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

**IN THE SENATE OF THE UNITED STATES**

Mr. Markey (for himself, Mr. Casey, Ms. Smith, and Mr. Brown) 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 Representatives of the United States of America in Congress assembled,*

2 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. TABLE OF CONTENTS.**

5 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.
Sec. 102. Referral of complaints.
TITLE II—NATIONAL LABOR RELATIONS ACT

Sec. 201. Amendments to National Labor Relations Act.

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.

TITLE I—WAREHOUSE WORKER PROTECTIONS

SEC. 101. WAREHOUSE WORKER PROTECTIONS.

The Fair Labor Standards Act of 1938 is amended—

(1) by inserting after section 4 (29 U.S.C. 204)
the following:

“SEC. 5. ESTABLISHMENT OF FAIRNESS AND TRANSPARENCY OFFICE.

“(a) IN GENERAL.—There is established in the Wage and Hour Division of the Department of Labor the Fairness and Transparency Office.

“(b) DIRECTOR OF THE FAIRNESS AND TRANSPARENCY OFFICE.—The President shall appoint a Director of the Fairness and Transparency Office to head the Fairness and Transparency Office.
“(c) Employees and Advisory Boards of the Office.—

“(1) In general.—The Director—

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

“(B) may fix the compensation of the individuals described in subparagraph (A) without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

“(2) Fairness and Transparency Advisory Board.—

“(A) In general.—The Director shall establish a Fairness and Transparency Advisory Board to advise and consult on the exercise of the functions of the Director under this Act.
“(B) COMPOSITION.—The Fairness and Transparency Advisory Board established under subparagraph (A) shall be composed of—

“(i) as the Director determines appropriate, covered employers and covered employees or representatives of covered employers and covered employees; and

“(ii) at least one of each of the following:

“(I) Worker protection experts.
“(II) Civil rights experts.
“(III) Health and safety experts.
“(IV) Workplace technology experts.
“(V) Disability law experts.
“(VI) Representatives of labor organizations.
“(VII) Representatives of worker advocacy organizations.

“(C) APPOINTMENTS.—The Director shall—

“(i) appoint members to the advisory board established under subparagraph (A); and
“(ii) ensure a partisan balance in the membership of the advisory board.

“(D) MEETINGS.—The advisory board established under subparagraph (A) shall meet—

“(i) at the call of the Director; and

“(ii) not less than 2 times annually.

“(E) COMPENSATION AND TRAVEL EXPENSES.—A member of the Fairness and Transparency Advisory Board established under subparagraph (A) who is not an officer or employee of the Federal Government shall—

“(i) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the advisory board, including travel time; and

“(ii) receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(F) EXEMPTION FROM THE FEDERAL ADVISORY COMMITTEE ACT.—The Fairness and Transparency Advisory Board established under subparagraph (A) shall be exempt from chapter 10 of title 5, United States Code (commonly
known as the ‘Federal Advisory Committee Act’.

“(3) Use of voluntary services.—The Director may, as may from time to time be needed, use any voluntary or uncompensated services.

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

“(d) Rulemaking.—

“(1) In general.—The Secretary, acting through the Director and the Administrator of the Wage and Hour Office, may issue orders and guidance or promulgate regulations as may be necessary or appropriate to enable the Secretary to carry out the purposes and objectives of this section, and to prevent evasions thereof.

“(2) Consultation.—In issuing orders and guidance or promulgating regulations under this subsection, the Secretary, acting through the Director and the Administrator of the Wage and Hour Office, may consult with the Occupational Safety and Health Administration and Federal agencies that have jurisdiction over labor and employment issues, including the Equal Employment Opportunity Commission, the National Labor Relations
Board, the National Mediation Board, and the Merit Systems Protection Board.”;

(2) by inserting after section 7 (29 U.S.C. 207) the following:

“SEC. 8. WAREHOUSE WORKER PROTECTIONS.

“(a) DEFINITIONS.—In this section:

“(1) ADVERSE EMPLOYMENT ACTION.—The term ‘adverse employment action’, with respect to a covered employee, means a change by the covered employer of the covered employee in the compensation, terms, conditions, or privileges of the job of the covered employee that, from the perspective of a reasonable person, puts the covered employee in a materially adverse position than prior to the change, including termination, a reduction in benefits, disciplinary action, demotion, promotion, transfer, imposition of a work schedule more burdensome to the covered employee, reduction of scheduled hours, adjustment in ability for promotion, or other modifications to compensation, terms, conditions, or privileges of employment.

“(2) AGGREGATED WORK SPEED DATA.—The term ‘aggregated work speed data’ means employee work speed data that a covered employer has combined, or collected together, in a summary or other
form so that the employee work speed data cannot, at any point, be identified or linked with any specific covered employee.

