

119TH CONGRESS
1ST SESSION

S. _____

To establish protections for warehouse workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself, Mr. HAWLEY, Mr. MARSHALL, Mr. SANDERS, Mr. PADILLA, Mr. BLUMENTHAL, Mr. WELCH, Ms. WARREN, Mr. MURPHY, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish protections for warehouse workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Warehouse Worker
5 Protection Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—WAREHOUSE WORKER PROTECTIONS

Sec. 101. Warehouse worker protections.

2

- Sec. 102. Warehouse worker protections.
- Sec. 103. Enforcement by the secretary of labor.
- Sec. 104. Referral of complaints.
- Sec. 105. Enforcement by the FTC.

TITLE II—NATIONAL LABOR RELATIONS ACT

- Sec. 201. Amendments to National Labor Relations Act.
- Sec. 202. National Labor Relations Board report.

TITLE III—OSHA STANDARDS

- Sec. 301. Standard protecting covered employees from occupational risk factors causing musculoskeletal disorders.
- Sec. 302. Standard for protecting covered employees from delays in medical treatment referrals following injuries or illnesses.
- Sec. 303. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.
- Sec. 304. Definitions.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Severability.
- Sec. 402. Preemption.
- Sec. 403. Authorization of appropriations.

1 **TITLE I—WAREHOUSE WORKER** 2 **PROTECTIONS**

3 **SEC. 101. WAREHOUSE WORKER PROTECTIONS.**

4 The Fair Labor Standards Act of 1938 is amended
5 by inserting after section 4 (29 U.S.C. 204) the following:

6 **“SEC. 5. ESTABLISHMENT OF FAIRNESS AND TRANS-** 7 **PARENCY OFFICE.**

8 “(a) IN GENERAL.—There is established in the Wage
9 and Hour Division of the Department of Labor the Fair-
10 ness and Transparency Office.

11 “(b) DIRECTOR OF THE FAIRNESS AND TRANS-
12 PARENCY OFFICE.—The President shall appoint a Direc-
13 tor of the Fairness and Transparency Office to head the
14 Fairness and Transparency Office.

1 “(c) EMPLOYEES AND ADVISORY BOARDS OF THE
2 OFFICE.—

3 “(1) IN GENERAL.—The Director—

4 “(A) may select, appoint, and employ,
5 without regard to the provisions of sections
6 3309 through 3318 of title 5, United States
7 Code, individuals directly to positions in the
8 competitive service, as defined in section 2102
9 of such title, to carry out the duties of the Di-
10 rector under this Act; and

11 “(B) may fix the compensation of the indi-
12 viduals described in subparagraph (A) without
13 regard to chapter 51 and subchapter III of
14 chapter 53 of title 5, United States Code, relat-
15 ing to classification of positions and General
16 Schedule pay rates, except that the rate of pay
17 for such individuals may not exceed the rate
18 payable for level V of the Executive Schedule
19 under section 5316 of that title.

20 “(2) FAIRNESS AND TRANSPARENCY ADVISORY
21 BOARD.—

22 “(A) IN GENERAL.—The Director shall es-
23 tablish a Fairness and Transparency Advisory
24 Board to advise and consult on the exercise of

1 the functions of the Director under this Act and
2 under the Warehouse Worker Protection Act.

3 “(B) COMPOSITION.—The Fairness and
4 Transparency Advisory Board established under
5 subparagraph (A) shall be composed of—

6 “(i) as the Director determines appro-
7 priate, covered employers and covered em-
8 ployees or representatives of covered em-
9 ployers and covered employees; and

10 “(ii) at least one of each of the fol-
11 lowing:

12 “(I) Worker protection experts.

13 “(II) Civil rights experts.

14 “(III) Health and safety experts.

15 “(IV) Workplace technology ex-
16 perts.

17 “(V) Disability law experts.

18 “(VI) Representatives of labor
19 organizations.

20 “(VII) Representatives of worker
21 advocacy organizations.

22 “(C) APPOINTMENTS.—The Director
23 shall—

1 “(i) appoint members to the advisory
2 board established under subparagraph (A);
3 and

4 “(ii) ensure a partisan balance in the
5 membership of the advisory board.

6 “(D) MEETINGS.—The advisory board es-
7 tablished under subparagraph (A) shall meet—

8 “(i) at the call of the Director; and

9 “(ii) not less than 2 times annually.

10 “(E) COMPENSATION AND TRAVEL EX-
11 PENSES.—A member of the Fairness and
12 Transparency Advisory Board established under
13 subparagraph (A) who is not an officer or em-
14 ployee of the Federal Government shall—

15 “(i) be entitled to receive compensa-
16 tion at a rate fixed by the Director while
17 attending meetings of the advisory board,
18 including travel time; and

19 “(ii) receive travel expenses, including
20 per diem in lieu of subsistence, in accord-
21 ance with applicable provisions under sub-
22 chapter I of chapter 57 of title 5, United
23 States Code.

24 “(F) EXEMPTION FROM THE FEDERAL AD-
25 VISORY COMMITTEE ACT.—The Fairness and

1 Transparency Advisory Board established under
2 subparagraph (A) shall be exempt from chapter
3 10 of title 5, United States Code (commonly
4 known as the ‘Federal Advisory Committee
5 Act’).

6 “(G) DEFINITIONS OF COVERED EM-
7 PLOYEE AND COVERED EMPLOYER.—In this
8 paragraph, the terms ‘covered employee’ and
9 ‘covered employer’ have the meanings given
10 such terms in section 102(a) of the Warehouse
11 Worker Protection Act.

12 “(3) USE OF VOLUNTARY SERVICES.—The Di-
13 rector may, as may from time to time be needed, use
14 any voluntary or uncompensated services.

15 “(4) ATTORNEYS.—Attorneys appointed under
16 this subsection or the Solicitor of Labor may appear
17 for and represent the Director in any litigation.

18 “(d) RULEMAKING.—

19 “(1) IN GENERAL.—The Secretary, acting
20 through the Director and the Administrator of the
21 Wage and Hour Office, may issue orders and guid-
22 ance or promulgate regulations as may be necessary
23 or appropriate to enable the Secretary to carry out
24 the purposes and objectives of the Warehouse Work-
25 er Protection Act, and to prevent evasions thereof.

1 “(2) CONSULTATION.—In issuing orders and
2 guidance or promulgating regulations under this
3 subsection, the Secretary, acting through the Direc-
4 tor and the Administrator of the Wage and Hour
5 Office, may consult with the Occupational Safety
6 and Health Administration and Federal agencies
7 that have jurisdiction over labor and employment
8 issues, including the Equal Employment Oppor-
9 tunity Commission, the National Labor Relations
10 Board, the National Mediation Board, and the Merit
11 Systems Protection Board.”.

12 **SEC. 102. WAREHOUSE WORKER PROTECTIONS.**

13 (a) DEFINITIONS.—In this section:

14 (1) ADVERSE EMPLOYMENT ACTION.—The term
15 “adverse employment action”, with respect to a cov-
16 ered employee, means a change by the covered em-
17 ployer of the covered employee in the compensation,
18 terms, conditions, or privileges of the job of the cov-
19 ered employee that, from the perspective of a rea-
20 sonable person, puts the covered employee in a ma-
21 terially adverse position than prior to the change, in-
22 cluding termination, a reduction in benefits, discipli-
23 nary action, demotion, promotion, transfer, imposi-
24 tion of a work schedule more burdensome to the cov-
25 ered employee, reduction of scheduled hours, adjust-

1 ment in ability for promotion, or other modifications
2 to compensation, terms, conditions, or privileges of
3 employment.

