

AB 701 LEGISLATIVE REPORT
THE BUREAU OF FIELD ENFORCEMENT
CALIFORNIA LABOR COMMISSIONER'S OFFICE

DEPARTMENT OF INDUSTRIAL RELATIONS



EXECUTIVE SUMMARY

The Labor Commissioner is tasked with engaging in coordinated and strategic enforcement efforts to enforce the provisions of AB 701 (Stats. 2021, ch. 197) and educating workers and employers about their rights and obligations under AB 701 to increase compliance.

Since AB 701 went into effect on January 1, 2022, the Labor Commissioner's Office (LCO) has undertaken multiple initiatives to both educate workers and employers and enforce the law, working hand in hand with partner enforcement agencies such as the Division of Occupational Safety and Health (Cal/OSHA), the Employment Development Department (EDD), and the Division of Workers Compensation (DWC).

As described below, LCO's outreach and enforcement has included contact letters, requests for information, on-site compliance visits, review and analysis of employer records, joint inspections with Cal/OSHA, and ongoing in-depth inspections of major warehouse employers. Enforcement actions will continue in 2023.

Introduction and Background

Assembly Bill 701 (AB 701) created 13 new sections of the Labor Code regulating the use of quotas by Warehouse Distribution Centers (as defined by Labor Code section 2100). The law went into effect on January 1, 2022.

The law covers employers who directly or indirectly control 100 or more employees at a single warehouse distribution center, or 1,000 or more employees at multiple warehouse distribution centers in California. By January 30, 2022, the law requires covered employers provide each employee with a written description of each quota the employee is subject to. This description must include the number of tasks to be performed or materials that must be produced or handled within a time period, and any potential adverse employment action that could result from failing to meet the quota. This information must be given to all new employees when hired. (Lab. Code § 2101.)

Under the law, an employee cannot be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities (including reasonable travel time to and from bathrooms), or occupational health and safety standards. A quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards is unlawful and may not be the basis for an adverse employment action. A quota may be unlawful if it directly or indirectly precludes employees from exercising these statutory rights. A quota may also be unlawful if it is so high that taking meal and rest breaks, going to the bathroom, or exercising rights under occupational health and safety standards will prevent an employee from meeting the quota.

The Labor Commissioner is tasked with engaging in coordinated and strategic enforcement efforts to enforce the provisions of AB 701 and educating workers and employers about their rights and obligations under AB 701 to increase compliance.

Labor Code section 2107, subdivision (a)(3)(A) requires the Labor Commissioner to report to the Legislature: the number of claims filed with the commissioner under Labor Code section 2100 et seq.; data on warehouse production quotas in warehouses in which the Division of Workers' Compensation has indicated that annual employee injury rates are above the industry average; and the number of investigations undertaken and enforcement actions initiated, per employer.

The Labor Commissioner's Office (LCO), also known as the Division of Labor Standards Enforcement, is a division of the California Department of Industrial Relations. The LCO provides a wide variety of essential services for California workers and employers, including adjudication of wage claims, inspections of workplaces, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of businesses, investigations of retaliation complaints, criminal prosecution for wage theft, and education of the public on labor laws. The mission of the LCO is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, the division puts earned wages into workers' pockets and helps level the playing field for law-abiding employers.

Claims Filed with the Labor Commissioner under Labor Code section 2100 et seq.

If an employee believes they are subject to an unlawful quota, or if a member of the public believes that the warehouse employer is violating the provisions of AB 701, they can file a Report of Labor Law Violation (RLLV) with the Labor Commissioner’s Bureau of Field Enforcement, a program within the LCO that conducts field investigations.

Employees who have suffered adverse employment actions related to unlawful quotas can file a Retaliation Complaint with the LCO.

If a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any applicable occupational health and safety laws, they have the right to request, and the employer must provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee’s own personal work speed data. (Lab. Code § 2104.) If an employer fails to comply with such a request, an employee can file an individual wage claim for penalties under Labor Code section 1198.5. The employee’s request must be in writing and the employer must provide the records within 30 days per Labor Code section 1198.5. A violation will subject the employer to a \$750 penalty.

As of December 19, 2022, the LCO received 168 RLLVs alleging violations of AB 701 provisions. Of the 168 reports, 75 reports alleged that the quota prevents compliance with meal periods, 93 reports alleged that the total quota prevents compliance with occupational health and safety standards, 87 reports alleged that the total quota prevents compliance with use of bathroom facilities, and 68 reports alleged that quota descriptions are not being provided to workers.¹

Reports of Labor Law Violations that allege violations of AB 701 Provisions

Total RLLVs	Quota prevents compliance with meal periods	Quota prevents compliance with occupational health and safety standards	Quota prevents compliance with use of bathroom	Description of Quota not provided
168	75	93	87	68

As of December 21, 2022, the Retaliation Complaints Investigation (RCI) unit received two complaints alleging violations of AB 701. Both complaints are currently under investigation.