“(3) COVERED FACILITY.—The term ‘covered facility’ means any warehouse distribution center described in the North American Industry Classification System code—

“(A) 493, for warehousing and storage;

“(B) 423, for merchant wholesalers, durable goods;

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

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

“(E) 492110, for couriers and express delivery services.

“(4) COVERED EMPLOYEE.—The term ‘covered employee’ means an employee who—

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

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

“(5) COVERED EMPLOYER.—The term ‘covered employer’ means an employer that—
“(A) is engaged in commerce, in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, including such an employer that is a contractor, subcontractor, temporary service firm, staffing agency, independent contractor, employee leasing entity, or similar entity; and

“(B) employs a covered employee for the performance of work at a covered facility.

“(6) Defined time period.—The term ‘defined time period’ means any unit of time measurement equal to or less than one day, including hours, minutes, and seconds and any fraction thereof.

“(7) Designated employee representative.—The term ‘designated employee representative’ means any representative designated by a covered employee, including an employee representative that has a collective bargaining relationship with the covered employer of the covered employee.

“(8) Director.—The term ‘Director’ means the Director of the Fairness and Transparency Office established by section 5.

“(9) Egregious misconduct.—The term ‘egregious misconduct’, with respect to a covered
employee, means deliberate or grossly negligent con-
duct that endangers the safety or well-being of the
covered employee, co-workers of the covered em-
ployer, customers, or other persons, including dis-
 crimination against or harassment of co-workers,
customers, or other persons.

“(10) EMPLOYEE WORK SPEED DATA.—The
term ‘employee work speed data’ means information
a covered employer collects, stores, analyzes, or in-
terprets relating to the performance of work by a
covered employee of the covered employer for a
quota, including information with respect to the—

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

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

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

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

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

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

“(A)(i) an employee is actually or effectively assigned, required, or expected within a defined time period (with or without any reasonable accommodation provided under Federal, State, or local law) to—

“(I) perform—

“(aa) a quantified number of tasks; or

“(bb) at a specified productivity speed; or

“(II) handle or produce a quantified amount of material without a certain number of errors or defects; and

“(ii) such assignment, requirement, or expectation is measured at the individual or group level for such defined time period;

“(B) actions by an employee are categorized and measured between time per-
forming tasks and not performing tasks within a defined time period; or

“(C) increments of time of a defined time period during which an employee is or is not doing a particular activity are measured, recorded, or tallied.

“(12) SIMILARLY SITUATED COVERED EMPLOYEE.—The term ‘similarly situated covered employee’, with respect to a covered employee, means another covered employee who holds the same job or responsibilities as the covered employee.

“(13) TRIBAL GOVERNMENT.—The term ‘Tribal government’ means the recognized governing body of an Indian Tribe.

“(14) WORKPLACE SURVEILLANCE.—The term ‘workplace surveillance’ means any employer surveillance (on- or off-duty) with respect to an employee, including the detection, monitoring, interception, collection, exploitation, preservation, protection, transmission, or retention of data concerning activities or communications with respect to the employee, including through the use of a product or service marketed, or that can be used, for such purposes, such as a computer, telephone, wire, radio, camera, sen-
sor, electromagnetic, photoelectronic, handheld or wearable device, or photo-optical system.

“(15) WORK STATION.—The term ‘work station’ means the area of a covered facility within which a covered employee is assigned to perform tasks for the longest duration of time during a day.

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

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

“(A) a written description of each quota to which the covered employee is subject, including—

“(i) as applicable, the quantified number of tasks to be performed or of materials to be produced or handled, or other performance measure, within the defined time period, for the quota;

“(ii) any potential discipline or adverse employment action that could result from failure to meet the quota;
“(iii) how performance targets or performance standards for the quota are calculated;

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

and

“(v) how the quota is monitored, including a description of—

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

“(II) how the employee work speed data are being collected, including a description of any workplace surveillance technology used on the covered employee by the covered employer;

“(III) where and when the employee work speed data are being collected;

“(IV) the frequency of the collection;

“(V) where the storage of the employee work speed data is located;
“(VI) the business purposes for which the employee work speed data are being used; and

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

“(aa) used for such workplace surveillance;

“(bb) to which data from such workplace surveillance is transferred; and

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

“(B) a written description of and training with respect to how the covered employee may file a complaint regarding a violation of this section or a standard promulgated under title III of the Warehouse Worker Protection Act.