4 (2) AGGREGATED WORK SPEED DATA.—The
5 term “aggregated work speed data” means employee
6 work speed data that a covered employer has com-
7 bined, or collected together, in a summary or other
8 form so that the employee work speed data cannot,
9 at any point, be identified or linked with any specific
10 covered employee.

11 (3) COMMERCE.—The terms “commerce”,
12 “goods”, “enterprise”, “enterprise engaged in com-
13 merce or in the production of goods for commerce”
14 have the meanings given such terms in section 3 of
15 the Fair Labor Standards Act of 1938 (29 U.S.C.
16 203).

17 (4) COVERED FACILITY.—The term “covered
18 facility” means any warehouse distribution center
19 described in the North American Industry Classifica-
20 tion System code—

21 (A) 493, for warehousing and storage;

22 (B) 423, for merchant wholesalers, durable
23 goods;

24 (C) 424, for merchant wholesalers, non-
25 durable goods;

1 (D) 454110, for electronic shopping and
2 mail-order houses; or

3 (E) 492110, for couriers and express deliv-
4 ery services.

5 (5) COVERED EMPLOYEE.—The term “covered
6 employee” means an employee who—

7 (A) is employed by an employer for the
8 performance of work at a covered facility; and

9 (B) is subject to a quota while performing
10 work at such covered facility.

11 (6) COVERED EMPLOYER.—

12 (A) IN GENERAL.—The term “covered em-
13 ployer” means an employer that—

14 (i) is engaged in commerce, in the
15 production of goods for commerce, or in an
16 enterprise engaged in commerce or in the
17 production of goods for commerce, includ-
18 ing such an employer that is a contractor,
19 subcontractor, temporary service firm,
20 staffing agency, independent contractor,
21 employee leasing entity, or similar entity;

22 (ii) employs a covered employee for
23 the performance of work at a covered facil-
24 ity; and

1 (iii) employs more than a total of 200
2 employees (including on a full- or part-time
3 basis) for the performance of work at all
4 covered facilities owned or operated by the
5 employer.

6 (B) RULE OF CONSTRUCTION.—For pur-
7 poses of determining the number of employees
8 under subparagraph (A)(iii), the total number
9 of employees employed for the performance of
10 work as described in such subparagraph shall
11 include all employees of any affiliate of the em-
12 ployer (as determined in accordance with sec-
13 tion 121.103 of title 13, Code of Federal Regu-
14 lations, as in effect on the date of enactment of
15 this Act).

16 (7) DEFINED TIME PERIOD.—The term “de-
17 fined time period” means any unit of time measure-
18 ment equal to or less than one day, including hours,
19 minutes, and seconds and any fraction thereof.

20 (8) DESIGNATED EMPLOYEE REPRESENTA-
21 TIVE.—The term “designated employee representa-
22 tive” means any representative designated by a cov-
23 ered employee, including an employee representative
24 that has a collective bargaining relationship with the
25 covered employer of the covered employee.

1 (9) DIRECTOR.—The term “Director” means
2 the Director of the Fairness and Transparency Of-
3 fice established by section 5 of the Fair Labor
4 Standards Act of 1938.

5 (10) EGREGIOUS MISCONDUCT.—The term
6 “egregious misconduct”, with respect to a covered
7 employee, means deliberate or grossly negligent con-
8 duct that endangers the safety or well-being of the
9 covered employee, co-workers of the covered em-
10 ployer, customers, or other persons, including dis-
11 crimination against or harassment of co-workers,
12 customers, or other persons.

13 (11) EMPLOY; EMPLOYEE; EMPLOYER.—The
14 terms “employ”; “employee”; and “employer” have
15 the meanings given such terms in section 3 of the
16 Fair Labor Standards Act of 1938 (29 U.S.C. 203).

17 (12) EMPLOYEE WORK SPEED DATA.—The
18 term “employee work speed data” means informa-
19 tion a covered employer collects, stores, analyzes, or
20 interprets relating to the performance of work by a
21 covered employee of the covered employer for a
22 quota, including information with respect to the—

23 (A) quantities of tasks performed by the
24 covered employee;

1 (B) quantities of items or materials han-
2 dled or produced by the covered employee;

3 (C) rates or speeds of tasks performed by
4 the covered employee;

5 (D) measurements or metrics of covered
6 employee performance in relation to a quota; or

7 (E) time categorized with respect to the
8 covered employee as performing tasks or not
9 performing tasks.

10 (13) QUOTA.—The term “quota” means an ex-
11 press or implied performance standard or perform-
12 ance target, including such a standard or target
13 used to rank or compare an employee in relation to
14 the performance of another employee or in relation
15 to the past performance of the employee, under
16 which—

17 (A)(i) an employee is actually or effectively
18 assigned, required, or expected within a defined
19 time period (with or without any reasonable ac-
20 commodation provided under Federal, State, or
21 local law) to—

22 (I) perform—

23 (aa) a quantified number of
24 tasks; or

1 (bb) at a specified produc-
2 tivity speed; or

3 (II) handle or produce a quan-
4 tified amount of material without a
5 certain number of errors or defects;
6 and

7 (ii) such assignment, requirement, or ex-
8 pectation is measured at the individual or group
9 level for such defined time period;

10 (B) actions by an employee are categorized
11 and measured between time performing tasks
12 and not performing tasks within a defined time
13 period; or

14 (C) increments of time of a defined time
15 period during which an employee is or is not
16 doing a particular activity are measured, re-
17 corded, or tallied.

18 (14) SIMILARLY SITUATED COVERED EM-
19 PLOYEE.—The term “similarly situated covered em-
20 ployee”, with respect to a covered employee, means
21 another covered employee who holds the same job or
22 responsibilities as the covered employee.

23 (15) TRIBAL GOVERNMENT.—The term “Tribal
24 government” means the recognized governing body
25 of an Indian Tribe.

1 (16) WORKPLACE SURVEILLANCE.—The term
2 “workplace surveillance” means any employer sur-
3 veillance (on- or off-duty) with respect to an em-
4 ployee, including the detection, monitoring, intercept-
5 tion, collection, exploitation, preservation, protection,
6 transmission, or retention of data concerning activi-
7 ties or communications with respect to the employee,
8 including through the use of a product or service
9 marketed, or that can be used, for such purposes,
10 such as a computer, telephone, wire, radio, camera,
11 sensor, electromagnetic, photoelectronic, handheld or
12 wearable device, or photo-optical system.

13 (17) WORK STATION.—The term “work sta-
14 tion” means the area of a covered facility within
15 which a covered employee is assigned to perform
16 tasks for the longest duration of time during a day.

17 (b) COMMUNICATION WITH COVERED EMPLOYEES
18 REGARDING QUOTAS AND WORKPLACE SURVEILLANCE.—

19 (1) IN GENERAL.—On the later of the date a
20 covered employee is hired by a covered employer or
21 180 days after the date of enactment of this section,
22 each covered employer shall provide to each covered
23 employee of the covered employer—

1 (A) a written description of each quota to
2 which the covered employee is subject, includ-
3 ing—

4 (i) as applicable, the quantified num-
5 ber of tasks to be performed or of mate-
6 rials to be produced or handled, or other
7 performance measure, within the defined
8 time period, for the quota;

9 (ii) any potential discipline or adverse
10 employment action that could result from
11 failure to meet the quota;

12 (iii) how performance targets or per-
13 formance standards for the quota are cal-
14 culated;

15 (iv) whether there is any incentive or
16 bonus program associated with meeting or
17 exceeding the quota and, if applicable, how
18 the incentive or bonus program operates;
19 and

20 (v) how the quota is monitored, in-
21 cluding a description of—

22 (I) what employee work speed
23 data are being collected;

24 (II) how the employee work speed
25 data are being collected, including a

1 description of any workplace surveil-
2 lance technology used on the covered
3 employee by the covered employer;

4 (III) where and when the em-
5 ployee work speed data are being col-
6 lected;

7 (IV) the frequency of the collec-
8 tion;

9 (V) where the storage of the em-
10 ployee work speed data is located;

11 (VI) the business purposes for
12 which the employee work speed data
13 are being used; and

14 (VII) as applicable, the identity
15 of any third party—

16 (aa) used for such workplace
17 surveillance;

18 (bb) to which data from
19 such workplace surveillance is
20 transferred; and

21 (cc) from which data of the
22 covered individual is or may be
23 purchased or acquired; and

24 (B) a written description of and training
25 with respect to how the covered employee may

1 file a complaint regarding a violation of this
2 section or a standard promulgated under title
3 III of this Act.

