

ACWI ADVANCE

David Sparkman, Editor

Volume 11, Issue 3

February 15, 2023

NY Quota Law Targets Amazon

New York State adopted a new law called the Warehouse Worker Protection Act which requires distribution centers to disclose work speed quota information to current and former employees.

The new law goes into effect on Feb. 19 and is aimed at preventing warehouse workers from being subjected to work quotas that are believed to be so demanding that they are considered risks to the safety and health of the employees that are subjected to them.



staffing schedules, rotating employees around jobs using different muscle-tendon groups to decrease repetitive motion and protect staff from MSD risks.

Amazon says it invested more than \$300 million in various safety projects, including a \$66 million in creating technology that will help prevent collisions of forklifts and other types of industrial vehicles. Amazon said it also initiated improved safety training and created wellness and mindfulness programs for employees.

New York joins other federal and state government efforts in taking sides with unions against Amazon.com in promoting organizing campaigns aimed at the company's warehouse workers.

Tom Erickson, Teamsters Local 120 president and director of the Teamsters Warehouse Division, said, "Enacting this legislation will end Amazon's shady practice of managing its New York warehouse workers by secret algorithm, but more still needs to be done. Going forward, lawmakers everywhere need to understand the damage this company is doing to their constituents and our communities."

Unions have tried hard to organize Amazon's DCs for years, but they have made only small progress. Amazon largely blunted the threat by raising wages and adopting sweeping safety measures in 2021

Recognizing that about 40% of its workers' injuries are related to musculoskeletal disorders (MSDs), at that time Amazon developed algorithms to automate

Unimpressed, OSHA recently charged Amazon with violations at fulfillment centers in Florida, Illinois and New York State, and is investigating three other facilities in New York, Colorado and Idaho. Charges claim a high rate of MSD injuries

OSHA Assistant Secretary of Labor Douglas L. Parker said, "Each of these inspections found work processes that were designed for speed but not safety, and they resulted in serious worker injuries. Our hope is that the findings of our investigations inspire Amazon and other warehouses to make the safety and health of their workers a core value."

Amazon currently faces a total of \$60,269 in proposed penalties for these violations. It also was cited in December for 14 recordkeeping violations. The penalties could rise substantially under a new practice adopted by OSHA (See article on page 4).

(Continued on the next page)

New York's WWPA is similar to a California law enacted last year that is intended to protect warehouse workers from unreasonably demanding work quotas by requiring DCs to disclose work speed data to all current and former employees to inform workers about how their performance is measured and evaluated, and help them learn about their rights in the workplace.

The California law, which went into effect at the beginning of 2022, does not permit a work quota that prevents compliance with meal or rest periods required by state law, the use of bathroom facilities (including reasonable travel time to and from bathrooms), as well as preventing compliance with health and safety standards.

The New York law applies to employers with 100 or more employees working at a single warehouse or DC and those with 500 or more employees at one or more warehouse DCs. Workers covered by include non-exempt and non-administrative employees who are subject to a quota.

The WWPA defines a quota very specifically, according to attorneys working for the law firm of Goldberg Segalla.

It defines a quota as a work standard where employee is assigned or required to perform at a specified productivity speed; or a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period.

The law says a quota also occurs when an employee's actions "are categorized between time performing tasks and not performing tasks, and the employee's failure to complete a task performance standard or recommendation may have an adverse impact on the employee's continued employment or the conditions of such employment."

Employers are required to provide each employee with a written description of the quota that is being imposed and any potential adverse employment action relating to it. When the quota changes, the employer must supply an updated description in two days. When an employee is disciplined, they also must be provided with information about the quota.

The WWPA protects workers from adverse actions because of a failure to meet undisclosed speed quotas or quotas that do not allow for proper breaks. It also prohibits employers from retaliating against employees exercising their rights under the law.

NRF: Recession Is Less Likely

A recession is unlikely and the economy is expected to grow slightly in 2023 as consumers continue to cope with inflation and high interest rates, National Retail Federation Chief Economist Jack Kleinhenz said, reversing course from **an earlier forecast**.

"A month into 2023, the economy is facing stiff headwinds and – with the exception of easing inflation – will likely face more challenges before it gets better," Kleinhenz noted.

"The debate on whether we are in a recession will heighten over the next few months, just like last year. But while households will probably feel recession-like conditions this year, I do not expect that the downturn will be severe enough to become an official recession."

The good news, he stressed, is that corporate and household balance sheets "are in the best shape we've seen going into a downturn. This should make any economic slowdown mild and limit the downside risks despite my outlook for the economy to straddle a zero-growth path during 2023."

He pointed out that the economy is more resilient than was expected, but is slowing down as Federal Reserve interest rate hikes adopted to bring inflation under control are having their desired effect.