“(2) CHANGES TO QUOTA OR WORKPLACE SURVEILLANCE.—Each covered employer shall provide to any applicable covered employee an updated written description of any information provided under paragraph (1) not less than 2 business days before any changes with respect to such information are made.
“(3) Requirements for Taking an Adverse Employment Action on Quota Compliance.—

“(A) In General.—A covered employer that takes an adverse employment action against a covered employee for work performance that does not meet requirements with respect to a quota shall provide—

“(i) a written explanation to the covered employee regarding the manner in which the covered employee failed to perform, including a description of the applicable quota and a comparison of such work performance to such quota; and

“(ii) if the adverse employment action was based on employee work speed data, a copy of the employee work speed data in a human-readable format that a reasonable individual can understand.

“(B) Notice for Actions Unrelated to Quota.—A covered employer that, with respect to any covered employee who is subject to a quota, takes an adverse employment action against such covered employee for any reason that is unrelated to compliance with the quota shall provide to such covered employee a written
confirmation that such action was unrelated to compliance with the quota.

“(4) Termination.—

“(A) In general.—Except as provided in clause (ii), a covered employer that seeks to terminate a covered employee shall, regardless of whether the termination relates to work performance with respect to a quota, provide to the covered employee a written notice of the intent to terminate the covered employee.

“(B) Egregious misconduct.—Notwithstanding subparagraph (A), a covered employer may terminate a covered employee without providing such written notice if the covered employee engaged in egregious misconduct.

“(5) Descriptions.—Each covered employer shall—

“(A) provide any written description, notice, explanation, or confirmation described in paragraph (1), (2), (3), or (4) to a covered employee—

“(i) through a human representative of the covered employer at the work station of the covered employee; and
“(ii) in a manner required by the Director that—

“(I) is accessible;

“(II) allows the covered employee to transport the data in the description, notice, explanation, or confirmation without hindrance;

“(III) is in plain language; and

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

“(B) make such description, notice, explanation, or confirmation available to the covered employee electronically.

“(c) PROTECTION FROM QUOTAS.—

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

“(A) prevent—

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

“(ii) compliance with health and safety provisions required by Federal, State, or local law;
“(iii) the use by the covered employee of bathroom facilities, including reasonable travel time to and from bathroom facilities that takes into account the architecture of the covered facility; or

“(iv) compliance with a covered employee’s right to reasonable accommodations or nondiscrimination as required by Federal, State, or local law.

“(B) set a performance target or performance standard that measures total output for the covered employee over an increment of time that is shorter than one day;

“(C) measure and evaluate the output or performance of a covered employee during any paid or unpaid break to which the covered employee is entitled under applicable law, contract, or industry standard, including breaks to use bathroom facilities and reasonable travel time to and from bathroom facilities;

“(D) prevent or discourage the covered employee from exercising any right under the National Labor Relations Act (29 U.S.C. 151 et seq.) or any other Federal law;
“(E) prevent or discourage the covered employee from exercising any right guaranteed in an applicable collective bargaining agreement; or

“(F) violate the generally accepted principles of work measurement as set forth in the Code of Work Measurement Ethics of the American Institute of Industrial Engineers and recognized by the Secretary.

“(2) ADVERSE EMPLOYMENT ACTION.—A covered employer may not take adverse employment action against a covered employee for failure to meet a quota that—

“(A) violates paragraph (1);

“(B) was not described to the covered employee in accordance with subsection (b);

“(C) is based solely on ranking the performance of the covered employee in relation to the performance of another covered employee or in relation to the past performance of that covered employee; or

“(D) is based on continuously measuring, recording, or tallying increments of time within a defined time period during which a covered employee is or is not doing a particular activity.
“(d) **MINIMIZATION.**—

“(1) **COLLECTION.**—In establishing, maintaining, or using employee work speed data with respect to a quota for a covered employee, a covered employer may not collect, use, maintain, or transfer data on or of the covered employee except as strictly necessary to monitor the compliance of the covered employee with the quota.

“(2) **EMPLOYEE ACCESS.**—In establishing, maintaining, or using employee work speed data with respect to a quota for a covered employee, a covered employer may not disclose any information collected on a covered employee with respect to the quota to any other covered employee of the covered employer except as strictly necessary to fulfill a specific and reasonable business rationale of the covered employer.