4 (2) CHANGES TO QUOTA OR WORKPLACE SUR-
5 VEILLANCE.—Each covered employer shall provide
6 to any applicable covered employee an updated writ-
7 ten description of any information provided under
8 paragraph (1) not less than 2 business days before
9 any changes with respect to such information are
10 made.

11 (3) REQUIREMENTS FOR TAKING AN ADVERSE
12 EMPLOYMENT ACTION ON QUOTA COMPLIANCE.—

13 (A) IN GENERAL.—A covered employer
14 that takes an adverse employment action
15 against a covered employee for work perform-
16 ance that does not meet requirements with re-
17 spect to a quota shall provide—

18 (i) a written explanation to the cov-
19 ered employee regarding the manner in
20 which the covered employee failed to per-
21 form, including a description of the appli-
22 cable quota and a comparison of such work
23 performance to such quota; and

24 (ii) if the adverse employment action
25 was based on employee work speed data, a

1 copy of the employee work speed data in a
2 human-readable format that a reasonable
3 individual can understand.

4 (B) NOTICE FOR ACTIONS UNRELATED TO
5 QUOTA.—A covered employer that, with respect
6 to any covered employee who is subject to a
7 quota, takes an adverse employment action
8 against such covered employee for any reason
9 that is unrelated to compliance with the quota
10 shall provide to such covered employee a written
11 confirmation that such action was unrelated to
12 compliance with the quota.

13 (4) TERMINATION.—

14 (A) IN GENERAL.—A covered employer
15 that seeks to terminate a covered employee
16 shall, regardless of whether the termination re-
17 lates to work performance with respect to a
18 quota, provide to the covered employee a writ-
19 ten notice of the intent to terminate the covered
20 employee.

21 (B) EGREGIOUS MISCONDUCT.—Notwith-
22 standing subparagraph (A), a covered employer
23 may terminate a covered employee without pro-
24 viding such written notice if the covered em-
25 ployee engaged in egregious misconduct.

1 (5) DESCRIPTIONS.—Each covered employer
2 shall—

3 (A) provide any written description, notice,
4 explanation, or confirmation described in para-
5 graph (1), (2), (3), or (4) to a covered em-
6 ployee—

7 (i) through a human representative of
8 the covered employer at the work station of
9 the covered employee; and

10 (ii) in a manner required by the Di-
11 rector that—

12 (I) is accessible;

13 (II) allows the covered employee
14 to transport the data in the descrip-
15 tion, notice, explanation, or confirma-
16 tion without hindrance;

17 (III) is in plain language; and

18 (IV) is in the primary language
19 of the covered employee; and

20 (B) make such description, notice, expla-
21 nation, or confirmation available to the covered
22 employee electronically.

23 (c) PROTECTION FROM QUOTAS.—

1 (1) PROHIBITED QUOTAS.—A covered employer
2 may not require any quota for a covered employee
3 that would—

4 (A) prevent—

5 (i) compliance with any required meal
6 or rest period or any other break required
7 by Federal, State, or local law;

8 (ii) compliance with health and safety
9 provisions required by Federal, State, or
10 local law;

11 (iii) the use by the covered employee
12 of bathroom facilities, including reasonable
13 travel time to and from bathroom facilities
14 that takes into account the architecture of
15 the covered facility; or

16 (iv) compliance with a covered em-
17 ployee's right to reasonable accommoda-
18 tions or nondiscrimination as required by
19 Federal, State, or local law;

20 (B) set a performance target or perform-
21 ance standard that measures total output for
22 the covered employee over an increment of time
23 that is shorter than one day;

24 (C) measure and evaluate the output or
25 performance of a covered employee during any

1 paid or unpaid break to which the covered em-
2 ployee is entitled under applicable law, contract,
3 or industry standard, including breaks to use
4 bathroom facilities and reasonable travel time
5 to and from bathroom facilities;

6 (D) prevent or discourage the covered em-
7 ployee from exercising any right under the Na-
8 tional Labor Relations Act (29 U.S.C. 151 et
9 seq.) or any other Federal law;

10 (E) prevent or discourage the covered em-
11 ployee from exercising any right guaranteed in
12 an applicable collective bargaining agreement;
13 or

14 (F) violate the generally accepted prin-
15 ciples of work measurement as set forth in the
16 Code of Work Measurement Ethics of the
17 American Institute of Industrial Engineers and
18 recognized by the Secretary.

19 (2) ADVERSE EMPLOYMENT ACTION.—A cov-
20 ered employer may not take adverse employment ac-
21 tion against a covered employee for failure to meet
22 a quota that—

23 (A) violates paragraph (1);

24 (B) was not described to the covered em-
25 ployee in accordance with subsection (b);

1 (C) is based solely on ranking the perform-
2 ance of the covered employee in relation to the
3 performance of another covered employee or in
4 relation to the past performance of that covered
5 employee; or

6 (D) is based on continuously measuring,
7 recording, or tallying increments of time within
8 a defined time period during which a covered
9 employee is or is not doing a particular activity.

10 (d) MINIMIZATION.—

11 (1) COLLECTION.—In establishing, maintaining,
12 or using employee work speed data with respect to
13 a quota for a covered employee, a covered employer
14 may not collect, use, maintain, or transfer data on
15 or of the covered employee except as strictly nec-
16 essary to monitor the compliance of the covered em-
17 ployee with the quota.

18 (2) EMPLOYEE ACCESS.—In establishing, main-
19 taining, or using employee work speed data with re-
20 spect to a quota for a covered employee, a covered
21 employer may not disclose any information collected
22 on a covered employee with respect to the quota to
23 any other covered employee of the covered employer
24 except as strictly necessary to fulfill a specific and

1 reasonable business rationale of the covered em-
2 ployer.

3 (e) RECORDKEEPING.—

4 (1) IN GENERAL.—Each covered employer
5 shall—

6 (A) maintain contemporaneous records,
7 with respect to each covered employee of the
8 covered employer, of—

9 (i) the employee work speed data of
10 each such covered employee;

11 (ii) the aggregated work speed data
12 for similarly situated covered employees at
13 the same place where each such covered
14 employee performs work for the covered
15 employer; and

16 (iii) the written descriptions of the
17 quota of each such covered employee pro-
18 vided under subsection (b)(1);

19 (B) maintain such records for the duration
20 of the employment of each relevant covered em-
21 ployee; and

22 (C) make such records available to the
23 Secretary upon request.