Whether the economy will see a "sluggish pace of growth" or slips into a "considerable falloff" depends largely on whether the Fed can strike the right balance between interest rates and inflation, according to Kleinhenz.

He added that the slowing momentum of inflation could lead to reassessment of future rate hikes or even a rate reduction, rates will likely remain "in restrictive territory" for the remainder of the year.

While consumer spending grew 2.8% for the year, it was slowing in late 2022, dropping 0.2% month over month in November and another 0.3% in December. Overall retail sales dropped 1.1% monthly in December as gasoline prices and automobile sales fell sharply and holiday sales turned out to be choppy, NRF reported.

More Hiring Seen This Year

Employers are planning to hire in the first half of this year but are scrambling to staff up, research from the consulting firm of Robert Half shows.

A survey of hiring managers found that 58% anticipate adding new permanent roles during the first half of 2023, up from 46% six months ago. Another 39% expect to hire for vacated positions

While many companies are eager to hire, nine in 10 managers said it's challenging to find skilled professionals, on par with results from the last hiring survey. Employers also reported it can take up to 11 weeks, on average, to hire for an open position, up from seven weeks in 2021.

"Hiring tends to pick up at the beginning of the year, as budgets have been approved and teams seek additional support for initiatives that will drive business growth and customer retention," observed Paul McDonald, Half's senior executive directory.

"As job openings and turnover remain high, employers need to play offense – and be prepared to negotiate – in order to recruit and retain skilled talent," he warned.

Despite hiring challenges, employers said they conduct about four interviews with a candidate before extending a job offer. Beyond skills, the top traits they look for are knowledge of the company, timeliness and professionalism during interviews, and passion for the company's mission

According to the research, 72% of managers are planning to hire more contract professionals in the first half of 2023, compared to 45% six months ago.

"Contract professionals can quickly step in to help with critical projects and heavy workloads while companies continue their search for permanent employees," McDonald noted.

Pressure to hire for open positions can lead to haste and mistakes, he warns, adding that a drawn-out interview process can be a barrier to bringing on top talent. Employers should get a well-rounded view of candidates while remaining efficient and consistent.

Laws Aim to Aid New Moms

Congress passed two new laws aimed at protecting expecting and nursing mothers as part of the massive omnibus budget legislation that was enacted at the end of 2022.

This follows the adoption of similar legislation at the state and local levels for workers in California, Colorado, Illinois, Kentucky, New York, Tennessee and Washington State.

The new federal laws defer to these state laws where their terms are stricter.



Both of the federal laws allow salaried employees to request workplace accommodations and expand the kinds the remedies available when employees are found to be in violation of the laws' requirements.

The Pregnant Workers Fairness Act extends the same protections available under the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act to those workers who are pregnant.

Years ago, the U.S. Supreme Court had ruled that pregnancy did not come under the ADA because it could not be considered a physical disability.

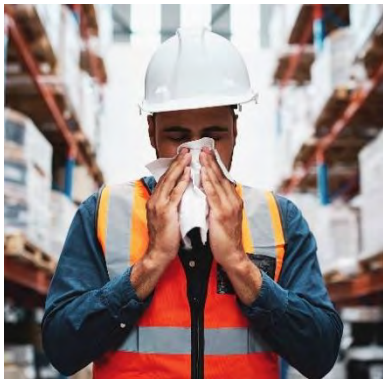
The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP) Act expands protections for new mothers who are nursing their infants or are expressing breast milk.

The PUMP Act about such things as where employees are located and the policies, practices and the private space provided to express breast milk. Even if an employer has done this, some modifications may be required under the new law.

A space temporarily created or converted for expressing breast milk is likely to be considered sufficient if the space is shielded from view and free from intrusion from coworkers and the public.

Don't Wait to Confront the Flu

With our previous attention focused on the Covid 19 pandemic, it can be easy for employers to forget that the government also continues to promote workplace practices regarding preventing and managing influenza outbreaks in the workforce.



The Centers for Disease Control and Prevention (CDC) recommends that employers work on encouraging workers to get vaccinated against the flu and that employers take other specific steps

that help to block its spread.

o Consider hosting a flu vaccine clinic and provide resources on where to get a vaccine. **The CDC discusses the benefits of vaccination on its website.** It also suggests how to encourage vaccination and provides specific suggestions on planning, promotion and handling a clinic's logistics.

o Develop and review sick leave policies that encourage employees to stay home while they are sick. If an employee has a fever, they should not return to work until fever-free for 24 hours without medication. If they have other symptoms, they should stay home for four to five days after the onset of those symptoms.

o Send home any employees who are sick.

o Develop telework (if able) and adopt leave policies so employees can care for sick family members, including children who are out of school.

o Employees with a sick family member may continue to come to work as long as they are well but should monitor their condition. Those with underlying conditions or who are pregnant should seek prompt treatment if they become ill.

o Implement preventive measures at work, such as providing tissues, no-touch trash cans, and hand soap or sanitizer.

