

## Publications

### New Law Targets California Distribution Centers That Use Quotas

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#### CLIENT ALERT | 1.20.2022

On January 1, 2022, AB 701 took effect in California. The law requires warehouse employers to disclose production quotas to their workers and prohibits employers from setting quotas that prevent workers from taking required meal and rest periods, using bathroom facilities, or which otherwise result in violations of occupation health and safety laws.

### Who Does AB 701 Apply to?

The law applies to employers with 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in California. A “warehouse distribution center” means any establishment defined under the North American Industry Classification System Codes as General Warehousing and Storage; Merchant Wholesalers, Durable Goods; Merchant Wholesalers, Nondurable Goods; and Electronic Shopping and Mail-Order houses.

### What is a Quota?

A quota is “a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.” Employers must provide to each employee by January 31, 2022, or upon hire, a written description of each quota that applies to the employee and any potential adverse employment action that may result from failure to meet the quota.

### Which quotas are now unenforceable?

Employers are prohibited from requiring that employees meet any quota that prevents them from taking compliant meal and rest periods or using restroom facilities (including reasonable travel time to and from restroom) or that violates any occupational health and safety law. Employers may not take adverse employment action against

employees who do not meet a quota for these reasons or if the quota was not properly disclosed to the employee.

## **What are the rights of employees under AB 701?**

Current and former employees who believe that meeting a quota caused a violation of their right to take a meal or rest period or required them to violate an occupational health and safety law may request the following from the employer: (1) a written description of each quota applicable to them; and (2) the employee's own "personal work speed data" for previous 90 days. This request may be made orally or in writing, and employers have 21 calendar days from the date of the request to provide this information.

## **What are the penalties for violations?**

Employees may bring a lawsuit for injunctive relief to suspend the quota and any adverse action, and if successful, recover costs and attorney's fees. Employers are also exposed to representative actions and penalties under the Private Attorney's General Act of \$100 for each initial violation and \$200 for each subsequent violation. Because PAGA penalties are calculated per pay period, employers will be subject to a penalty for each employee for every pay period during which the employer enforces an improper quota. The law provides employers with a limited right to cure violations before PAGA penalties would be imposed. However, an employer may use the cure provision no more than three times in a 12-month period for the same violation, regardless of the worksite. So if a warehouse has hundreds of employees and multiple locations in California, the cure provision may be exhausted quickly with just a few claims.

## **What should employers do now?**

Warehouse distribution centers in California should develop written disclosure documents and distribute them to every employee who is subject to a quota. The disclosure should describe the quota, including the quantified number of tasks to be performed or materials to be produced or handled within the defined time period, and the potential adverse actions that could result from failing to meet the quota. This disclosure should also emphasize that the employer strictly prohibits any retaliation against an employee for reporting concerns regarding the quota and explain that the employer requires employees to report any concerns that their job requirements prevent them from taking compliant meal and rest breaks, using the restroom, or from complying with other health and safety protections.

Contact your Vorys lawyer if you have questions about the new law or other wage and hour compliance issues in California.