24 (2) SUPPLEMENTATION AND DISPUTE OF
25 RECORDS.—

1 (A) SUPPLEMENTATION OF RECORDS.—

2 Each covered employer shall enable a covered
3 employee, upon request of the covered employee
4 at or after the time of any employee work speed
5 data collection with respect to the covered em-
6 ployee, to supplement the employee work speed
7 data by recording any reason the covered em-
8 ployee provides for any defined time period dur-
9 ing which the covered employee was not per-
10 forming work-related tasks, including because
11 the covered employee was taking a paid or un-
12 paid break, using a bathroom facility (including
13 reasonable travel to and from the facility), re-
14 porting an injury or receiving attention due to
15 an injury, exercising a right guaranteed under
16 the National Labor Relations Act (29 U.S.C.
17 151 et seq.) or another Federal law, or exer-
18 cising a right guaranteed under an applicable
19 covered bargaining agreement.

20 (B) DISPUTE PROCESS.—

21 (i) IN GENERAL.—Each covered em-
22 ployer shall enable a covered employee,
23 upon request of the covered employee at or
24 after the time of any data collection with
25 respect to the covered employee, to review

1 and request correction of the employee
2 work speed data in accordance with clause
3 (ii).

4 (ii) CORRECTION OF EMPLOYEE WORK
5 SPEED DATA.—A covered employer that re-
6 ceives a request by a covered employee
7 under clause (i) shall—

8 (I) investigate and determine
9 whether the employee work speed data
10 is inaccurate; and

11 (II) if determined to be inac-
12 curate—

13 (aa) promptly correct the in-
14 accurate data and notify the cov-
15 ered employee of the covered em-
16 ployer's determination and cor-
17 rection; and

18 (bb) review and adjust, as
19 appropriate, any adverse employ-
20 ment action that was, partially or
21 solely, based on the inaccurate
22 data and notify the covered em-
23 ployee of the adjustment.

24 (3) RETENTION OF RECORDS.—

1 (A) IN GENERAL.—After the termination
2 of employment of a covered employee of a cov-
3 ered employer, the covered employer shall—

4 (i) for not less than 3 years after the
5 date of such termination, retain the
6 records described in paragraph (1) with re-
7 spect to the 6-month period prior to such
8 date; and

9 (ii) make such records available to the
10 Secretary upon request.

11 (4) RULE OF CONSTRUCTION.—Nothing in this
12 subsection shall require a covered employer to keep
13 records described in paragraph (1) with respect to
14 employee work speed data if such covered employer
15 does not otherwise monitor employee work speed
16 data.

17 (f) RIGHT TO REQUEST.—

18 (1) IN GENERAL.—A covered employer shall,
19 upon receiving a request under paragraph (2) or (3),
20 provide the relevant copies described in such para-
21 graphs to, as the case may be, the covered employee,
22 designated employee representative, or individual
23 who was a covered employee—

24 (A) except as provided in subparagraph

25 (B)(ii), at no cost to the covered employee, des-

1 ignated employee representative, or individual
2 who was a covered employee;

3 (B) with respect to—

4 (i) a covered employee, by a human
5 representative of the covered employer; or

6 (ii) a designated employee representa-
7 tive or an individual who was a covered
8 employee, by a human representative of
9 the covered employer or through the mail
10 (at the cost of the designated employee
11 representative or individual, respectively);
12 and

13 (C) as soon as practicable but not later
14 than—

15 (i) 7 business days after receipt of a
16 request for such copies with respect to em-
17 ployee work speed data or aggregate work
18 speed data; or

19 (ii) 2 business days after receipt of a
20 request for any other copy.

21 (2) REQUESTS DURING EMPLOYMENT.—A cov-
22 ered employee, or a designated employee representa-
23 tive of such covered employee at the request of the
24 covered employee, may request from the covered em-
25 ployer of the covered employee a copy of the written

1 description described under subsection (b), a copy of
2 the employee work speed data (in a human-readable
3 format that a reasonable individual can understand)
4 of the covered employee for the preceding 6-month
5 period, and a copy of the aggregated work speed
6 data (in a human-readable format that a reasonable
7 individual can understand) for similarly situated cov-
8 ered employees at the same place where the covered
9 employee performs work for the covered employer
10 for the preceding 6-month period.

11 (3) REQUESTS AFTER EMPLOYMENT TERMI-
12 NATION.—An individual who was a covered employee
13 with respect to a covered employer, or a designated
14 employee representative with respect to such an indi-
15 vidual, may, not later than 3 years after the date of
16 termination of employment of the covered employee
17 with the covered employer, request from the covered
18 employer a copy of—

19 (A) the written description described under
20 subsection (b) effective on the date of termi-
21 nation of the covered employee;

22 (B) the employee work speed data (in a
23 human-readable format that a reasonable indi-
24 vidual can understand) of the covered employee

1 for the 6-month period prior to such date of
2 termination; and

3 (C) the aggregated work speed data (in a
4 human-readable format that a reasonable indi-
5 vidual can understand) for similarly situated
6 covered employees at the same place where the
7 covered employee performs work for the covered
8 employer for such 6-month period.

9 (4) RULE OF CONSTRUCTION.—Nothing in this
10 subsection shall require a covered employer to—

11 (A) monitor employee work speed data; or

12 (B) provide information related to em-
13 ployee work speed data if the covered employer
14 does not otherwise monitor such employee work
15 speed data.

16 (g) POSTING OF NOTICES.—

17 (1) IN GENERAL.—Each covered employer shall
18 post, in a conspicuous and accessible location, a no-
19 tice in the covered facility of the covered employer
20 regarding the rights of covered employees under this
21 section, including what constitutes a permissible
22 quota, the right to request quota descriptions and
23 employee speed data information, and the right to
24 make a complaint to Federal authorities regarding a
25 violation of any right under this section.

1 (2) REQUIREMENTS FOR NOTICES.—Each no-
2 tice described in paragraph (1) shall be in a manner
3 required by the Director that—

4 (A) is in plain language; and

5 (B) is in English, Spanish, and any other
6 language that constitutes the primary language
7 of any covered employee at the covered facility.

8 (h) BREAKS FOR COVERED EMPLOYEES.—

9 (1) IN GENERAL.—Each covered employer
10 shall—

11 (A) with respect to each covered employee
12 of such covered employer—

13 (i) provide, for every 4 hours of work
14 by such a covered employee, to the covered
15 employee not less than one 15-minute rest
16 break paid at the regular rate at which the
17 covered employee is employed; and

18 (ii) provide, at the time the covered
19 employer hires such a covered employee,
20 notice to the covered employee, in plain
21 language and the primary language of the
22 covered employee, that—

23 (I) the covered employee is enti-
24 tled to the paid rest breaks described
25 in clause (i);

1 (II) retaliation by the covered
2 employer against the covered employee
3 for requesting or taking such paid
4 rest breaks is prohibited; and

5 (III) the covered employee, or a
6 designated employee representative of
7 the covered employee, has a right to
8 file a complaint with the Secretary for
9 any violation by the covered employer
10 of this subsection; and

11 (B) display, in a conspicuous and acces-
12 sible location, a sign at each covered facility of
13 the covered employer that includes, in English,
14 Spanish, and any other language that con-
15 stitutes the primary language of any covered
16 employee at the covered facility, the information
17 in the notice described in subparagraph (A)(ii).

18 (2) NOTICE.—Not later than 180 days after the
19 date of enactment of this section, the Secretary of
20 Labor shall issue regulations with respect to the de-
21 sign and content of the sign described in paragraph
22 (1)(B), including a sample design.

23 (3) INTERACTION WITH OTHER LAWS.—Noth-
24 ing in this subsection shall be construed to super-
25 sede or preempt any Federal, State, or local law or

1 collective bargaining agreement requiring longer
2 paid rest breaks than those required under para-
3 graph (1)(A)(i).