“(e) **RECORDKEEPING.**—

“(1) **IN GENERAL.**—Each covered employer shall—

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

“(i) the employee work speed data of each such covered employee;
“(ii) the aggregated work speed data for similarly situated covered employees at the same place where each such covered employee performs work for the covered employer; and

“(iii) the written descriptions of the quota of each such covered employee provided under subsection (b)(1);

“(B) maintain such records for the duration of the employment of each relevant covered employee; and

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

“(2) SUPPLEMENTATION AND DISPUTE OF RECORDS.—

“(A) SUPPLEMENTATION OF RECORDS.—
Each covered employer shall enable a covered employee, upon request of the covered employee at or after the time of any employee work speed data collection with respect to the covered employee, to supplement the employee work speed data by recording any reason the covered employee provides for any defined time period during which the covered employee was not performing work-related tasks, including because...
the covered employee was taking a paid or un-
paid break, using a bathroom facility (including
reasonable travel to and from the facility), re-
reporting an injury or receiving attention due to
an injury, exercising a right guaranteed under
the National Labor Relations Act (29 U.S.C.
151 et seq.) or another Federal law, or exer-
cising a right guaranteed under an applicable
covered bargaining agreement.

“(B) DISPUTE PROCESS.—

“(i) IN GENERAL.—Each covered em-
ployer shall enable a covered employee,
upon request of the covered employee at or
after the time of any data collection with
respect to the covered employee, to review
and request correction of the employee
work speed data in accordance with clause
(ii).

“(ii) CORRECTION OF EMPLOYEE
WORK SPEED DATA.—A covered employer
that receives a request by a covered em-
ployee under clause (i) shall—

“(I) investigate and determine
whether the employee work speed data
is inaccurate; and
“(II) if determined to be inaccurate—

“(aa) promptly correct the inaccurate data and notify the covered employee of the covered employer’s determination and correction; and

“(bb) review and adjust, as appropriate, any adverse employment action that was, partially or solely, based on the inaccurate data and notify the covered employee of the adjustment.

“(3) Retention of records.—

“(A) In general.—After the termination of employment of a covered employee of a covered employer, the covered employer shall—

“(i) for not less than 3 years after the date of such termination, retain the records described in paragraph (1) with respect to the 6-month period prior to such date; and

“(ii) make such records available to the Secretary upon request.
“(4) Rule of Construction.—Nothing in this subsection shall require a covered employer to keep records described in paragraph (1) with respect to employee work speed data if such covered employer does not otherwise monitor employee work speed data.

“(f) Right to Request.—

“(1) In general.—A covered employer shall, upon receiving a request under paragraph (2) or (3), provide the relevant copies described in such paragraphs to, as the case may be, the covered employee, designated employee representative, or individual who was a covered employee—

“(A) except as provided in subparagraph (B)(ii), at no cost to the covered employee, designated employee representative, or individual who was a covered employee;

“(B) with respect to—

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

“(ii) a designated employee representative or an individual who was a covered employee, by a human representative of the covered employer or through the mail (at the cost of the designated employee
representative or individual, respectively);
and
“(C) as soon as practicable but not later
than—
“(i) 7 business days after receipt of a
request for such copies with respect to em-
ployee work speed data or aggregate work
speed data; or
“(ii) 2 business days after receipt of a
request for any other copy.
“(2) Requests during employment.—A cov-
ered employee, or a designated employee representa-
tive of such covered employee at the request of the
covered employee, may request from the covered em-
ployer of the covered employee a copy of the written
description described under subsection (b), a copy of
the employee work speed data (in a human-readable
format that a reasonable individual can understand)
of the covered employee for the preceding 6-month
period, and a copy of the aggregated work speed
data (in a human-readable format that a reasonable
individual can understand) for similarly situated cov-
ered employees at the same place where the covered
employee performs work for the covered employer
for the preceding 6-month period.
“(3) REQUESTS AFTER EMPLOYMENT TERMINATION.—An individual who was a covered employee with respect to a covered employer, or a designated employee representative with respect to such an individual, may, not later than 3 years after the date of termination of employment of the covered employee with the covered employer, request from the covered employer a copy of—

“(A) the written description described under subsection (b) effective on the date of termination of the covered employee;

“(B) the employee work speed data (in a human-readable format that a reasonable individual can understand) of the covered employee for the 6-month period prior to such date of termination; and

“(C) the aggregated work speed data (in a human-readable format that a reasonable individual can understand) for similarly situated covered employees at the same place where the covered employee performs work for the covered employer for such 6-month period.

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

“(A) monitor employee work speed data; or
“(B) provide information related to employee work speed data if the covered employer does not otherwise monitor such employee work speed data.

“(g) Posting of Notices.—

“(1) In general.—Each covered employer shall post, in a conspicuous and accessible location, a notice in the covered facility of the covered employer regarding the rights of covered employees under this section, including what constitutes a permissible quota, the right to request quota descriptions and employee speed data information, and the right to make a complaint to Federal authorities regarding a violation of an right under this section.

