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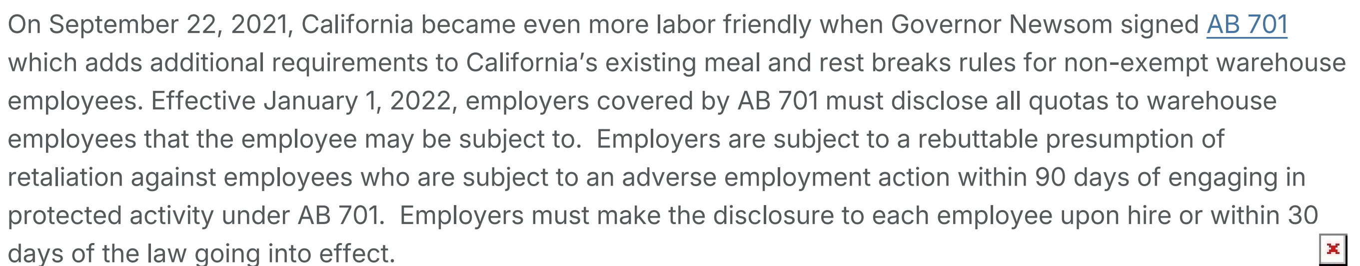
California Adds Increased Meal/Rest Period and Workplace Safety Protections for Warehouse Employees Subject to Production Quotas

By Ashley D. Mitchell

On September 22, 2021, California became even more labor friendly when Governor Newsom signed AB 701 which adds additional requirements to California's existing meal and rest breaks rules for non-exempt warehouse employees. Effective January 1, 2022, employers covered by AB 701 must disclose all quotas to warehouse employees that the employee may be subject to. Employers are subject to a rebuttable presumption of retaliation against employees who are subject to an adverse employment action within 90 days of engaging in protected activity under AB 701. Employers must make the disclosure to each employee upon hire or within 30 days of the law going into effect.



Aimed at making large Amazon warehouses in the state safer, AB 701 covers employers with 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state of California. Covered employers must provide to all non-exempt employees a written description of every quota the employee must comply with and may be subjected to discipline for failing to meet including "the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota." For purposes of AB 701 a warehouse is classified by the following NAICS Codes: 493110 (for general warehouse and storage); 423 (for merchant wholesalers, durable goods); 424 (for merchant wholesalers, nondurable goods); or 454110 (for electronic shopping and mail order houses) but not 493130 (farm product warehousing and storage). If an employer fails to disclose an employee's quota, the employer cannot take an adverse employment action against the employee for failure to meet that quota.

Quotas may not prevent: an employee from taking meal or rest periods; using bathroom facilities, including reasonable travel time to and from bathroom facilities; or complying with other occupational health and safety laws. If an employee fails to meet a quota that prevents the employee from taking meal and rest periods or from complying with occupational health and safety laws, the employer may not subject the employee to an adverse employment action based on that quota.

When an employee complains that their work quota violates AB 701 or makes a request for information about a

quota under AB 701, they have engaged in a protected activity. Moreover, employees who believe their work quota violates AB 701 may seek injunctive relief to compel compliance with AB 701. Current and former employees who believe their work quota has prevented them from taking meal or rest periods or prohibited them from complying with other occupational and safety health laws may request a written description of every quota that applied to the employee as well as the employee's own personal work speed data from the past 90 days. After receiving a written or oral request, the employer must provide the requested information within 21 calendar days from the date of the request.

In furtherance of protecting warehouse employees, AB 701 establishes a rebuttable presumption of retaliation if within 90 days of the employee initiating their first request in a calendar year for information about a quota or personal work speed data or making a complaint that a quota violates AB 701 the employer takes an adverse employment action. Moreover, employees that prevail on a retaliation claim are entitled to reasonable attorneys' fees. Employers may also be subject to penalties under the California Private Attorneys General Act (PAGA) for violations of AB 701.

Looking ahead, covered employers that have work quotas should be prepared to disclose and have provided in writing all applicable quotas to affected employees in a language the employee understands by the end of January (for existing employees) or upon hire (for those hired beginning January 1, 2022). It is imperative that employers document all efforts taken to communicate workplace quotas. Moreover, employers should develop a means to receive, track, and respond within 21 days to employee requests for written quotas and/or work speed data.

Employers would also be well advised to review their existing rest and meal break policies and ensure compliance with California labor laws and that existing workplace quotas do not interfere with employees' meal and rest break periods or prohibit compliance with all health and safety requirements. In doing so, employers should keep in mind that time spent complying with health and safety laws must be considered productive time for purposes of setting a quota. It is also important to make sure quotas do not create an adverse incentive for employees to skip meal and rest periods or ignore applicable safety regulations. To the extent an employee is found not complying with rest and meal periods or other health and safety requirements, employers should continue to take appropriate disciplinary action and keep accurate records of all discipline, while keeping in mind the retaliatory protections of AB 701.

Employers should also keep in mind their annual employee injury rate, as the Labor Commissioner has the ability to consider an investigation where an employer's rate is at least 1.5 times higher than the warehousing industry's average annual injury rate. Moreover, the Commissioner is permitted to coordinate enforcement with other division within the Department of Industrial Relations including Cal/OSHA.

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