4 (i) UNLAWFUL RETALIATION.—

5 (1) IN GENERAL.—A person, including a cov-
6 ered employer, an agent of a covered employer, or
7 person acting as or on behalf of a covered employer
8 conducting hiring or any related activity, or an offi-
9 cer or agent of any entity, business, corporation,
10 partnership, or limited liability company, may not—

11 (A) discharge or in any way retaliate, dis-
12 criminate, or take any adverse employment ac-
13 tion against any individual for exercising any
14 right conferred under this section, or for being
15 perceived as exercising such a right, including
16 for—

17 (i) requesting copies under subsection

18 (f);

19 (ii) filing a complaint under subpara-
20 graph (A) of section 16(f) of the Fair
21 Labor Standards Act of 1938 regarding a
22 violation of this section or designating a
23 representative in accordance with subpara-
24 graph (B) of such section to file such a
25 complaint; or

1 (iii) commencing a proceeding under
2 section 16(b) of the Fair Labor Standards
3 Act of 1938 (29 U.S.C. 216(b)) for a vio-
4 lation of this section; or

5 (B) otherwise prevent an individual for ex-
6 ercising such a right or take any action against
7 an individual that might deter a reasonable em-
8 ployee from asserting a right conferred under
9 this section.

10 (2) PROTECTIONS FOR GOOD FAITH ALLEGA-
11 TIONS.—The protections under paragraph (1) shall
12 apply to any individual who mistakenly, but in good
13 faith, alleges a violation of a requirement of this sec-
14 tion.

15 (3) EXPLICIT REFERENCE NOT REQUIRED.—A
16 complaint or other communication by an individual,
17 including a covered employee, may be the exercise of
18 a right for purposes of paragraph (1) regardless of
19 whether the complaint or communication is in writ-
20 ing or makes explicit reference to this Act.

21 (4) REBUTTABLE PRESUMPTION.—If a person
22 takes adverse action against a covered employee
23 within 90 days of the covered employee engaging, or
24 attempting to engage in, activities protected by para-
25 graph (1), such conduct shall establish a rebuttable

1 presumption that the adverse action is an adverse
2 action in violation of such paragraph. Such pre-
3 sumption may be rebutted by clear and convincing
4 evidence that—

5 (A) the action was taken for other permis-
6 sible reasons; and

7 (B) the engaging or attempting to engage
8 in activities protected by paragraph (1) was not
9 a motivating factor in the adverse action.

10 (j) QUOTA TASK FORCE.—Not later than 90 days
11 after the date of the enactment of this section, the Direc-
12 tor shall convene a task force with labor organizations,
13 worker advocacy organizations, and covered employees to
14 develop strategies for labor organizations and worker ad-
15 vocacy organizations to—

16 (1) assist in the enforcement of this section;

17 (2) train covered employees with respect to new
18 rights provided through this section; and

19 (3) provide the Director with recommendations
20 on the implementation of regulations related to this
21 section.

22 **SEC. 103. ENFORCEMENT BY THE SECRETARY OF LABOR.**

23 The Fair Labor Standards Act of 1938 is amended—

1 (1) in section 9 (29 U.S.C. 209), by striking
2 “or investigation” and inserting “, investigation, or
3 inspection”;

4 (2) in section 11 (29 U.S.C. 211), by adding at
5 the end the following:

6 “(e)(1) The Secretary, acting through the Director
7 of the Fairness and Transparency Division, shall, as pro-
8 vided in subsection (a) and paragraph (2), investigate vio-
9 lations of section 102 of the Warehouse Worker Protection
10 Act, including any violations of any regulation or order
11 issued with respect to that section.

12 “(2) In addition to powers otherwise provided to the
13 Secretary under subsection (a), the Secretary, in inves-
14 tigating violations of section 102 of the Warehouse Work-
15 er Protection Act, may upon presenting appropriate cre-
16 dentials to the owner, operator, or agent in charge—

17 “(A) enter without delay and at reasonable
18 times any covered facility of a covered employer; and

19 “(B) inspect and investigate during regular
20 working hours and at other reasonable times, and
21 within reasonable limits and in a reasonable manner,
22 any such covered facility and all pertinent condi-
23 tions, structures, machines, apparatus, devices,
24 equipment, and materials therein, and to question

1 privately any such covered employer, owner, oper-
2 ator, agent, or covered employee.

3 “(3)(A) In conducting an inspection during an inves-
4 tigation into a violation of section 102 of the Warehouse
5 Worker Protection Act, the Secretary shall permit, at the
6 request of a covered employee, a representative of a labor
7 organization or a worker advocacy organization, or an-
8 other designee of the covered employee, to accompany any
9 inspectors during such inspection.

10 “(B) A covered employee may, regardless of the rela-
11 tionship between the covered employee and the labor orga-
12 nization, worker advocacy organization, or other designee,
13 anonymously request to the Secretary that the Secretary
14 permit a representative of such labor organization, worker
15 advocacy organization, or other designee accompany in-
16 spectors during an inspection in accordance with para-
17 graph (1).

18 “(f)(1) Not later than 30 days after an event de-
19 scribed in paragraph (2), the Secretary shall open an in-
20 vestigation under this section (that includes an on-site in-
21 spection) into any covered employer to determine if such
22 covered employer is violating section 102 of the Warehouse
23 Worker Protection Act.

24 “(2) An event described in this paragraph is, with
25 respect to a covered employer, either of the following:

1 “(A) The Secretary determines that the covered
2 employer—

3 “(i) has an annual total of employee work
4 hours that is not less than 40,000 hours; and

5 “(ii) has an annual employee injury rate,
6 overall or at a worksite, that is not less than
7 1.5 times the warehousing industry’s average
8 annual injury rate, as determined by the Bu-
9 reau of Labor Statistics in the most recent (as
10 of such determination) publication regarding
11 fatal and nonfatal occupational injuries and ill-
12 nesses data.

13 “(B) The Secretary receives, during any one-
14 year period, not less than—

15 “(i) 5 credible complaints from covered
16 employees of the covered employer, individuals
17 who were covered employees of the covered em-
18 ployer, or designated representatives of such
19 covered employees or individuals, about viola-
20 tions under section 102 of the Warehouse
21 Worker Protection Act at a worksite; or

22 “(ii) 10 credible complaints from covered
23 employees of the covered employer, individuals
24 who were covered employees of the covered em-
25 ployer, or designated representatives of such

1 covered employees or individuals, about such
2 violations at multiple worksites operated by the
3 covered employer.

4 “(3) In conducting an investigation under paragraph
5 (1), the Secretary shall select representatives of a labor
6 organization or a worker advocacy organization who have
7 specific knowledge of the relevant industry to conduct out-
8 reach to workers with respect to such investigation and
9 aid and accompany investigators in such investigation.

