



2024 South Dakota Legislature

Senate Bill 179

Introduced by: **Senator Nesiba**

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 in a
 7 manner that it cannot be identified with any individual;

8 (2) "Controlled group of corporations," as defined under 26 U.S.C. § 1563 (January 1,
 9 2024), except that fifty percent is substituted for eighty percent in all instances
 10 where eighty percent appears in the definition;

11 (3) "Defined time period," any unit of time measurement equal to or less than the
 12 duration of an employee's shift;

13 (4) "Designated employee representative," any person authorized by all employees to
 14 represent the employee's interests with the employer through a collective
 15 bargaining agreement;

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

18 (6) "Employee work speed data," information an employer collects, stores, analyzes,
 19 or interprets relating to an individual employee's performance of a quota;

20 (7) "Employer," a person, either directly, indirectly, or through an agent, at any time
 21 in the prior twelve months, that employs, exercises control over the wages, hours,
 22 or working conditions of one hundred or more employees at a single warehouse
 23 distribution center or five hundred or more employees at multiple warehouse
 24 distribution centers in the state. This term also deems employers to be all members
 25 of a controlled group of corporations of which the employer is a member;

26 (8) "Quota," a work standard in which:

- 1 (a) An employee is assigned or required to perform at a specified productivity
 2 speed or a quantified number of tasks or to handle or produce a quantified
 3 amount of material within a defined time period;
 4 (b) An employee's actions are categorized between time performing tasks and
 5 not performing tasks within a day; or
 6 (c) An employee's performance is ranked in relation to the performance of other
 7 employees; and
 8 (9) "Warehouse distribution center," an establishment, as defined by any of the
 9 following North American Classification System codes:
 10 (a) Four hundred ninety-three for warehousing and storage;
 11 (b) Four hundred twenty-three for merchant wholesalers, durable goods;
 12 (c) Four hundred twenty-four for merchant wholesalers, nondurable goods;
 13 (d) Four hundred fifty-four thousand one hundred ten for electronic shopping
 14 and mail-order houses; or
 15 (e) Four hundred ninety-two thousand one hundred ten for couriers and
 16 express delivery services.

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

18 An employee employed directly, indirectly, or through an agent or any other person
 19 or as an employee employed by a member of a controlled group of corporations of which
 20 the employer is a member must be counted in determining the number of employees
 21 employed at a single warehouse distribution center or at multiple warehouse distribution
 22 centers in the state.

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

24 An employer must provide to each employee upon hire, or within thirty days of the
 25 effective date of this Act, a written description of each quota to which the employee is
 26 subject. The written description must contain the quantified number of tasks to be
 27 performed or materials to be produced or handled, within the defined time period, and
 28 any potential adverse employment action that could result from failure to meet the quota.

29 Each time the quota changes thereafter, the employer must:

- 30 (1) Notify the employee, verbally and in writing, before the employee is subject to the
 31 new quota; and
 32 (2) Provide an updated written description of each quota to which the employee is
 33 subject within two business days of the quota change.

1 Each time an employer takes an adverse employment action against an employee,
2 the employer must provide the employee with the applicable quota for the employee.

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

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

10 Paid and unpaid breaks must not be considered productive time for the purpose of
11 any quota or monitoring system unless the employe is required to remain on call.

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

13 Each employer shall establish, maintain, and preserve records of:

- 14 (1) Each employee's personal work speed data;
15 (2) The aggregated work speed data for similar employees at the same warehouse
16 distribution center; and
17 (3) The written descriptions of each quota provided to an employee pursuant to section
18 3 of this Act.

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

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

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

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

29 A current employee may request a written description of each quota to which the
30 employee is subject, a copy of the employee's own personal work speed data, and a copy

1 of the preceding six months of aggregated work speed data for similar employees at the
2 same establishment.

3 A former employee may request, within three years of the employee's separation
4 from the employer, a written description of the quota to which the employee was subject
5 as of the date of separation, a copy of the employee's own personal work speed data for
6 the six months preceding the date of separation, and a copy of the aggregated work speed
7 data for similar employees at the same establishment for the six months preceding the
8 employee's separation from the employer.

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

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

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

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

15 An employer may not discharge an employee, or retaliate, discriminate, or take
16 adverse action against an employee who makes a request pursuant to section 6 of this
17 Act or makes a complaint regarding a violation of this chapter.

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

19 A current or former employee or a designated employee representative of the
20 current or former employee may bring an action for injunctive relief to obtain compliance
21 with this Act and may, upon prevailing in the action, recover costs and reasonable
22 attorney's fees in the action.

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

28 In any action involving a retaliation in violation of this Act, in addition to the relief
29 authorized, a prevailing current or former employee or a designated employee
30 representative of the current or former employee must be awarded damages equal to the
31 greater of ten thousand dollars or three time the actual damages, including unpaid wages
32 and benefits.