

2023 South Dakota Legislature

Senate Bill 178**AMENDMENT 178A
FOR THE INTRODUCED BILL**

1 **An Act to create provisions for the protection of warehouse distribution center**
2 **employees.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to title 60:**

5 Terms in this chapter mean:

6 (1) "Aggregated data," information that an employer has combined or collected
7 together in summary or other form such that the data cannot be identified with
8 any individual;

9 (2) "Controlled group of corporations," as defined under 26 U.S.C. § 1563, as in effect
10 on January 1, 2023, except that fifty percent is substituted for eighty percent in all
11 instances where eighty percent appears in the definition;

12 (3) "Defined time period," any unit of time measurement equal to or less than the
13 duration of an employee's shift, including hours, minutes, seconds, and any
14 fraction thereof;

15 (4) "Designated employee representative," any person authorized by all employees to
16 represent on behalf of the employee's interests and has a collective bargaining
17 relationship with the employer;

18 (5) "Employee," a nonexempt and non-administrative employee who works at a
19 warehouse distribution center and is subject to a quota;

20 (6) "Employee work speed data," information an employer collects, stores, analyzes,
21 or interprets relating to an individual employee's performance of a quota, including
22 quantities of tasks performed, quantities of items or materials handled or
23 produced, rates or speeds of tasks performed, measurements or metrics of
24 employee performance in relation to a quota, and time categorized as performing
25 tasks or not performing tasks;

1 (7) "Employer," a person, either directly, indirectly, or through an agent, including
2 through the services of a third-party employer, temporary services, staffing
3 agency, independent contractor, or any similar entity, at any time in the prior
4 twelve months, that employs, exercises control over the wages, hours, or working
5 conditions of one hundred or more employees at a single warehouse distribution
6 center or five hundred or more employees at multiple warehouse distribution
7 centers in the state. This term also deems employers to be all members of a
8 controlled group of which the employer is a member;

9 (8) "Person," an individual, corporation, partnership, limited partnership, limited
10 liability partnership, limited liability company, business trust, estate, trust,
11 association, joint venture, agency, instrumentality, or any other legal or
12 commercial entity, whether domestic or foreign;

13 (9) "Quota," a work standard in which:

14 (a) An employee is assigned or required to perform at a specified productivity
15 speed or a quantified number of tasks or to handle or produce a quantified
16 amount of material within a defined time period; or

17 (b) An employee's actions are categorized between time performing tasks and
18 not performing tasks, and the employee's failure to complete a task,
19 performance standard, or recommendation may have an adverse impact on
20 the employee's continued employment or the conditions of employment;
21 and

22 (10) "Warehouse distribution center," an establishment, as defined by any of the
23 following North American Industry Classification System codes:

24 (a) Four hundred ninety-three for warehousing and storage;

25 (b) Four hundred twenty-three for merchant wholesalers, durable goods;

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

27 (d) Four hundred fifty-four thousand one hundred ten for electronic shopping
28 and mail-order houses; or

29 (e) Four hundred ninety-two thousand one hundred ten for couriers and
30 express delivery services.

31 **Section 2. That a NEW SECTION be added to title 60:**

32 All employees employed directly, indirectly, or through an agent or any other
33 person, as well as any employee employed by a member of a controlled group of
34 corporations of which the employer is a member, must be counted in determining the

1 number of employees employed at a single warehouse distribution center or at multiple
2 warehouse distribution centers in the state.

3 **Section 3. That a NEW SECTION be added to title 60:**

4 Each employer must provide to each employee upon hire, or within thirty days of
5 the effective date of this Act, a written description of each quota to which the employee
6 is subject, including the quantified number of tasks to be performed or materials to be
7 produced or handled, within the defined time period, and any potential adverse
8 employment action that could result from failure to meet the quota. Each time the quota
9 changes thereafter, the employer must provide an updated written description of each
10 quota to which the employee is subject within two business days of the quota change.
11 Each time an employer takes an adverse employment action against an employee, the
12 employer must provide that employee with the applicable quota for the employee.

13 **Section 4. That a NEW SECTION be added to title 60:**

14 An employee may not be required to meet a quota that prevents compliance with
15 meal periods, rest periods, or use of bathroom facilities, including reasonable travel to
16 and from bathroom facilities. An employer may not take adverse employment action
17 against an employee for failure to meet a quota that does not allow an employee to comply
18 with meal or rest periods, or both, or for failure to meet a quota that has not been disclosed
19 to the employee pursuant to section 3 of this Act.

20 **Section 5. That a NEW SECTION be added to title 60:**

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

24 **Section 6. That a NEW SECTION be added to title 60:**

25 Each employer shall establish, maintain, and preserve records of:
26 (1) Each employee's personal work speed data;
27 (2) The aggregated work speed data for similar employees at the same warehouse
28 distribution center; and
29 (3) A written description of the quota an employee was provided pursuant to section
30 3 of this Act.

1 The records must be maintained and preserved throughout the duration of an
2 employee's employment and made available upon request by the secretary of the
3 Department of Labor and Regulation.

4 Upon an employee's separation from the employer, the records relating to the six
5 months prior to an employee's separation from the employer must be preserved for no
6 less than three years and made available to the secretary of the Department of Labor and
7 Regulation upon request.

8 This chapter does not require an employer to keep the records if the employer does
9 not use quotas or monitor work speed data.

10 **Section 7. That a NEW SECTION be added to title 60:**

11 A current employee may request a written description of each quota to which the
12 employee is subject, a copy of the employee's own personal work speed data, and a copy
13 of the preceding six months of aggregated work speed data for similar employees at the
14 same establishment.

15 A former employee may request, within three years of the employee's separation
16 from the employer, a written description of the quota to which the employee was subject
17 as of the date of separation, a copy of the employee's own personal work speed data for
18 the six months preceding the date of separation, and a copy of the aggregated work speed
19 data for similar employees at the same establishment for the six months preceding the
20 employee's separation from the employer.

21 The requested records must be provided at no cost to the current or former
22 employee.

23 The employer shall provide the requested records in a timely manner.

24 This chapter does not require an employer to use quotas or monitor work speed
25 data. An employer that does not monitor work speed data has no obligation to provide it.

26 **Section 8. That a NEW SECTION be added to title 60:**

27 An employer may not discharge, retaliate, discriminate, or take adverse action
28 against an employee who makes a request pursuant to section 7 of this Act or makes a
29 complaint regarding a violation of this chapter.

30 **Section 9. That a NEW SECTION be added to title 60:**

1 A current or former employee or a representative of the current or former employee
2 may bring an action for injunctive relief to obtain compliance with this chapter and may,
3 upon prevailing in the action, recover costs and reasonable attorney's fees in the action.

4 In any action involving a quota that prevented the compliance with applicable
5 regulations on workplace safety and health or meal or rest break requirements, the
6 injunctive relief must be limited to suspension of the quota and restitution and injunctive
7 relief to address any retaliation or other adverse action taken by the employer in relation
8 to the complaint or its enforcement.

9 In any action involving a retaliation in violation of this chapter, in addition to the
10 relief authorized, a prevailing current or former employee or a representative of the
11 current or former employee must be awarded damages equal to the greater of ten
12 thousand dollars or three times the actual damages, including unpaid wages and benefits.

13 **Section 10. That a NEW SECTION be added to title 60:**

14 The secretary of the Department of Labor and Regulation shall promulgate rules
15 pursuant to chapter 1-26 concerning the enforcement of this chapter.