10 “(g) For purposes of subsections (e) and (f), the
11 terms ‘covered employee’, ‘covered employer’, and ‘covered
12 facility’ have the meanings given such terms in section
13 102(a) of the Warehouse Worker Protection Act.”;

14 (3) in section 15(a) (29 U.S.C. 215(a))—

15 (A) in paragraph (5), by striking “; and”
16 and inserting a semicolon;

17 (B) in paragraph (6), by striking the pe-
18 riod at the end and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(7) to violate any of the provisions of section
21 102 of the Warehouse Worker Protection Act.”; and

22 (4) in section 16 (29 U.S.C. 216)—

23 (A) in subsection (b)—

1 (i) by inserting “or section 102 of the
2 Warehouse Worker Protection Act” after
3 “18D” each place it appears;

4 (ii) in the second sentence—

5 (I) by striking “of this Act shall”
6 and inserting “shall”;

7 (II) by inserting “and, in the
8 case of a violation of section 102 of
9 the Warehouse Worker Protection
10 Act, of an amount for the direct or
11 foreseeable pecuniary harms resulting
12 from the violation and an amount
13 equal to \$10,000 per violation of sub-
14 section (b), (d), (e), (f), or (g) of such
15 section or an amount equal to
16 \$25,000 per violation of subsection
17 (c), (h), or (i) of such section” before
18 the period at the end of the sentence;
19 and

20 (iii) in the fifth sentence, by striking
21 “No” and inserting “Except with respect
22 to an action brought regarding a violation
23 of section 102 of the Warehouse Worker
24 Protection Act, no”; and

25 (B) in subsection (e)—

1 (i) by redesignating paragraphs (3),
2 (4), and (5) as paragraphs (4), (5), and
3 (6), respectively;

4 (ii) by inserting after paragraph (2),
5 the following:

6 “(3) Any person who violates section 102 of the
7 Warehouse Worker Protection Act shall be subject
8 to a civil penalty—

9 “(A) in an amount not more than \$76,987
10 per violation; or

11 “(B) for repeat or willful violations, in an
12 amount not more than \$769,870 per viola-
13 tion.”; and

14 (iii) in paragraph (4)(C), as so redes-
15 ignated, by striking “section 15(a)(4)” and
16 inserting “paragraph (4) or (7) of section
17 15(a)”;

18 (C) by adding at the end the following:

19 “(f) ADMINISTRATIVE COMPLAINTS REGARDING
20 WAREHOUSE WORKER PROTECTIONS.—

21 “(1) IN GENERAL.—A covered employee or an
22 individual who was a covered employee may—

23 “(A) file a complaint of a violation of sec-
24 tion 102 of the Warehouse Worker Protection
25 Act with the Secretary; and

1 “(B) designate a representative of a labor
2 organization or worker advocacy organization,
3 regardless of the relationship between the cov-
4 ered employee or individual and the labor orga-
5 nization or worker advocacy organization, to—

6 “(i) file the complaint on behalf of the
7 covered employee or individual; or

8 “(ii) represent the covered employee
9 or individual for purposes of engagement
10 with the Secretary regarding such com-
11 plaint, including being present at employee
12 interviews and participating in workplace
13 inspections, conferences, and settlement
14 negotiations.

15 “(2) DEFINITION OF COVERED EMPLOYEE.—

16 For purposes of paragraph (1), the term ‘covered
17 employee’ has the meaning given such term in sec-
18 tion 102(a) of the Warehouse Worker Protection
19 Act.

20 “(g) EXEMPTION FROM THE FEDERAL ARBITRATION
21 ACT REGARDING WAREHOUSE WORKER PROTECTIONS.—

22 “(1) IN GENERAL.—Notwithstanding chapter 1
23 of title 9, United States Code (commonly known as
24 the ‘Federal Arbitration Act’), no predispute arbitra-
25 tion agreement or predispute joint-action waiver (as

1 those terms are defined in section 401 of title 9,
2 United States Code) shall be valid or enforceable
3 with respect to claims arising under this Act for vio-
4 lations of section 102 of the Warehouse Worker Pro-
5 tection Act.

6 “(2) ARBITRATION PURSUANT TO A COLLEC-
7 TIVE BARGAINING AGREEMENT.—Nothing in this
8 subsection shall limit the enforceability of any arbi-
9 tration provision in a collective bargaining agree-
10 ment between a covered employer (as defined in sec-
11 tion 102(a) of the Warehouse Worker Protection
12 Act) and a labor organization.

13 “(h) EXCEPTION FROM CLASS ACTION PRE-
14 REQUISITES FOR ACTIONS REGARDING WAREHOUSE
15 WORKER PROTECTIONS.—An employee who brings an ac-
16 tion for a violation of section 102 of the Warehouse Work-
17 er Protection Act on behalf of employees similarly situated
18 shall be considered to have satisfied paragraphs (1)
19 through (4) of rule 23(a) of the Federal Rules of Civil
20 Procedure for purposes of such an action.”.

21 **SEC. 104. REFERRAL OF COMPLAINTS.**

22 (a) MEMORANDUM OF UNDERSTANDING.—The Di-
23 rector of the Fairness and Transparency Office estab-
24 lished by section 5 of the Fair Labor Standards Act of
25 1938 (as added by section 101) and the Administrator of

1 the Wage and Hour Office of the Department of Labor
2 shall jointly enter into a memorandum of understanding
3 with the Assistant Secretary of Labor for Occupational
4 Safety and Health to encourage efficient enforcement of
5 relevant labor laws, including through information shar-
6 ing, referral of complaints, and cross-training of inspec-
7 tors and investigators. The memorandum of under-
8 standing shall encourage coordination of enforcement ac-
9 tivity in States enforcing relevant labor law under a State
10 plan that has been approved by the Secretary under sec-
11 tion 18 of the Occupational Safety and Health Act of 1970
12 (29 U.S.C. 667).

13 (b) REFERRAL OF COMPLAINTS AND CROSS-TRAIN-
14 ING.—The Director of the Fairness and Transparency Of-
15 fice shall, to the greatest extent possible—

16 (1) encourage the referral of relevant com-
17 plaints from and to the Equal Employment Oppor-
18 tunity Commission, the National Institute for Occu-
19 pational Safety and Health, the Environmental Pro-
20 tection Agency, the National Labor Relations Board,
21 and other Federal and State agencies that may con-
22 duct inspections related to occupational health and
23 safety in covered facilities (as defined in section
24 102(a) of the Warehouse Worker Protection Act);
25 and

1 (2) promote cross-training of inspectors and in-
2 vestigators in the Equal Employment Opportunity
3 Commission, National Institute for Occupational
4 Safety and Health, Environmental Protection Agen-
5 cy, and such other Federal and State agencies for
6 inspections related to working conditions in such
7 covered facilities.

8 **SEC. 105. ENFORCEMENT BY THE FTC.**

9 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
10 A violation of section 102 shall be treated as a violation
11 of a rule defining an unfair or deceptive act or practice
12 under section 18(a)(1)(B) of the Federal Trade Commis-
13 sion Act (15 U.S.C. 57a(a)(1)(B)).

14 (b) POWERS OF THE FTC.—

15 (1) IN GENERAL.—The Federal Trade Commis-
16 sion (in this section referred to as the Commission)
17 shall enforce section 102 and the regulations pro-
18 mulgated under this Act in the same manner, by the
19 same means, and with the same jurisdiction, powers,
20 and duties as though all applicable terms and provi-
21 sions of the Federal Trade Commission Act (15
22 U.S.C. 41 et seq.) were incorporated into and made
23 a part of this Act.

24 (2) PRIVILEGES AND IMMUNITIES.—Any person
25 who violates section 102 shall be subject to the pen-

1 alties and entitled to the privileges and immunities
2 provided in the Federal Trade Commission Act (15
3 U.S.C. 41 et seq.).

4 (3) AUTHORITY PRESERVED.—Nothing in this
5 Act shall be construed to limit the authority of the
6 Commission under any other provision of law.

7 (4) RULEMAKING.—The Commission may pro-
8 mulgate in accordance with section 553 of title 5,
9 United States Code, such rules as may be necessary
10 to carry out this section.

