

HF36 - 2E - Warehouse Distribution Worker Safety

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 Committee: **Workforce Development Finance**
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 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	-	102	78	78	78	78
Total	-	102	78	78	78	78
Biennial Total			180			156

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Workers Compensation	-	1	.75	.75	.75
Total	-	1	.75	.75	.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:** 3/21/2023 9:26:10 AM
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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	-	102	78	78	78	78
Total	-	102	78	78	78	78
Biennial Total			180			156
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Workers Compensation	-	115	91	91	91	91
Total	-	115	91	91	91	91
Biennial Total			206			182
2 - Revenues, Transfers In*						
Workers Compensation	-	13	13	13	13	13
Total	-	13	13	13	13	13
Biennial Total			26			26

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”, “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 250 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 worksite. 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. For this subdivision, the definition of employee is limited to nonexempt employees performing warehouse work on the property of a warehouse distribution center and does not include a nonexempt employee performing solely manufacturing, administrative, sales, accounting, human resources, or driving work at a warehouse distribution center.

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) clarifies that the enforcement section shall not be construed to prevent local enforcement of occupational safety and health standards more restrictive than this section.

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 71 “warehouse distribution centers” meeting the following criteria:

- o Warehouse distribution centers with 250 or more workers in Minnesota
- o 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 71 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 judgement of MNOSHA management, the Department anticipates that approximately 40% of the 71 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 28 MNOSHA enforcement inspections annually. Currently, the position of a Safety Investigator 2 requires the employee perform approximately 60 inspections annually. Therefore, MNOSHA will need 0.5 FTEs Safety Investigator 2 (MAPE 11K) classification to complete the estimated 28 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 28 estimated inspections, approximately 50% (14) of the inspections will result in citations issued to the employer per the State Activity Mandated Measures (SAMM). Of the 14 citations issued, the Department anticipates that 60% (8) 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% (6) of inspections that issue citations will contest the citation. Per SAMM data, DLI estimates that 90% (5) 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	0.5	0.5	0.5	0.5
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	56,064	57,466	57,466	57,466
Non-Personnel Services	6,030	6,062	6,062	6,062
Cumulative Cost	62,094	63,528	63,528	63,528

Cumulative Expenditures	2024	2025	2026	2027
Management Analyst 2 (MAPE - 7L)	53,584	27,682	27,682	27,682
Safety Investigator 2 (MAPE - 11K)	62,094	63,528	63,528	63,528
Cumulative Expenditures	115,678	91,210	91,210	91,210

Citation Revenue	2024	2025	2026	2027
Annual Inspections	28	28	28	28
Annual Total Citations Issued	14	14	14	14
Non Contested Citations Issued - Due to DLI	8	8	8	8
Contested Citations	6	6	6	6
Contested Citations Issued - Due to DLI	5	5	5	5
Total Citations Due to DLI	13	13	13	13
Average Penalty collected per Citation	1,012	1,012	1,012	1,012
Cumulative Revenue	13,156	13,156	13,156	13,156

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

NAICS	Number of establishments		
423X XX	22		
424X XX	19		
45411 0	7		
49211 0	13		
49311 0	10		
Total	71		

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