“(2) Requirements for notices.—Each notice described in paragraph (1) shall be in a manner required by the Director that—

“(A) is in plain language; and

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

“(h) Breaks for Covered Employees.—

“(1) In general.—Each covered employer shall—
“(A) with respect to each covered employee of such covered employer—

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

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

“(I) the covered employee is entitled to the paid rest breaks described in clause (i);

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

“(III) the covered employee, or a designated employee representative of the covered employee, has a right to file a complaint with the Secretary for any violation by the covered employer of this subsection; and
“(B) display, in a conspicuous and accessible location, a sign at each covered facility of the covered employer that includes, in English, Spanish, and any other language that constitutes the primary language of any covered employee at the covered facility, the information in the notice described in subparagraph (A)(ii).

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

“(3) INTERACTION WITH OTHER LAWS.—Nothing in this subsection shall be construed to supersede or preempt any Federal, State, or local law or collective bargaining agreement requiring longer paid rest breaks than those required under paragraph (1)(A)(i).

“(i) UNLAWFUL RETALIATION.—

“(1) IN GENERAL.—A person, including a covered employer, an agent of a covered employer, or person acting as or on behalf of a covered employer conducting hiring or any related activity, or an officer or agent of any entity, business, corporation, partnership, or limited liability company, may not—
“(A) discharge or in any way retaliate, discriminate, or take any adverse employment action against any individual for exercising any right conferred under this section, or for being perceived as exercising such a right, including for—

“(i) requesting copies under subsection (f);

“(ii) filing a complaint under subparagraph (A) of section 16(f) regarding a violation of this section or designating a representative in accordance with subparagraph (B) of such section to file such a complaint; or

“(iii) commencing a proceeding under section 16(b) for a violation of this section; or

“(B) otherwise prevent an individual for exercising such a right or take any action against an individual that might deter a reasonable employee from asserting a right conferred under this section.

“(2) PROTECTIONS FOR GOOD FAITH ALLEGATIONS.—The protections under paragraph (1) shall apply to any individual who mistakenly, but in good
faith, alleges a violation of a requirement of this sec-

tion.

“(3) EXPLICIT REFERENCE NOT REQUIRED.—A

complaint or other communication by an individual,

including a covered employee, may be the exercise of

a right for purposes of paragraph (1) regardless of

whether the complaint or communication is in writ-

ing or makes explicit reference to this Act.

“(4) REBUTTABLE PRESUMPTION.—If a person

takes adverse action against a covered employee

within 90 days of the covered employee engaging, or

attempting to engage in, activities protected by para-

graph (1), such conduct shall establish a rebuttable

presumption that the adverse action is an adverse

action in violation of such paragraph. Such pre-

sumption may be rebutted by clear and convincing

evidence that—

“(A) the action was taken for other per-

missible reasons; and

“(B) the engaging or attempting to engage

in activities protected by paragraph (1) was not

a motivating factor in the adverse action.

“(j) QUOTA TASK FORCE.—Not later than 90 days

after the date of the enactment of this section, the Direc-
tor shall convene a task force with labor organizations,
worker advocacy organizations, and covered employees to
develop strategies for labor organizations and worker ad-
vocacy organizations to—

“(1) assist in the enforcement of this section;
“(2) train covered employees with respect to
new rights provided through this section; and
“(3) provide the Director with recommendations
on the implementation of regulations related to this
section.”;

(3) in section 9 (29 U.S.C. 208), by striking
“and investigation” and inserting “, investigation, or
inspection”;

(4) by repealing section 10 (29 U.S.C. 210);

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

“(e)(1) The Secretary, acting through the Director
of the Fairness and Transparency Division, shall, as pro-
vided in subsection (a) and paragraph (2), investigate vi-
lations of section 8, including any violations of any regula-
tion or order issued with respect to that section.

“(2) In addition to powers otherwise provided to the
Secretary under subsection (a), the Secretary, in inves-
tigating violations of section 8, may upon presenting ap-
propriate credentials to the owner, operator, or agent in
charge—
“(A) enter without delay and at reasonable times any covered facility of a covered employer; and

“(B) inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such covered facility and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such covered employer, owner, operator, agent, or covered employee.

“(3)(A) In conducting an inspection during an investigation into a violation of section 8, the Secretary shall permit, at the request of a covered employee, a representative of a labor organization or a worker advocacy organization, or another designee of the covered employee, to accompany any inspectors during such inspection.

“(B) A covered employee may, regardless of the relationship between the covered employee and the labor organization, worker advocacy organization, or other designee, anonymously request to the Secretary that the Secretary permit a representative of such labor organization, worker advocacy organization, or other designee accompany inspectors during an inspection in accordance with paragraph (1).
“(f)(1) Not later than 30 days after an event described in paragraph (2), the Secretary shall open an investigation under this section (that includes an on-site inspection) into any covered employer to determine if such covered employer is violating section 8.