OSHA Boosts Staff Penalties

OSHA issued new enforcement guidance allowing its staff to impose increased fines on employers with a history of failure to comply with government safety and health requirements.

OSHA regional administrators and area office directors can now cite certain types of violations as "instance-by-instance citations" for cases of "high-gravity" serious violations of OSHA standards.

The agency said this applies to violation types involving lockout/tagout, machine guarding, permit-required confined space, respiratory protection, falls, trenching and for cases with other-than-serious violations specific to recordkeeping.

"Smart, impactful enforcement means using all the tools available to us when an employer 'doesn't get it' and will respond to only additional deterrence in the form of increased citations and penalties," explained OSHA Chief Doug Parker.

"This is intended to be a targeted strategy for those employers who repeatedly choose to put profits before their employees' safety, health and wellbeing. Employers who callously view injured or sickened workers simply as a cost of doing business will face more serious consequences."

Agency staff now can treat each violation on an individual basis, applying a separate penalty to each one, note attorneys for the law firm of Constangy Brooks Smith & Prophete.

For example, employer with 10 machines missing a guard could face a penalty of \$156,000 or more if the violations are deemed serious, and \$1,560,000 or more if the violations are deemed willful.

Employers, especially those with a history of previous citations, should redouble their compliance efforts with respect to those standards, the attorneys warn. "The price for non-compliance just got much, much higher."

The impact of inflation increased OSHA penalties this year for serious violations up to \$15,625 and for willful or repeat violations up to \$156,259.

Warehouse Rents May Moderate

Demand for industrial real estate in 2023 will remain strong but rent increases for warehouse space are expected slow down a bit in some areas, according to a forecast issued by the IRE giant Cushman & Wakefield.

Asking rents for warehouse space soared in 2022 but have shown signs of moderating during recent quarters, the company reports.

In the fourth quarter, the average industrial asking rental rate climbed only 1.0% quarter-over-quarter (QoQ) to \$8.81 per square foot (psf) but swelled by 18.6% year-over-year (YoY), marking the strongest year in history for annual rental rate growth.

Also in the fourth quarter, gross industrial leasing declined by 28% quarter-over-quarter (QoQ) and by 37% year-over-year (YoY), the company adds:

“Although these declines are coming off peak levels of activity, it’s a trend we are watching as we head into 2023. Dallas/Fort Worth (13.8 msf), Houston (9.2 msf), Atlanta (8.1 msf), and Phoenix (7.0 msf) were the most active markets throughout the fourth quarter,” C&W says.

Meanwhile, within warehouse/distribution facilities, the key driver of the industrial market, asking rents surged by 21.6% annually (but only 0.6% QoQ). Just five of the 81 markets tracked yielded double-digit quarterly increases while 24 markets recorded YoY growth rates of 20% or higher.

Overall tenant demand should remain positive, C&W adds, “but it can be expected it to continue to decelerate as choppier economic conditions emerge and consumer spending continues to rotate back towards services.”

As for what will happen beyond this year, the company currently is predicting that in 2024, supply will finally catch up, at which point rent growth will likely moderate back into the 3% range.

“With much of the space being built on a speculative basis, there is a risk of overbuilding in

certain markets in the near-term,” C&W warns. “In the face of an increasingly difficult economic climate and the Fed pursuing additional hike rates, we anticipate construction starts to slow down.”



The upshot is that some IRE tenants may choose to opt for a wait-and-see approach during this year due to a prolonged period of economic uncertainty, while others who are enjoying continuing growth may find opportunities to expand their footprints as the supply chain becomes more reliable in delivering vacancies.

Of the 81 markets C&W tracks, 19 recorded more than 2.0 msf of net absorption in the fourth quarter while another nine exceeded 1.0 msf. While absorption finished in the red in just eight markets at the close of the fourth quarter – with most posting nominal net losses – this was an improvement from the previous two quarters when 10 markets, on average, yielded negative absorption.

For the third year in a row, the U.S. industrial market inked more than 700 msf of new leasing volume with 757 msf signed throughout 2022. This was the second-best year in history, only lagging the 923 msf leased in 2021.

Although ecommerce transactions fell in comparison to 2020 and 2021, other industries propelled demand totals during 2022. Strong activity by retailers, wholesalers, third-party logistics and manufacturing companies drove another healthy quarter of leasing, C&W notes.

“That said, tenant demand began to tick lower in the second half of 2022 as some tenants began to tap the brakes amid the uncertainty around the economy and a deceleration in consumer spending on goods,” the company’s report says.

C&W’s analysis closely tracks forecasts by other prominent IRE firms, such as JLL, Prologis and CBRE. These companies also watch the same economic conditions as well as the economic factors impacting how customers choose warehouse and distribution center space.