11 **TITLE II—NATIONAL LABOR** 12 **RELATIONS ACT**

13 **SEC. 201. AMENDMENTS TO NATIONAL LABOR RELATIONS** 14 **ACT.**

15 (a) IN GENERAL.—Section 8(a) of the National
16 Labor Relations Act (29 U.S.C. 158) is amended—

17 (1) in paragraph (5) by striking the period at
18 the end and inserting “; and”; and

19 (2) by adding at the end the following:

20 “(6) to impose on an employee a quota that sig-
21 nificantly discourages or prevents, or is intended to
22 significantly discourage or prevent, an employee
23 from exercising the rights guaranteed in section 7.”.

1 (b) PRESUMPTION OF RETALIATION.—Section 8 of
2 the such Act (29 U.S.C. 158) is amended by adding at
3 the end the following:

4 “(h) PRESUMPTION OF RETALIATION RELATED TO
5 A QUOTA.—Any action to impose a quota on an employee
6 that is taken against the employee within 90 days of an
7 employee exercising the rights guaranteed in section 7
8 shall establish a rebuttable presumption that the action
9 is discrimination against the employee in violation of sub-
10 section (a)(6).”.

11 (c) DEFINITIONS.—Section 2 such Act (29 U.S.C.
12 152) is amended by adding at the end the following:

13 “(15) QUOTA.—

14 “(A) IN GENERAL.—The term ‘quota’
15 means a performance standard or performance
16 target, including such a standard or target used
17 to rank an employee in relation to the perform-
18 ance of another employee or in relation to the
19 past performance of the employee, under
20 which—

21 “(i)(I) an employee is actually or ef-
22 fectively assigned, required, or expected
23 within a defined time period (with or with-
24 out any reasonable accommodation pro-

1 vided under Federal, State, or local law)

2 to—

3 “(aa) perform—

4 “(AA) a quantified
5 number of tasks; or

6 “(BB) at a specified
7 productivity speed; or

8 “(bb) handle or produce a
9 quantified amount of material
10 without a certain number of er-
11 rors or defects; and

12 “(II) such assignment, requirement,
13 or expectation is measured at the indi-
14 vidual or group level for such defined time
15 period;

16 “(ii) actions by an employee are cat-
17 egorized and measured between time per-
18 forming tasks and not performing tasks
19 within a defined time period; or

20 “(iii) increments of time of a defined
21 time period during which an employee is or
22 is not doing a particular activity are meas-
23 ured, recorded, or tallied.

24 “(B) DEFINED TIME PERIOD.—For pur-
25 poses of subparagraph (A), the term ‘defined

1 time period’ means any unit of time measure-
2 ment equal to or less than one day, including
3 hours, minutes, and seconds and any fraction
4 thereof.”.

5 **SEC. 202. NATIONAL LABOR RELATIONS BOARD REPORT.**

6 The National Labor Relations Board shall—

7 (1) examine cases in which a quota (as such
8 term is defined in section 2 of the National Labor
9 Relations Act (29 U.S.C. 152)) was used as a rea-
10 son to deny a worker rights under the National
11 Labor Relations Act; and

12 (2) as often as practicable, submit a report on
13 such cases to—

14 (A) the Committee on Health, Education,
15 Labor, and Pensions of the Senate; and

16 (B) the Committee on Education and
17 Workforce of the House of Representatives.

18 **TITLE III—OSHA STANDARDS**

19 **SEC. 301. STANDARD PROTECTING COVERED EMPLOYEES**
20 **FROM OCCUPATIONAL RISK FACTORS CAUS-**
21 **ING MUSCULOSKELETAL DISORDERS.**

22 (a) PROPOSED STANDARD.—Not later than 3 years
23 after the date of enactment of this Act, the Secretary
24 shall, pursuant to section 6 of the Occupational Safety and
25 Health Act of 1970 (29 U.S.C. 655), publish in the Fed-

1 eral Register a proposed standard for ergonomic program
2 management for covered employers with respect to covered
3 employees, including requirements for—

4 (1) hazard identification and ergonomic job
5 evaluations for covered employees, including require-
6 ments for covered employee and designated employee
7 representative participation in such identification
8 with the aim of maximizing such participation;

9 (2) hazard control at covered facilities, which
10 may rely on the principles of the hierarchy of con-
11 trols and which may include measures such as equip-
12 ment and workstation redesign, work pace reduc-
13 tions, or job rotation to less forceful or repetitive
14 jobs;

15 (3) training for covered employees regarding
16 covered employer activities, occupational risk factors,
17 and training on controls and recognition of symp-
18 toms of musculoskeletal disorders; and

19 (4) medical management for covered employees
20 that includes—

21 (A) encouraging early reporting of mus-
22 culoskeletal disorder symptoms;

23 (B) first aid delivered by those operating
24 under State licensing requirements; and

1 (C) systematic evaluation and early refer-
2 ral for medical attention.

3 (b) FINAL STANDARD.—Not later than 4 years after
4 the date of enactment this Act, the Secretary shall, pursu-
5 ant to section 6 of the Occupational Safety and Health
6 Act of 1970 (29 U.S.C. 655), publish in the Federal Reg-
7 ister a final standard based on the proposed standard
8 under subsection (a).

9 **SEC. 302. STANDARD FOR PROTECTING COVERED EMPLOY-**
10 **EES FROM DELAYS IN MEDICAL TREATMENT**
11 **REFERRALS FOLLOWING INJURIES OR ILL-**
12 **NESSES.**

13 (a) PROPOSED STANDARD.—Not later than 1 year
14 after the date of enactment of this Act, the Secretary
15 shall, pursuant to section 6 of the Occupational Safety and
16 Health Act of 1970 (29 U.S.C. 655), publish in the Fed-
17 eral Register a proposed standard requiring that—

18 (1) all covered employers have a person readily
19 available at the covered facility of the covered em-
20 ployer who is adequately trained to render first aid
21 and ensure that such person provides first aid to any
22 injured or ill covered employee and, without delay,
23 refers any such covered employee who reports an in-
24 jury or illness that requires further medical treat-

1 ment to an appropriate medical professional for such
2 treatment; and

3 (2) all covered employers provide to the covered
4 employees of the covered employer occupational med-
5 icine consultation services through a physician who
6 is board certified in occupational medicine, which
7 services shall include—

8 (A) regular review of any health and safety
9 program, medical management program, or
10 ergonomics program of the covered employer;

11 (B) review of any work-related injury or
12 illness of a covered employee;

13 (C) providing onsite health services for
14 treatment of such injury or illness; and

15 (D) consultation referral to a local health
16 care provider for treating such injury or illness.

17 (b) FINAL STANDARD.—Not later than 3 years after
18 the date of enactment of this Act, the Secretary shall, pur-
19 suant to section 6 of the Occupational Safety and Health
20 Act of 1970 (29 U.S.C. 655), publish in the Federal Reg-
21 ister a final standard based on the proposed standard
22 under subsection (a).

1 **SEC. 303. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
2 **PEATED VIOLATIONS PENDING CONTEST AND**
3 **PROCEDURES FOR A STAY.**

4 (a) IN GENERAL.—Section 10 of the Occupational
5 Safety and Health Act of 1970 (29 U.S.C. 659) is amend-
6 ed by adding at the end the following:

7 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-
8 PEATED VIOLATIONS PENDING CONTEST AND PROCE-
9 DURES FOR A STAY.—

10 “(1) PERIOD PERMITTED FOR CORRECTION OF
11 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—
12 For each violation which the Secretary designates as
13 serious, willful, or repeated, the period permitted for
14 the correction of the violation shall begin to run
15 upon receipt of the citation.

16 “(2) FILING OF A MOTION OF CONTEST.—The
17 filing of a notice of contest by an employer shall not
18 operate as a stay of the period for correction of a
19 violation designated as serious, willful, or repeated.