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

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

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

“(ii) has an annual employee injury rate, overall or at a worksite, that is not less than 1.5 times the warehousing industry’s average annual injury rate, as determined by the Bureau of Labor Statistics in the most recent (as of such determination) publication regarding fatal and nonfatal occupational injuries and illnesses data.

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

“(i) 5 credible complaints from covered employees of the covered employer, individuals who were covered employees of the covered employer, or designated representatives of such
covered employees or individuals, about violations under section 8 at a worksite; or

“(ii) 10 credible complaints from covered employees of the covered employer, individuals who were covered employees of the covered employer, or designated representatives of such covered employees or individuals, about such violations at multiple worksites operated by the covered employer.

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

“(g) For purposes of subsections (e) and (f), the terms ‘covered employee’, ‘covered employer’, and ‘covered facility’ have the meanings given such terms in section 8(a).”;

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

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

(B) in paragraph (6), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:
“(7) to violate any of the provisions of section 8.”; and

(7) in section 16 (29 U.S.C. 216)—

(A) in subsection (b)—

(i) by striking “15(a)(3)” each place it appears and inserting “8, 15(a)(3),”;

(ii) in the second sentence, by inserting “and, in the case of a violation of section 8, of an amount for the direct or foreseeable pecuniary harms resulting from the violation and an amount equal to $10,000 per violation of subsection (b), (d), (e), (f), or (g) of such section or an amount equal to $25,000 per violation of subsection (c), (h), or (i) of such section” before the period at the end of the sentence; and

(iii) in the fifth sentence, by striking “No” and inserting “Except with respect to an action brought regarding a violation of section 8, no”;

(B) in subsection (e)—

(i) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and
(ii) by inserting after paragraph (2), the following:

“(3) Any person who violates section 8 shall be subject to a civil penalty—

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

“(B) for repeat or willful violations, in an amount not more than $769,870 per violation.”; and

(iii) in paragraph (4)(C), as so redesignated, by striking “section 15(a)(4)” and inserting “paragraph (4) or (7) of section 15(a)”;

(C) by adding at the end the following:

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

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

“(A) file a complaint of a violation of section 8 with the Secretary; and

“(B) designate a representative of a labor organization or worker advocacy organization, regardless of the relationship between the covered employee or individual and the labor organization or worker advocacy organization, to—
“(i) file the complaint on behalf of the covered employee or individual; or

“(ii) represent the covered employee or individual for purposes of engagement with the Secretary regarding such complaint, including being present at employee interviews and participating in workplace inspections, conferences, settlement negotiations.

“(2) Definition of covered employee.—

For purposes of paragraph (1), the term ‘covered employee’ has the meaning given such term in section 8(a).

“(g) Exemption from the Federal Arbitration Act regarding warehouse worker protections.—

“(1) In general.—Notwithstanding chapter 1 of title 9, United States Code (commonly known as the ‘Federal Arbitration Act’), no predispute arbitration agreement or predispute joint-action waiver (as those terms are defined in section 401 of title 9, United States Code) shall be valid or enforceable with respect to claims arising under this Act for violations of section 8.

“(2) Arbitration pursuant to a collective bargaining agreement.—Nothing in this
subsection shall limit the enforceability of any arbitration provision in a collective bargaining agreement between a covered employer (as defined in section 8(a)) and a labor organization.

“(h) Exception From Class Action Pre-requisites for Actions Regarding Warehouse Worker Protections.—An employee who brings an action for a violation of section 8 on behalf of employees similarly situated shall be considered to have satisfied paragraphs (1) through (4) of rule 23(a) of the Federal Rules of Civil Procedure for purposes of such an action.”.

SEC. 102. REFERRAL OF COMPLAINTS.

(a) Memorandum of Understanding.—The Director of the Fairness and Transparency Office established by section 5 of the Fair Labor Standards Act of 1938 (as added by section 101) and the Administrator of the Wage and Hour Office of the Department of Labor shall jointly enter into a memorandum of understanding with the Assistant Secretary of Labor for Occupational Safety and Health to encourage efficient enforcement of relevant labor laws, including through information sharing, referral of complaints, and cross-training of inspectors and investigators. The memorandum of understanding shall encourage coordination of enforcement activity in States enforcing relevant labor law under a State
plan that has been approved by the Secretary under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

(b) Referral of Complaints and Cross-training.—The Director of the Fairness and Transparency Office shall, to the greatest extent possible—

(1) encourage the referral of relevant complaints from and to the Equal Employment Opportunity Commission, the National Institute for Occupational Safety and Health, the Environmental Protection Agency, the National Labor Relations Board, and other Federal and State agencies that may conduct inspections related to occupational health and safety in covered facilities (as defined in section 8(a) of the Fair Labor Standards Act of 1938); and

(2) promote cross-training of inspectors and investigators in the Equal Employment Opportunity Commission, National Institute for Occupational Safety and Health, Environmental Protection Agency, and such other Federal and State agencies for inspections related to working conditions in such covered facilities.
TITLE II—NATIONAL LABOR RELATIONS ACT

SEC. 201. AMENDMENTS TO NATIONAL LABOR RELATIONS ACT.

