

SF58 - 0 - Warehouse Distribution Worker Safety

Chief Author: **Erin Murphy**
 Committee: **Labor**
 Date Completed: **1/11/2023 3:30:04 PM**
 Agency: **Labor and Industry Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Workers Compensation	-	200	178	178	178	178
Total	-	200	178	178	178	178
Biennial Total			378			356

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Workers Compensation	-	2	1.75	1.75	1.75
Total	-	2	1.75	1.75	1.75

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 1/11/2023 3:30:04 PM
Phone: 651-296-6055 **Email:** karl.palm@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Workers Compensation	-	200	178	178	178	178
Total		-	200	178	178	178
Biennial Total			378			356
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Workers Compensation	-	240	218	218	218	218
Total		-	240	218	218	218
Biennial Total			458			436
2 - Revenues, Transfers In*						
Workers Compensation	-	40	40	40	40	40
Total		-	40	40	40	40
Biennial Total			80			80

Bill Description

Section 1 of this bill establishes a new law in Minn. Statutes, chapter 182 relating to warehouse distribution worker safety. The first subdivision of this section creates definitions for “employee”, “employee work speed data”, “employer”, “warehouse distribution center”, and “quota”. Of note in this definition section is the definition of “employer” which is limited to a person who employs 100 or more employees at a single warehouse distribution center or 1,000 or more employees in one or more warehouse distribution centers in the state. The definition of warehouse distribution center is limited to establishments in five identified North American Industry Classification System (NAICS) codes.

Subdivision 2 of this section requires covered employers to provide written notices to employees that contain a description of quotas to which an employee is subject and any potential adverse employment action that could result from failure to meet the quota. This subdivision also prohibits an employer from taking adverse employment action against an employee for failure to meet a quota that was not disclosed to the employee.

Subdivision 3 of this section provides that an employee shall not be required to meet a quota that prevents meal or rest or prayer periods, use of restroom facilities, or occupational health and safety standards. This subdivision also prohibits an employer from taking adverse employment action for failure to meet a quota that does not allow a worker to utilize meal or rest or prayer periods or comply with occupational safety and health standards.

Subdivision 4 of this section establishes that employees have the right to request, and the employer must provide, a written description of each quota to which an employee is subject and the most recent 90 days of the employee’s own personal work speed data and aggregated work speed data similar employees at the same work site. It also provides that if an employer disciplines or discharges an employee for failure to meet a quota, the employer must provide the employee with a written copy of the most recent 90 days of the employee’s personal work speed data at the time of the discipline or discharge. An employer is prohibited from retaliating against an employee for requesting data under this subdivision.

Subdivision 5 requires the Commissioner of the Department of Labor and Industry (DLI) to open an investigation of violations under this section if a work site or employer is found to have an employee incidence rate in any given year, based on data reported to federal OSHA, of at least 30 percent higher than that year’s average incidence rate for the relevant NAICS code’s nonfatal occupational injuries and illnesses.

The employer must also hold its safety committee meetings as provided under section 182.676 monthly, for two consecutive years, until the work site or employer does not have an employee incidence rate 30 percent higher than the average yearly incidence rate for the relevant NAICS code.

Subdivision 6, paragraph (a) provides for enforcement of subdivision 2, paragraphs (a) to (c), subdivision 4, and subdivision 5 by Minnesota OSHA through its statutory enforcement and penalty authority.

Subdivision 6, paragraph (b) allows a current or former employee who is aggrieved by a violation to bring a civil cause of action for damages and injunctive relief to obtain compliance with this section and other equitable relief as determined by a court, including reinstatement with back wages, and costs and reasonable attorney fees. A cause of action must be commenced within one year of the date of injury.

Subdivision 6, paragraph (c) it clarifies that the enforcement section shall not be construed to prevent enforcement of occupational safety and health standards more restrictive than this section.

Section 2 of this bill is a severability provision that states that if any provision of this act is found to be invalid, the other provisions or applications of the act which can be given effect, will be effective.

Assumptions

Section 1 of this bill adds additional investigatory and enforcement authority for the Minnesota Occupational Safety and Health Administration (MNOSHA). Based on data from the Bureau of Labor Statistics (BLS), there are a total of 210 “warehouse distribution centers” meeting the following criteria:

Warehouse distribution centers with 100 or more workers in Minnesota

Categorized in one of the following North American Industry Classification System (NAICS):

- o 493110 for General Warehousing and Storage
- o 423 for Merchant Wholesalers, Durable Good
- o 424 for Merchant Wholesalers, Nondurable Goods; and
- o 454110 for Electronic Shopping and Mail-Order Houses
- o 492110 Couriers and Express Delivery Services

This bill will require MNOSHA to evaluate these 210 warehouse distribution centers annually to determine if they have a rate of injury of at least 30 percent higher than the year’s average incidence rate for the relevant NAICS code’s nonfatal occupational injuries and illnesses. MNOSHA would determine that rate by utilizing the relevant NAICS code’s nonfatal occupational injuries and illnesses by industry and case types, released by the U.S. Bureau of Labor Statistics (BLS). This work for MNOSHA is completely new and will require more analysis than is currently being done by MNOSHA staff, utilizing multiple databases. MNOSHA estimates the evaluations will take approximately six months (0.5 FTE) the first year to establish parameters, document the review process, perform follow-up assessments of employers, and reconcile the multiple sets of data in a consistent format. Each year after, MNOSHA estimates that 0.25 FTE would be needed to maintain and prepare the evaluations. A Management Analyst 2 (MAPE 7L) would complete this work.

