S.8922-A (Ramos) / A.10020-A (Joyner)

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BILL

S.8922-A (Ramos) / A.10020-A (Joyner)

SUBJECT

Establishes the Warehouse Worker Protection Act

DATE

June 01, 2022

OPPOSE

The Business Council, on behalf of its 3,200 members opposes this bill as it is duplicative of the enforcement powers of the Occupation Safety and Health Act (OSHA), as creating a new private right of action based on vague standards, as creating a never-ending presumption of retaliation, and is based on fundamental misunderstandings of performance metrics.

New York State is home to thousands of warehouses that are essential to maintaining our complex supply chain. We depend on them to keep store shelves stocked with food and everyday household items and deliver packages to our doorsteps.

But not all warehouses are the same. Some package and store fresh, healthy food for farmers before it makes it to neighborhood grocery stores and restaurants. Others serve the vital need of distributing medical supplies to hospitals and pharmacies. And some warehouses supply automotive parts or store and distribute packages for small businesses.

S.8922-A (Ramos)/A.10020-A (Joyner) lumps the entire warehousing industry together - increasing the potential for frivolous lawsuits and imposing excessive administrative burdens which will hurt small businesses and farmers who are less capable of keeping up with rising costs. Ultimately, the ripple effects of S.8922-A (Ramos)/A.10020-A (Joyner) will cost New York State jobs.

This bill starts with a false premise – that workplace performance metrics are inherently unsafe and correlated with workplace injuries. Business Council members take workplace safety seriously but cannot operate without estimates for the output of any given employee or facility. Indeed, most jobs, across all industries, have some type of performance or production measurement to assist the employer in meeting the goals and obligations of the business to customers and business partners. There is nothing inherently nefarious about the use of such performance measures, in logistics or any other industry.

In addition, OSHA already requires employers to provide employment and a

workplace which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Warehouse employers are not exempt from such requirements. An employee who believes their employer is not following these long-established laws may report that violation and be protected from retaliation for doing so.

Nor are productivity metrics inherently punitive in nature, as assumed by S.8922-A (Ramos)/A.10020-A (Joyner). Productivity metrics are generally set based on past performance of employees in the aggregate, not an arbitrary, impossible standard set by the employer. Moreover, an employer has no incentive to set unreachable, high standards or terminate large numbers of employees for missing a quota. First, unreachable standards lead to inaccurate workflow projections, leading to logistical errors and embarrassing failures. Second, setting unreachable standards would result in widespread discipline of good employees, reduced morale, and increased turnover, which are counterproductive and expensive. Employee turnover also negatively affects productivity, institutional knowledge, volume of product being moved in a facility, not to mention employee morale and motivation. Put simply - it does not make financial sense for a company to impose performance metrics that lead to high rates of injury as suggested by this bill.

Additionally, this bill includes a presumption of retaliation if an employer takes any adverse action within 90 days of an employee exercising any right under this part. (See §786). This is extremely problematic, as it could create a never-ending presumption of retaliation. For example, under this bill an employee is entitled to, and can request data related to the performance metrics applicable to their position. (See §785). As an initial matter, it appears that the compulsory notice to the employee might trigger this presumption automatically on a near-daily basis, meaning that every employee at the facility would be constantly protected by a rebuttable presumption.

Putting that notice aside, an employee could easily voluntarily trigger a never-ending presumption pursuant to §785. If an employee makes such a request every three months – which can be done orally – that employee would have a perpetual presumption that any disciplinary action taken was retaliatory. In the event of serious misconduct and termination, the employer would then be forced to either pay the cost of retaining attorneys to demonstrate that discipline/termination was not retaliatory, and/or to pay to settle any such allegations by the employee. This presumption creates a constant bargaining chip for the employee and against the employer regardless of whether any actual retaliation occurred.

Under this bill, many employers will be forced to issue a stream of notices

depending on the day, shift, and position of every individual worker. Moreover, its provisions will not create any new protections for workers, who already must be provided with a safe workplace and who cannot be retaliated against for asserting health and safety violations. Finally, this bill will create litigation for employers via a private right of action and an all-encompassing presumption of retaliation.

Particularly now, as New York's economy struggles and warehouses are essential to the distribution of necessary goods, such burdens on workplaces without any appreciable benefit just do not make sense.

For these reasons, we are opposed to S.8922-A (Ramos)/A.10020-A (Joyner).