Legal Update Article

Distribution Centers Should Brace for Restrictions on Their Use of Production Quotas

By Kathryn J. Barry

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Meet the Authors

Kathryn J. Barry

Principal and Office Litigation Manager
(631) 247-0404
Kathryn.Barry@jacksonlewis.com

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Warehouse distribution centers should prepare for increased regulation over their use of employee production quotas.

Many employers use quotas to monitor employee performance and set minimum standards for productivity. The use of these quotas, however, has come under increased scrutiny from legislators.

In 2021, California enacted first-of-its-kind legislation over how certain employers may use workplace productivity data (A.B. 701). New York followed in 2022 with the Warehouse Worker Protection Act. The New York law, which a union helped write, goes into effect in June 2023. Washington passed a similar law this legislative session (and delivered it to the governor for signature); while Connecticut held a hearing on its own bill in March 2023.

Although the laws or pending bills vary by state, there are common themes throughout the legislation. These laws are focused specifically on large distribution centers — California and New York's laws apply only to employers with at least 100 employees at a single distribution center or at least 1,000 employees within the state. Non-distribution centers and smaller employers are not covered by the California and New York laws.

Further, covered employers are generally required to provide a written notice of the quota to employees upon hire or within 30 days of the law's effective date. That notice must describe any applicable quotas *and* explain what disciplinary actions might result if an employee does not meet the quota. While this sounds straightforward, many employers use sophisticated algorithms or detailed engineered labor standards to establish workplace productivity requirements — and the laws are unclear as to the level of detail that must be disclosed to the employee.

Employers must disclose more than just the quotas themselves. Under these laws, employees have a right to request their own productivity data and the aggregate productivity data of their coworkers. Both California and New York offer broad protection to employees who request this data. Under both laws, there is a rebuttable presumption of unlawful retaliation if an employer takes any adverse action within 90 days of the request.

The laws also regulate the quotas themselves, specifically prohibiting any quota that could prevent an employee from taking any required meal or rest breaks, using restroom facilities, or complying with occupational safety and health laws. In line with this requirement, employers cannot consider paid or unpaid breaks as "time on task" or "productive time."

Employers with distribution centers in California and New York should ensure their productivity standards comply with these laws. Employers with distribution centers in other states (including Washington) should prepare for the possibility of similar requirements soon.

Please contact a Jackson Lewis attorney with any questions.