20 “(3) CRITERIA AND RULES OF PROCEDURE FOR
21 STAYS.—

22 “(A) MOTION FOR A STAY.—An employer
23 that receives a citation alleging a violation des-
24 ignated as serious, willful, or repeated and that
25 files a notice of contest to the citation asserting
26 that the time set for abatement of the alleged

1 violation is unreasonable or challenging the ex-
2 istence of the alleged violation may file with the
3 Commission a motion to stay the period for the
4 abatement of the violation.

5 “(B) CRITERIA.—In determining whether
6 a stay should be issued on the basis of a motion
7 filed under subparagraph (A), the Commission
8 may grant a stay only if the employer has dem-
9 onstrated—

10 “(i) a substantial likelihood of success
11 on the areas contested under subparagraph
12 (A); and

13 “(ii) that a stay will not adversely af-
14 fect the health and safety of employees.

15 “(C) RULES OF PROCEDURE.—The Com-
16 mission shall develop rules of procedure for con-
17 ducting a hearing on a motion filed under sub-
18 paragraph (A) on an expedited basis. At a min-
19 imum, such rules shall provide the following:

20 “(i) That a hearing before an admin-
21 istrative law judge shall occur not later
22 than 15 days following the filing of the
23 motion for a stay (unless extended at the
24 request of the employer), and shall provide
25 for a decision on the motion not later than

1 15 days following the hearing (unless ex-
2 tended at the request of the employer).

3 “(ii) That a decision of an administra-
4 tive law judge on a motion for stay is ren-
5 dered on a timely basis.

6 “(iii) That if a party is aggrieved by
7 a decision issued by an administrative law
8 judge regarding the stay, such party has
9 the right to file an objection with the Com-
10 mission not later than 5 days after receipt
11 of the administrative law judge’s decision.
12 Within 10 days after receipt of the objec-
13 tion, a Commissioner, if a quorum is seat-
14 ed pursuant to section 12(f), shall decide
15 whether to grant review of the objection.
16 If, within 10 days after receipt of the ob-
17 jection, no decision is made on whether to
18 review the decision of the administrative
19 law judge, the Commission declines to re-
20 view such decision, or no quorum is seated,
21 the decision of the administrative law
22 judge shall become a final order of the
23 Commission. If the Commission grants re-
24 view of the objection, the Commission shall
25 issue a decision regarding the stay not

1 later than 30 days after receipt of the ob-
2 jection. If the Commission fails to issue
3 such decision within 30 days, the decision
4 of the administrative law judge shall be-
5 come a final order of the Commission.

6 “(iv) For notification to employees or
7 representatives of affected employees of re-
8 quests for such hearings, and to provide an
9 opportunity for affected employees or rep-
10 resentatives of affected employees to par-
11 ticipate as parties to such hearings.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) IN GENERAL.—The Occupational Safety
14 and Health Act of 1970 is amended—

15 (A) in the first sentence of section 10(b)
16 (29 U.S.C. 659(b)), by inserting “, with the ex-
17 ception of violations designated as serious, will-
18 ful, or repeated,” after “(which period shall not
19 begin to run”; and

20 (B) in section 17 (29 U.S.C. 666) by strik-
21 ing subsection (d) and inserting the following:

22 “(d) Any employer who fails to correct a violation
23 designated by the Secretary as serious, willful, or repeated
24 and for which a citation has been issued under section 9(a)
25 within the period permitted for its correction (and a stay

1 has not been issued by the Commission under section
2 10(d)) may be assessed a civil penalty of not more than
3 \$7,000 for each day during which such failure or violation
4 continues. Any employer who fails to correct any other vio-
5 lation for which a citation has been issued under section
6 9(a) of this title within the period permitted for its correc-
7 tion (which period shall not begin to run until the date
8 of the final order of the Commission in the case of any
9 review proceeding under section 10 initiated by the em-
10 ployer in good faith and not solely for delay of avoidance
11 of penalties) may be assessed a civil penalty of not more
12 than \$7,000 for each day during which such failure or vio-
13 lation continues.”.

14 (2) ADJUSTMENT UNDER THE FEDERAL CIVIL
15 PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—

16 (A) CATCH-UP.—Not later than 1 year
17 after the date of enactment of this Act, the Sec-
18 retary of Labor shall adjust the maximum
19 amounts described in subsection (d) of section
20 17 of the Occupational Safety and Health Act
21 of 1970 (29 U.S.C. 666), as amended by para-
22 graph (1)(B), so that each such amount equals
23 the maximum amount of the civil penalty under
24 such subsection (as in effect on the day before
25 such date of enactment) as adjusted by section

1 4 of the Federal Civil Penalties Inflation Ad-
2 justment Act of 1990 (28 U.S.C. 2461 note).

3 (B) SUBSEQUENT ADJUSTMENTS.—Sub-
4 paragraph (A) and the amendment made by
5 this paragraph (1)(B) shall not be construed to
6 affect the application of the Federal Civil Pen-
7 alties Inflation Adjustment Act of 1990 (28
8 U.S.C. 2461 note) to the civil penalty amount
9 under section 17(d) of the Occupational Safety
10 and Health Act of 1970 (29 U.S.C. 666) for
11 any adjustment under section 4 of the Federal
12 Civil Penalties Inflation Adjustment Act of
13 1990 (28 U.S.C. 2461 note) after the catch-up
14 adjustment made by the Secretary of Labor
15 under subparagraph (A).

16 **SEC. 304. DEFINITIONS.**

17 For purposes of sections 301 and 302, the terms
18 “covered employee”, “covered employer”, “covered facil-
19 ity”, and “designated employee representative” have the
20 meanings given such terms in section 102(a).

21 **TITLE IV—MISCELLANEOUS**
22 **PROVISIONS**

23 **SEC. 401. SEVERABILITY.**

24 If any provision of this Act (including an amendment
25 made by this Act) or the application of such provision to

1 any person, entity, government, or circumstance, is held
2 to be unconstitutional, the remainder of this Act (includ-
3 ing the amendments made by this Act), or the application
4 of such provision to all other persons, entities, govern-
5 ments, or circumstances, shall not be affected thereby.

6 **SEC. 402. PREEMPTION.**

7 (a) INTERACTION WITH OTHER LAWS.—Nothing in
8 this Act (including the amendments made by this Act) or
9 the regulations promulgated under this Act shall be con-
10 strued to supersede or preempt any law or ordinance of
11 a State, or political subdivision of a State, that requires
12 limitations on any quota for a covered employee of a cov-
13 ered employer that are comparable to or greater than the
14 protections provided in this Act.

15 (b) COLLECTIVE BARGAINING AGREEMENTS.—Noth-
16 ing in this Act (including the amendments made by this
17 Act) or the regulations promulgated under this Act shall
18 be construed to supersede or preempt employment terms
19 or conditions agreed upon in collective bargaining agree-
20 ments that are more beneficial to a covered employee.

21 (c) OSHA.—No action by the Director under this Act
22 (including the amendments made by this Act) shall be con-
23 strued as an exercise of statutory authority within the
24 meaning of section 4(b)(1) of the Occupational Safety and
25 Health Act of 1970 (29 U.S.C. 653(b)(1)).

1 (d) DEFINITIONS.—For purposes of this section, the
2 terms “Director”, “covered employee”, “covered em-
3 ployer”, “designated employee representative”, and
4 “quota” have the meanings given such terms in section
5 102(a).

6 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS.**

7 There is authorized to be appropriated to carry out
8 this Act such sums as may be necessary for each of the
9 fiscal years 2026 through 2036.