100
employer shall count all of the following time as productive 101
time or time on task for purposes of the quota: 102

<u>(1) The time an employee takes for any action necessary</u>	103
<u>for the employee to exercise the employee's right to a safe and</u>	104
<u>healthful workplace pursuant to law, including time for the</u>	105
<u>employee to access the tools or safety equipment the employee</u>	106
<u>needs to perform the employee's duties;</u>	107
<u>(2) The time an employee takes for any action required by</u>	108
<u>the employer to perform work subject to a quota;</u>	109
<u>(3) The time an employee takes to travel to and use the</u>	110
<u>restroom facilities;</u>	111
<u>(4) The time an employee takes for a rest break granted by</u>	112
<u>the employer, if any, and the employee's reasonable travel time</u>	113
<u>to the employer's designated location to take the rest break;</u>	114
<u>(5) The employee's reasonable travel time to the meal</u>	115
<u>break location designated by the employer;</u>	116
<u>(6) The time an employee takes for a meal break, provided</u>	117
<u>that the employer requires the employee to do either of the</u>	118
<u>following during the meal break:</u>	119
<u>(a) Remain on call;</u>	120
<u>(b) Remain on duty on the employer's premises at a</u>	121
<u>designated worksite in the interest of the employer.</u>	122
<u>(C) For purposes of determining the reasonableness of an</u>	123
<u>employee's travel time under this section, an employer shall</u>	124
<u>consider both of the following:</u>	125
<u>(1) The architecture and geography of the employer's</u>	126
<u>warehouse distribution center;</u>	127
<u>(2) The location within the warehouse distribution center</u>	128
<u>at which the employee is located at the time the employee begins</u>	129

traveling from one location to another. 130

(D) Nothing in this section requires an employer to 131
provide an employee with a meal or rest break during the time 132
the employee is performing services for the employer. 133

Sec. 4145.05. (A) If an employer adopts and enforces a 134
quota, the employer shall maintain records of all of the 135
following information: 136

(1) Each employee's work speed data, if the employer 137
collects employee work speed data; 138

(2) The aggregated work speed data for employees in 139
similar positions at the same warehouse distribution center, if 140
the employer collects employee work speed data; 141

(3) The written description of each quota the employer is 142
required to disclose under section 4145.03 of the Revised Code. 143

(B) An employer that is required to maintain records under 144
this section shall do both of the following: 145

(1) Preserve the records for a period of not less than 146
three years beginning on the date the record is created; 147

(2) Make the records available at an employee's request in 148
accordance with section 4145.06 of the Revised Code or at the 149
director of commerce's request. 150

Sec. 4145.06. (A) An employee may request that the 151
employee's employer disclose the written description of each 152
quota to which the employee is subject. 153

(B) If an employee believes that an employer disciplined 154
the employee for failing to comply with a quota, or that the 155
employer violated division (A) (1) or (B) (3) of section 4145.04 156

of the Revised Code, the employee may request the employer to 157
disclose any of the following documentation: 158

(1) The written description of each quota to which the 159
employee is subject; 160

(2) A copy of the employee's work speed data covering the 161
three-month period that immediately precedes the date the 162
employee submits the request; 163

(3) A copy of the aggregated work speed data for employees 164
in similar positions at the same warehouse distribution center 165
covering the three-month period that immediately precedes the 166
date the employee submits the request. 167

(B)(1) If a former employee who separated from employment 168
after the effective date of this section believes that an 169
employer disciplined the former employee for failing to comply 170
with a quota, or that the employer violated division (A)(1) or 171
(B)(3) of section 4145.04 of the Revised Code, the former 172
employee may request the employer to disclose any of the 173
following documentation: 174

(a) A written description of each quota to which the 175
former employee was subject on the date the former employee 176
separated from employment; 177

(b) A copy of the former employee's personal work speed 178
data covering the three-month period that immediately precedes 179
the date the former employee separated from employment; 180

(c) A copy of the aggregated work speed data for employees 181
who worked in positions similar to the former employee's last 182
position at the same warehouse distribution center covering the 183
three-month period that immediately precedes the date the former 184
employee separated from employment. 185

(2) No former employee shall submit more than one request 186
under this section per employer. 187

(C) Except as provided in division (D) of this section, if 188
an employer adopts and enforces a quota and receives a request 189
for documentation under this section, the employer shall do all 190
of the following: 191

(1) Disclose the requested documentation at no cost to the 192
employee or former employee; 193

(2) Disclose the requested documentation as soon as 194
practicable, but not later than fourteen days after the date the 195
request is submitted; 196

(3) Provide the requested documentation in English and in 197
the employee's preferred language. 198