Enforcement and Outreach Efforts by the Labor Commissioner’s Office:

Since AB 701 went into effect on January 1, 2022, the LCO has undertaken multiple initiatives to conduct both education and outreach as well as enforcement of the law, working hand in hand with partner enforcement agencies, such as the Division of Occupational Safety and Health (Cal/OSHA), the

¹ A single report of labor law violation can report multiple violations. For example, a report can allege that a quota prevents compliance with meal periods and use of bathroom.

Employment Development Department (EDD), and the Division of Workers Compensation (DWC). (Lab. Code § 2107 (a)(2).)

Outreach

The LCO has conducted a significant amount of outreach to both employers and workers to educate the public about AB 701.

The LCO created a Frequently Asked Questions section on Warehouse Quotas (AB 701) and published it on its website. The Labor Commissioner's Office also updated its Business Engagement Program to incorporate information about AB 701.

In early-February 2022, the LCO mailed information letters to warehouse employers throughout California that explained their obligations under the new law and invited them to an employer training. The LCO subsequently held an employer training on AB 701 requirements on February 28, 2022.

The LCO also conducted numerous outreach programs for workers. This included joining with the Warehouse Workers Resources Center (WWRC) to do worker outreach on AB 701 at resource fairs for warehouse workers in the Inland Empire on December 4, 2021, and August 6, 2022.

The LCO also conducted training sessions for warehouse workers about their rights under AB 701 on January 25, 2022 with WWRC and the Los Angeles County Federation of Labor. In addition, on July 8, 2022 the LCO conducted a training in coordination with WWRC for 100 students in Moreno Valley Unified School District that provided information about their rights at work, including under AB 701.

Enforcement

Working with partner enforcement agencies EDD and Cal/OSHA, the LCO compiled a list of warehouse employers that were likely subject to the provisions of AB 701. This list combined data from EDD, workplace injury data from Cal/OSHA, and RLLVs submitted to the LCO.

The combined list included 1,105 warehouse employers. Contact letters were sent to all 1,105 employers in September and October 2022. The contact letters explained the provisions of AB 701, the LCO's enforcement authority, and requested copies of the quota information required by Labor Code section 2101, in addition to other identifying information for the employer.

The letters also asked employers that believe that the provisions of AB 701 do not apply to their businesses to explain whether their employees must maintain a certain speed, complete any task within a time period, or complete tasks as calculated by computer, and whether they are subject to any adverse employment action for failing to do so.

The LCO received responses from 361 employers. LCO is currently reviewing these responses to determine whether further inquiries and/or potential enforcement actions are warranted.

For the employers that failed to respond, the LCO is currently conducting compliance visits to each of the employers.

These compliance visits consist of on-site visits by an investigator from the field enforcement unit. During these visits, the investigator will identify the reason for the visit and issue Orders to Appear (OTA). OTAs are document requests for information such as the quota information that the employer is required to provide under AB 701.

As of December 22, 2022, LCO investigators made compliance visits to 654 employers and issued 550 document requests.² The LCO is expected to make an additional 90 compliance visits and will continue to make compliance visits to the remaining businesses and review documents received in response to the OTAs. They will determine necessary follow-up-actions, which may include in-depth investigations.

The LCO will be conducting in-depth investigations of employers who fail to comply with the document requests to determine their compliance with AB 701 and other labor laws

2022 AB 701 Compliance Operation³

Employers mailed contact letters	Employers who provided responses to contact letters	In-person compliance visits to employers	Document requests issued after compliance visits	Remaining compliance visits to employers
1,105	361	654	550	90

The Labor Commissioner has also conducted multiple joint inspections with Cal/OSHA of warehouse facilities to determine compliance with provisions of AB 701 and other labor laws, including workplace safety laws. Presently, the Labor Commissioner has two ongoing in-depth investigations of major warehouse employers to determine their compliance with AB 701.

The Labor Commissioner will continue enforcement actions in 2023 to ensure compliance with AB 701. Enforcement priorities will be informed by reviewing both responses to the document requests and reports of labor law violations.

Warehouse Distribution Centers with High Injury Rates

The LCO created a list of warehouse distribution centers with injury rates at least 1.5 times the average rate using data from the U.S. Bureau of Labor Statistics. The list was completed in November 2022.

DWC also completed its warehouse industry injury rate report in December 2022 and the report was shared with the LCO. Both reports are being reviewed by the LCO to determine whether AB 701 enforcement actions are warranted. Given the timing of this report, however, data on quotas at these warehouses is not yet available.

² For various reasons, the LCO did not issue a document request to every employer. For example, the investigators may determine that the business has closed, that there may be a different business on site, or the business is not a warehouse employer.

³ All numbers provided are based on data current as of December 22, 2022.

The LCO received 361 responses to the contact letters. The Labor Commissioner also issued 550 additional document requests after compliance visits and will be making approximately 90 additional compliance visits. The LCO will be conducting an in-depth analysis of the responses to the contact letters and the document requests. This analysis will cross-reference the warehouse injury industry rate reports from DWC and the LCO's internal list of warehouse distribution centers with injury rates at least 1.5 times the average rate. The results of the analysis will be used to inform future LCO investigations, including by reviewing the quotas for warehouse employers with high industry injury rates.