

HF2774 - 1E - Warehouse Distribution Worker Safety

Chief Author: **Emma Greenman**
 Committee: **Judiciary Finance and Civil Law**
 Date Completed: **2/17/2022 1:56:38 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	FY2021	FY2022	FY2023	FY2024
Workers Compensation	-	-	183	157	157
Total	-	-	183	157	157
Biennial Total			183		314

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Workers Compensation	-	-	2	1.75	1.75
Total	-	-	2	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: Darren Sheets **Date:** 2/17/2022 1:56:38 PM
Phone: 651-297-1423 **Email:** darren.sheets@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 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Workers Compensation	-	-	183	157	157
Total	-	-	183	157	157
Biennial Total			183		314
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Workers Compensation	-	-	232	206	206
Total	-	-	232	206	206
Biennial Total			232		412
2 - Revenues, Transfers In*					
Workers Compensation	-	-	49	49	49
Total	-	-	49	49	49
Biennial Total			49		98

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 and establishes an employee's right to bring a civil action to recover damages and obtain other relief.

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. 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 a given year, based on data reported to federal OSHA, of at least 30 percent higher than the 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 until, for two consecutive years, 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 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. It also allows for civil or criminal enforcement actions by the attorney general, a district attorney, or city attorney. It also allows a current or former employee to bring an action for injunctive relief to obtain compliance with this section and to recover costs and reasonable attorney fees. Finally, 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 3 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 252 "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 252 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 data bases. 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 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 can be absorbed by 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 judgement of MNOSHA management, the Department anticipates that approximately 40% of the 252 covered employers will have an employee incidence rate in a given year 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 100 MNOSHA enforcement inspections annually. Currently, the position of a Safety Investigator 2 requires the employee perform more than 60 inspections annually. Therefore, MNOSHA will need 1.5 FTEs Safety Investigator 2 (MAPE 11K) classification to complete the estimated 100 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 will be similar 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 100 estimated inspections, approximately 50% (50) per the State Activity Mandated Measures (SAMM) will result in a citation issued to the employer. Of the 50 citations issued, the Department anticipates that 60% (30) of citations issued will accept the citation and pay the monetary penalty, per the last three fiscal years of data in the MN OSHA Operation Systems Exchange (MOOSE). The other 40% (20) of employers will contest the citation. Per SAMM data, DLI estimates that 90% of contested citations will result in the employer paying the monetary penalty. In the last three fiscal years, the average monetary penalty amount per citation was \$1,012.

Expenditure and/or Revenue Formula

Management Analyst 2 - MAPE 7L	2022	2023	2024	2025
FTE	0	0.5	0.25	0.25
Salary per FTE (midpoint)	-	58,318	58,318	58,318
Fringe Benefits (35% of Salary)	-	20,411	20,411	20,411
Indirect (22.5% of Salary/Fringe)	-	17,714	17,714	17,714
Salary / Fringe / Indirect	-	48,222	24,111	24,111
Non-Personnel Services	-	3,482	1,741	1,741
Cumulative Cost	-	51,703	25,852	25,852

Safety Investigator 2 - MAPE 11K	2022	2023	2024	2025
FTE	0	1.5	1.5	1.5
Salary per FTE (midpoint)	-	64,728	64,728	64,728
Fringe Benefits (35% of Salary)	-	22,655	22,655	22,655
Indirect (22.50% of Salary/Fringe)	-	19,661	19,661	19,661
Salary / Fringe / Indirect	-	160,566	160,566	160,566
Non-Personnel Services	-	19,775	19,775	19,775

Cumulative Cost	-	180,341	180,341	180,341

Cumulative Expenditures	2022	2023	2024	2025
Management Analyst 2	-	51,703	25,852	25,852
Safety Investigator 2	-	180,341	180,341	180,341
Cumulative Expenditures	-	232,044	206,193	206,193

Penalty Revenue	2022	2023	2024	2025
Non-Contested Citations (30)	-	30,360	30,360	30,360
Contested Citations (18)	-	18,216	18,216	18,216
Total Penalty Revenue	-	48,576	48,576	48,576

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Jacob Gaub

Agency Fiscal Note Coordinator Signature: Jacob Gaub

Phone: 651-284-5812

Date: 2/17/2022 1:50:45 PM

Email: jacob.gaub@state.mn.us