(D) Nothing in this section shall be construed to require 199
an employer to adopt or enforce a quota or to collect employee 200
work speed data. If an employer does not collect work speed data 201
and receives a request under this section, the employer is not 202
required to disclose documentation related to work speed data. 203

Sec. 4145.07. An employee or former employee who separated 204
from employment after the effective date of this section may 205
submit a complaint with an employer or the director of commerce 206
alleging the employer has violated this chapter. 207

Sec. 4145.08. (A) No employer shall discriminate, 208
retaliate, or take any adverse employment action against an 209
employee because the employee does either of the following: 210

(1) Submits a request for documentation under section 211
4145.06 of the Revised Code; 212

(2) Submits a complaint under section 4145.07 of the 213

<u>Revised Code.</u>	214
<u>(B) An employee is not required to refer to this chapter</u>	215
<u>or the rights granted to the employee under this chapter to be</u>	216
<u>protected from the actions prohibited under division (A) of this</u>	217
<u>section. The prohibition specified under that division applies</u>	218
<u>to an employee who mistakenly but in good faith alleges a</u>	219
<u>violation of this chapter.</u>	220
<u>(C) There is a rebuttable presumption that an employer has</u>	221
<u>violated division (A) of this section if the employer takes any</u>	222
<u>of the actions described under that division within ninety days</u>	223
<u>after an employee does either of the following:</u>	224
<u>(1) Submits a request for documentation under section</u>	225
<u>4145.06 of the Revised Code;</u>	226
<u>(2) Submits a complaint under section 4145.07 of the</u>	227
<u>Revised Code.</u>	228
<u>(D) An employer may rebut a presumption established under</u>	229
<u>division (C) of this section if the employer proves by clear and</u>	230
<u>convincing evidence both of the following:</u>	231
<u>(1) That the employer took an action described under</u>	232
<u>division (A) of this section for a reason other than the reasons</u>	233
<u>described under that division;</u>	234
<u>(2) That an employee's request for documentation under</u>	235
<u>section 4145.06 of the Revised Code or complaint submitted under</u>	236
<u>section 4145.07 of the Revised Code was not a motivating factor</u>	237
<u>in the employer's decision to take the action.</u>	238
<u>Sec. 4145.09.</u> <u>The director of commerce shall administer</u>	239
<u>and enforce this chapter. The director shall adopt rules in</u>	240
<u>accordance with Chapter 119. of the Revised Code to implement</u>	241

this chapter. 242

Sec. 4145.10. The director of commerce shall investigate 243
whether an employer has violated this chapter if, based on data 244
reported to the occupational safety and health administration 245
for the previous year, the incidence rate of occupational 246
injuries at the employer's warehouse distribution center is at 247
least thirty per cent higher than the average annual rate for 248
other warehouse distribution centers that are classified in the 249
same North American industry classification system subsector or 250
industry as the employer's warehouse distribution center. 251

Sec. 4145.11. If the director of commerce determines an 252
employer has violated this chapter, the director may commence an 253
action in any court of competent jurisdiction for damages 254
sustained due to an employer's violation of this chapter, 255
injunctive relief to compel the employer to comply with this 256
chapter, and court costs and reasonable attorney's fees. 257

Any employee or former employee who separated from 258
employment after the effective date of this section who believes 259
an employer has violated this chapter may commence an action in 260
any court of competent jurisdiction for damages sustained due to 261
an employer's violation of this chapter, injunctive relief to 262
compel the employer to comply with this chapter, and court costs 263
and reasonable attorney's fees. 264

Section 2. (A) As used in this section, "employer," 265
"employee," "quota," and "warehouse distribution center" have 266
the same meanings as in section 4145.01 of the Revised Code, as 267
enacted by this act. 268

(B) Not later than one year after the effective date of 269
this section, the Director of Commerce shall submit to the 270

General Assembly a report that includes all of the following	271
information:	272
(1) The number of complaints submitted to the Director	273
under section 4145.07 of the Revised Code, as enacted by this	274
act, since the effective date of this section;	275
(2) Since the effective date of this section, the number	276
of warehouse distribution centers at which employee injuries	277
have occurred at a rate that exceeds the average injury rate for	278
the same industry;	279
(3) Any information the Director has collected since the	280
effective date of this section regarding quotas employers have	281
adopted and enforced for employees performing services at	282
warehouse distribution centers;	283
(4) The number of investigations and enforcement actions	284
the Director has commenced under Chapter 4145. of the Revised	285
Code, as enacted by this act, categorized by employer.	286
Section 3. This act shall be known as the Warehouse Worker	287
Protection Act.	288