

NEW CHAPTER

**Chapter 296-35 WAC Safety Standards for Quotas for Warehouse
Distribution Center**

NEW SECTION

WAC 296-35-010 Scope.

This chapter applies to employers as defined in this chapter at warehouse distribution centers.

NEW SECTION

WAC 296-35-100 Definitions.

(1) "Adverse action" means any action taken or threatened by an employer against an employee for their exercise of chapter 49.84 RCW rights, which may include, but is not limited to:

- (a) Terminating, suspending, demoting, or denying a promotion;
- (b) Changing the number of work hours for which the employee is scheduled;
- (c) Altering the employee's preexisting work schedule;

(d) Reducing the employee's rate of pay;

(e) Threatening to take, or taking action, based upon the immigration status of an employee, former employee, or an employee or former employee's family member; and

(f) Preventing future job opportunities whether for the employer or elsewhere.

(2) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection, "control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(3) "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

(4) "Department" means the department of labor and industries.

(5) "Employee" means an employee who is not exempt under RCW 49.46.010(3)(c) and works at a warehouse distribution center.

(6) (a) "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, at any time, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center in the state or 1,000 or more employees at one or more warehouse distribution centers in the state.

(b) For the purposes of determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers, all employees employed directly or indirectly, or through an agency or any other person, and all employees employed by an employer and its affiliates, must be counted.

(c) For the purposes of determining responsible employers, all agents or other persons, and affiliates must be deemed employers and are jointly and severally responsible for compliance with this chapter.

(7) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. Normally, one business location has only one establishment.

When distinct and separate economic activities are performed at a single physical location each would be considered separate establishments provided:

(a) No one industry description in the North American Industrial Classification System applies to the joint activities of the establishments;

(b) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information; and

(c) Employment and output are significant for both activities.

(7) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(8) "Quota" means a work performance standard, whether required or recommended, where: (a) 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; or (b) an employee's actions are categorized between time performing tasks and not performing tasks, if the employee may suffer an adverse employment action if they fail to meet the performance standard.

(9) "Reasonable travel time" means that the employee must have enough time to access bathroom locations considering the architecture and geography of the facility and the location within the facility that the employee is located at the time a bathroom is required.

(10) "Warehouse distribution center" means an establishment engaged in activities as defined by any of the following North American industry classification system codes, however such establishment is denominated:

(a) 493 for warehousing and storage, but does not include 493130 for farm product warehousing and storage;

(b) 423 for merchant wholesalers, durable goods;

(c) 424 for merchant wholesalers, nondurable goods; or

(d) 454110 for electronic shopping and mail-order houses.

NEW SECTION

WAC 296-35-200 Quota Time Periods and Reasonable Travel Time

The time period considered in a quota, including time designated as productive time or time on task must include:

(1) Time to use the bathroom, including reasonable travel time;

and

(2) Time to take any actions necessary for the employee to exercise the employee's right to a safe and healthful workplace pursuant to chapter 49.17 RCW, including but not limited to time to access tools or safety equipment necessary to perform the employee's duties.

NEW SECTION

WAC 296-35-300 Quota - Violations of WISHA.

(1) A quota violates chapter 49.17 RCW if the quota:

(a) Does not provide sufficient time as required under WAC 296-35-200(1) (a) and (b);

(b) Prevents the performance of any activity related to occupational safety and health required by the employer for the employee to do the work subject to any quota; or

(c) Exposes an employee to occupational safety and health hazards in violation of the requirements of chapter 49.17 RCW and the applicable rules or regulations.

(2) An employee is not required to meet a quota that violates this section.

(3) An employer may not take adverse action against an employee for failing to meet a quota that violates RCW 49.84.032 or this chapter.

(4) The following table is a non-exhaustive list of examples of activities or equipment for use in understanding this section and how to determine what may contribute to a quota being found in violation of chapter 49.84 RCW and this chapter:

Examples	WAC Reference (Where applicable)
Examples of tools and equipment necessary to perform the employee's duties WAC 296-35-200, including but not limited to:	
Carts and handtrucks	
Step stools and ladders.	WAC 296-876 Ladders, portable and fixed.
Dockplates.	WAC 296-24-75006 Dockboards (bridge plates).
Safety shoes.	WAC 296-800-16060 Make sure your employees use appropriate foot protection.

High visibility vests.	WAC 296-800-16015 Select appropriate PPE for your employees.
Radios/Comms	
Examples of safety or health related activities mentioned in WAC 296-35-300(1) (b) .	
[Placeholder for examples]	
Examples of where the quota exposes employees to an occupational safety and health hazards under WAC 296-35-300(1) (c)	
[Placeholder for examples]	

NEW SECTION

WAC 296-35-300 Employer recordkeeping requirements.

(1) An employer must maintain and preserve all records required under WAC 296-XX-XXX (FPLS section records).

(2) An employer must develop, maintain, and preserve all records related to how the employer determines a quota does not violate chapter 49.84 RCW or this chapter.

(3) Nothing in this section requires an employer to collect or keep such records if the employer does not use quotas or monitor work speed data.

(4) The records must be made available to the department or director upon request. An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

NEW SECTION

WAC 296-35-400 Protection from Adverse Action for Failure to Meet a Quota in Violation of WISHA.

(1) An employer may not take adverse action against an employee for failing to meet a quota that violates RCW 49.84.032 or this chapter.

(2) A person who has adverse action taken against them for failure to meet a quota that violates RCW 49.84.032 RCW or this chapter may file a complaint with the department alleged in accordance with WAC 296-360-030.

(3) Complaints under this section will be investigated according to chapter 29-360 WAC, including appropriate relief, payment of damages, penalties, and appeal of citations of notices of assessment.

NEW SECTION

WAC 296-35-410 Retaliation Enforcement

(1) A person, including but not limited to an employer, their agent, a person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, may not discharge or in any way retaliate, discriminate, or take adverse action against an employee or former employee for exercising any rights established in this chapter, or for being perceived as exercising rights established in this chapter including, but not limited to:

(a) The right to make a complaint to the employer, the director, or any local, state, or federal governmental agency or official, related to a quota that is allegedly in violation of RCW 49.17, RCW 49.84.032, or any associated rules;

(b) the right to participate in any proceeding related to a quota that is allegedly in violation of RCW 49.17, RCW 49.84.032, or any associated rules; and,

(c) The right to testify in any proceeding related to a quota that is allegedly in violation of RCW 49.17, RCW 49.84.032, or any associated rules, including any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, administrative adjudications, and rules hearings

(3) An employee or former employee who believes that they were subject to retaliation under this section may file a complaint with the department in accordance with WAC 296-360-030.

(4) Complaints under this section will be investigated according to chapter 296-360 WAC, including appropriate relief, payment of damages, penalties, and appeal of citations of notices of assessment, except if the presumption in subsection (5) below applies.

(5) If a person takes adverse action against an employee or former employee within 90 days of the employee engaging or attempting to engage in activities protected by this chapter, there is a rebuttable presumption that the adverse action is a retaliatory action in violation of this section.

(6) The presumption may be rebutted by a preponderance of the evidence that: (a) The action was taken for other permissible reasons; and (b) the engaging or attempting to engage in activities protected by this chapter was not a motivating factor in the adverse action.