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

(1) in paragraph (5) by striking the period at the end and inserting ‘; and’; and

(2) by adding at the end the following:

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

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

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

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

“(A) IN GENERAL.—The term ‘quota’ means a performance standard or performance target, including such a standard or target used to rank an employee in relation to the performance of another employee or in relation to the past performance of the employee, under which—

“(i)(I) an employee is actually or effectively assigned, required, or expected within a defined time period (with or without any reasonable accommodation provided under Federal, State, or local law) to—

“(aa) perform—

“(AA) a quantified number of tasks; or

“(BB) at a specified productivity speed; or

“(bb) handle or produce a quantified amount of material without a certain number of errors or defects; and

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

“(ii) actions by an employee are categorized and measured between time performing tasks and not performing tasks within a defined time period; or

“(iii) increments of time of a defined time period during which an employee is or is not doing a particular activity are measured, recorded, or tallied.

“(B) DEFINED TIME PERIOD.—For purposes of subparagraph (A), the term ‘defined time period’ means any unit of time measurement equal to or less than one day, including hours, minutes, and seconds and any fraction thereof.”.

SEC. 202. NATIONAL LABOR RELATIONS BOARD REPORT.

The National Labor Relations Board shall—

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

(2) as often as practicable, submit a report on such cases to—
(A) the Committee on Health, Education, Labor, and Pensions of the Senate; and
(B) the Committee on Education and the Workforce of the House of Representatives.

TITLE III—OSHA STANDARDS

SEC. 301. STANDARD PROTECTING COVERED EMPLOYEES FROM OCCUPATIONAL RISK FACTORS CAUSING MUSCULOSKELETAL DISORDERS.

(a) Proposed Standard.—Not later than 3 years after the date of enactment of this Act, the Secretary shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), publish in the Federal Register a proposed standard for ergonomic program management for covered employers with respect to covered employees, including requirements for—

(1) hazard identification and ergonomic job evaluations for covered employees, including requirements for covered employee and designated employee representative participation in such identification with the aim of maximizing such participation;

(2) hazard control at covered facilities, which may rely on the principles of the hierarchy of controls and which may include measures such as equipment and workstation redesign, work pace reduc-
tions, or job rotation to less forceful or repetitive jobs;

(3) training for covered employees regarding covered employer activities, occupational risk factors, and training on controls and recognition of symptoms of musculoskeletal disorders; and

(4) medical management for covered employees that includes—

(A) encouraging early reporting of musculoskeletal disorder symptoms;

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

(C) systematic evaluation and early referral for medical attention.

(b) **Final Standard.**—Not later than 4 years after the date of enactment this Act, the Secretary shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), publish in the Federal Register a final standard based on the proposed standard under subsection (a).
SEC. 302. STANDARD FOR PROTECTING COVERED EMPLOYEES FROM DELAYS IN MEDICAL TREATMENT REFERRALS FOLLOWING INJURIES OR ILLNESSES.

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

(1) all covered employers have a person readily available at the covered facility of the covered employer who is adequately trained to render first aid and ensure that such person provides first aid to any injured or ill covered employee and, without delay, refers any such covered employee who reports an injury or illness that requires further medical treatment to an appropriate medical professional for such treatment; and

(2) all covered employers provide to the covered employees of the covered employer occupational medicine consultation services through a physician who is board certified in occupational medicine, which services shall include—

(A) regular review of any health and safety program, medical management program, or ergonomics program of the covered employer;
(B) review of any work-related injury or illness of a covered employee;

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

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

(b) Final Standard.—Not later than 3 years after the date of enactment of this Act, the Secretary shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), publish in the Federal Register a final standard based on the proposed standard under subsection (a).

SEC. 303. CORRECTION OF SERIOUS, WILLFUL, OR REPEATED VIOLATIONS PENDING CONTEST AND PROCEDURES FOR A STAY.