Section 1, subdivision 2, paragraph (a) to (c) and subdivision 4 would add enforceable MNOSHA standards for covered employers that require certain notices and work speed data be provided to employees. While these standards could result in complaints and enforcement efforts, MNOSHA expects that almost all violations of this paragraph will be addressed through the required investigations outlined in Section 1 subdivision 5 (addressed below). It is anticipated that complaints involving covered employers not subject to the required investigation in subdivision 5 will be immaterial and considered other duties as assigned for current staff.

Section 1, Subdivision 2, paragraph (d) and subdivision 3 of this bill are not covered by the MNOSHA enforcement or penalty authority in subdivision 6, paragraph (a).

Based on the professional judgment of MNOSHA management, the Department anticipates that approximately 40% of the 210 covered employers will have an employee incidence rate yearly of at least 30 percent higher than the year’s average incidence rate for the relevant NAICS code’s nonfatal occupational injuries and illnesses, creating a need for an additional 84 MNOSHA enforcement inspections annually. Currently, the position of a Safety Investigator 2 requires the employee perform approximately 60 inspections annually. Therefore, MNOSHA will need 1.5 FTE Safety Investigator 2 (MAPE 11K) classification to complete the estimated 84 enforcement inspections annually.

As part of these inspections, MNOSHA will be issuing citations with monetary penalties to employers for failure to provide written materials to employees as discussed in Subd. 2 and Subd. 4 of section 1 of the bill. MNOSHA anticipates these penalties will be similar in nature to employers who receive a citation for not maintaining a material safety data sheet as required by 29 CFR 1910.1200(g)(8).

Of the 84 estimated inspections, approximately 50% (42) of the inspections will result in citations issued to the employer per the State Activity Mandated Measures (SAMM). Of the 42 citations issued, the Department anticipates that 60% (25) of the inspections with issued, will accept the citation, and pay the monetary penalty. This is based upon three fiscal years of data in the MNOSHA Operation Systems Exchange (MOOSE). The other 40% (17) of inspections that issue citations will contest the citation. Per SAMM data, DLI estimates that 90% (15) of contested citations will result in the employer paying the monetary penalty for the inspections.

Based upon the three fiscal years of data, the average monetary penalty amount per citation was \$1,012.

Expenditure and/or Revenue Formula

Management Analyst 2 (MAPE-7L)	2024	2025	2026	2027
FTE	0.5	0.25	0.25	0.25
Salary per FTE (Midpoint)	60,182	61,687	61,687	61,687
Fringe Benefits (35% of Salary)	21,064	21,590	21,590	21,590
Indirect (22.89% of Salary/Fringe)	18,597	19,062	19,062	19,062
Salary/Fringe/Indirect	49,922	25,585	25,585	25,585
Non-Personnel Services	3,662	2,097	2,097	2,097
Cumulative Cost	53,584	27,682	27,682	27,682

Safety Investigator 2 (MAPE-11K)	2024	2025	2026	2027
FTE	1.5	1.5	1.5	1.5
Salary per FTE (Midpoint)	67,587	69,277	69,277	69,277
Fringe Benefits (35% of Salary)	23,656	24,247	24,247	24,247
Indirect (22.89% of Salary/Fringe)	20,886	21,408	21,408	21,408
Salary/Fringe/Indirect	168,193	172,398	172,398	172,398
Non-Personnel Services	18,089	18,185	18,185	18,185
Cumulative Cost	186,282	190,583	190,583	190,583

Cumulative Expenditures	2024	2025	2026	2027
Management Analyst (MAPE-7L)	53,584	27,682	27,682	27,682
Safety Investigator 2 (MAPE-11K)	186,282	190,583	190,583	190,583
Cumulative Expenditures	239,866	218,265	218,265	218,265

Annual Citation Revenue	2024	2025	2026	2027
Annual Inspections	84	84	84	84
Annual Citations Issued	42	42	42	42
Non-Contested Citations - Due to DLI	25	25	25	25
Contested Citations	17	17	17	17
Contested Citations Issued - Due to DLI	15	15	15	15
Total Citations Due to DLI	40	40	40	40

Average Penalty Collected per Citation	1,012	1,012	1,012	1,012
Cumulative Revenue	40,480	40,480	40,480	40,480

Long-Term Fiscal Considerations

NA

Local Fiscal Impact

NA

References/Sources

NAICS	Number of Establishments
423XXX	100
424XXX	69
454110	19
492110	22
493110	19
Total	210

Agency Contact: Jim Krueger 651-284-5462

Agency Fiscal Note Coordinator Signature: Jacob Gaub

Phone: 652-284-5812

Date: 1/11/2023 3:22:48 PM

Email: jacob.gaub@state.mn.us