

S.5081-C (Ramos)/A.8907-A (Bronson)

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<p>BILL</p> <p>S.5081-C (Ramos)/A.8907-A (Bronson)</p>
<p>SUBJECT</p> <p>Establishes the warehouse worker injury reduction program</p>
<p>DATE</p> <p>May 29, 2024</p>
<p>OPPOSE</p>

This bill purports to address the injury rate for warehouse workers in New York State. The Business Council, on behalf of its more than 3,200 members, opposes this bill.

This bill imposes significant administrative and financial obligations on employers that are duplicative of already existing federal employee safety obligations under the Occupational Safety and Health Act (OSHA). Imposing such significant additional burdens will not make workers safer and will only contribute to the perception of New York not being “business friendly.”

Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, employers are required to provide their employees with a place of employment that "is free from recognized hazards that are causing or likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard. This includes musculoskeletal and repetitive stress injuries found in warehouses.

Consequently, any employer who knowingly exposes a worker to such hazards as a condition of employment is already liable for significant fines and penalties under current federal law.

OSHA requires all employers to engage in certain activities to ensure employee safety in the workplace. These include:

- 1. Management Commitment and Employee Involvement.** The manager or management team leads the way, by setting policy, assigning and supporting responsibility, setting an example and involving employees.
- 2. Worksite Analysis.** The worksite is continually analyzed to identify all existing and potential hazards.

3. **Hazard Prevention and Control.** Methods to prevent or control existing or potential hazards are put in place and maintained.
4. **Training for Employees, Supervisors and Managers.** Managers, supervisors and employees are trained to understand and deal with worksite hazards.

In the area of Hazard Prevention and Control, employers must take steps to mitigate risks to musculoskeletal and repetitive stress injuries. These steps include:

1. **Engineering Controls** – Employers must take steps, if possible, to remove the risk entirely from the job.
2. **Administrative Controls** – if the risk is an essential function of the job, the employer must develop and implement workplace rules that ensure employees are protected.
3. **Personal Protective Equipment** – And as a last line of defense, employers must provide personal protective equipment (PPE) sufficient to protect the employee from known hazards.

S.5081-C (Ramos)/A.8907-A (Bronson) uses identical language found in existing OSHA standards and guidance. Not only does this bill not improve upon existing requirements to protect employees, but it falls short of current federal law. For example, the bill only provides these protections to employees in warehouses that meet certain employment thresholds (100 or more employees). All workers are entitled to protections provided by current federal law. In fact, OSHA is currently implementing a National Emphasis Program on warehousing to increase compliance and enforcement of current guidelines.

New York employers want to protect the safety and well-being of their employees and take seriously their obligations under OSHA. These bills do nothing to improve employee safety and only provide unnecessary and duplicative administrative and financial burdens on employers already struggling under a difficult business environment.

For these reasons, The Business Council opposes these bills.