(a) In General.—Section 10 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659) is amended by adding at the end the following:

“(d) Correction of Serious, Willful, or Repeated Violations Pending Contest and Procedures for a Stay.—

“(1) Period permitted for correction of serious, willful, or repeated violations.—

For each violation which the Secretary designates as serious, willful, or repeated, the period permitted for
the correction of the violation shall begin to run
upon receipt of the citation.

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

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

“(A) **MOTION FOR A STAY.**—An employer
that receives a citation alleging a violation des-
ignated as serious, willful, or repeated and that
files a notice of contest to the citation asserting
that the time set for abatement of the alleged
violation is unreasonable or challenging the ex-
istence of the alleged violation may file with the
Commission a motion to stay the period for the
abatement of the violation.

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

strated—

“(i) a substantial likelihood of success

on the areas contested under subparagraph

(A); and
“(ii) that a stay will not adversely affect the health and safety of employees.

“(C) Rules of Procedure.—The Commission shall develop rules of procedure for conducting a hearing on a motion filed under subparagraph (A) on an expedited basis. At a minimum, such rules shall provide the following:

“(i) That a hearing before an administrative law judge shall occur not later than 15 days following the filing of the motion for a stay (unless extended at the request of the employer), and shall provide for a decision on the motion not later than 15 days following the hearing (unless extended at the request of the employer).

“(ii) That a decision of an administrative law judge on a motion for stay is rendered on a timely basis.

“(iii) That if a party is aggrieved by a decision issued by an administrative law judge regarding the stay, such party has the right to file an objection with the Commission not later than 5 days after receipt of the administrative law judge’s decision.

Within 10 days after receipt of the objec-
tion, a Commissioner, if a quorum is seated pursuant to section 12(f), shall decide whether to grant review of the objection. If, within 10 days after receipt of the objection, no decision is made on whether to review the decision of the administrative law judge, the Commission declines to review such decision, or no quorum is seated, the decision of the administrative law judge shall become a final order of the Commission. If the Commission grants review of the objection, the Commission shall issue a decision regarding the stay not later than 30 days after receipt of the objection. If the Commission fails to issue such decision within 30 days, the decision of the administrative law judge shall become a final order of the Commission.

“(iv) For notification to employees or representatives of affected employees of requests for such hearings, and to provide an opportunity for affected employees or representatives of affected employees to participate as parties to such hearings.”.

(b) Conforming Amendments.—
(1) IN GENERAL.—The Occupational Safety and Health Act of 1970 is amended—

(A) in the first sentence of section 10(b) (29 U.S.C. 659(b)), by inserting “, with the exception of violations designated as serious, willful, or repeated,” after “(which period shall not begin to run”; and

(B) in section 17 (29 U.S.C. 666) by striking subsection (d) and inserting the following:

“(d) Any employer who fails to correct a violation designated by the Secretary as serious, willful, or repeated and for which a citation has been issued under section 9(a) within the period permitted for its correction (and a stay has not been issued by the Commission under section 10(d)) may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues. Any employer who fails to correct any other violation for which a citation has been issued under section 9(a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay of avoidance of penalties) may be assessed a civil penalty of not more
than $7,000 for each day during which such failure or viol-

(2) ADJUSTMENT UNDER THE FEDERAL CIVIL
PENLALTIES INFLATION ADJUSTMENT ACT OF 1990.—

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

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

SEC. 304. DEFINITIONS.

For purposes of sections 301 and 302, the terms “covered employee”, “covered employer”, “covered facility”, and “designated employee representative” have the meanings given such terms in section 8(a) of the Fair Labor Standards Act of 1938 (as added by section 101).

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act (including an amendment made by this Act) or the application of such provision to any person, entity, government, or circumstance, is held to be unconstitutional, the remainder of this Act (including the amendments made by this Act), or the application of such provision to all other persons, entities, governments, or circumstances, shall not be affected thereby.

SEC. 402. PREEMPTION.

(a) INTERACTION WITH OTHER LAWS.—Nothing in this Act (including the amendments made by this Act) or the regulations promulgated under this Act shall be construed to supersede or preempt any law or ordinance of
a State, or political subdivision of a State, that requires limitations on any quota for a covered employee of a covered employer that are comparable to or greater than the protections provided in this Act.

(b) **Collective Bargaining Agreements.**—Nothing in this Act (including the amendments made by this Act) or the regulations promulgated under this Act shall be construed to supersede or preempt employment terms or conditions agreed upon in collective bargaining agreements that are more beneficial to a covered employee.

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

(d) **Definitions.**—For purposes of this section, the terms “Director”, “covered employee”, “covered employer”, “designated employee representative”, and “quota” have the meanings given such terms in section 8(a) of the Fair Labor Standards Act of 1938 (as added by section 101).

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

There is authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years 2025 through 2035.