
ILLINOIS BUSINESS LAW JOURNAL

ROBOTS DON'T TAKE BATHROOM BREAKS: ANALYZING THE APPLICABILITY OF CALIFORNIA'S A.B. 701 LEGISLATION IN ILLINOIS

❖ Note ❖

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I. INTRODUCTION

On September 22, 2021, California Governor Gavin Newsom signed into law A.B. 701¹ intending to further protect the health and safety of warehouse workers in the state of California.² Authored by California Assemblywoman Lorena Gonzalez, A.B. 701 “strengthen[s] warehouse workers' rights against arbitrary and abusive work quota systems by requiring companies to disclose work quotas to employees and state agencies, and establish statewide standards to minimize on-the-job injuries for employees working under strict quotas.”³ Although the bill places restrictions on all single warehouse distribution center with 100 or more employees or 1,000 or more employees at one or more warehouse distribution centers in the state,⁴ the bill specifically targets Amazon Inc. and their “extreme high-churn model, continually replacing workers in order to sustain dangerous and grueling work pace demands.”⁵ To achieve its purpose, A.B. 701 is the first state legislation⁶ that provides protections from AI monitoring systems that thwart basic worker rights such as rest periods, bathroom breaks, and safety.⁷

Placing a target on Amazon and the entire warehousing industry is a substantial move for the California legislature. California relies heavily on the warehousing market for a significant number of

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¹ CA LEGIS 197 (2021), 2021 Cal. Legis. Serv. Ch. 197 (A.B. 701).

² *New California Law Expands Protections for Warehouse Workers*, SAFETY AND HEALTH MAG. (Sept. 29, 2021), <https://www.safetyandhealthmagazine.com/articles/21762-new-california-law-expands-protections-for-warehouse-workers>.

³ Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3 (2021).

⁴ Cal. Lab. Code § 2100(f).

⁵ Assem. Bill No. 701, CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 2.

⁶ *Amazon's AI Managers Targeted in California Legislation Meant to Empower Warehouse Workers*, Morning S. CHINA MORNING POST (Dec. 21, 2021), https://www.scmp.com/tech/big-tech/article/3161647/amazons-ai-managers-targeted-california-legislation-meant-empower?utm_source=rss_feed.

⁷ Cal. Lab. Code § 2103(a).

blue-collar jobs.⁸ As of 2022, Amazon alone has created more than 170,000 jobs in California.⁹ This is an increase of over 20,000 positions during the pandemic,¹⁰ leading some experts to fear the bill will result in, “some of these warehouse distribution centers mov[ing] out of the state of California”¹¹, ultimately, causing a loss of much need blue-collar jobs.¹² However, California, as a port state, has seen massive investment from the warehousing market during the pandemic, all while A.B. 701 was being proposed and passed.¹³ Major international companies have announced new distribution centers in 2021.¹⁴ Likewise, as of 2021, California has 35 current or planned Amazon warehouses - the most of any state - with almost 32 million square feet of warehouse space.¹⁵ As such, imposing protections on the warehouse industry has seemingly not slowed the growth.

Illinois, like California, relies heavily on warehousing industry and Amazon to provide jobs for blue-collar workers.¹⁶ Amazon employs over 43,000 individuals in Illinois,¹⁷ and Illinois contains the third most square footage of warehouse space with nearly 15 million square feet of space.¹⁸ Although Illinois does not provide an AI monitoring protection currently for employees, the state Legislature has also taken early steps to provide AI monitoring protections to jobseekers.¹⁹ However, application of a warehousing protection bill in Illinois must come with some hesitation. Illinois is not a port state and nearby mid-western states provide similar strengths in the warehousing industry.²⁰ New legislation could push companies away from the state.

This note will argue the need for Illinois to further develop its warehouse worker protections by taking legislative action similar to that of California under A.B. 701. Part II discusses the warehouse industry, the growth of Amazon and the usage of AI technology, the status of federal worker AI Monitoring protections, and the current protections against AI monitoring provided under Illinois law. Part III will analyze the effectiveness of the working provisions under A.B. 701 and the potential effects A.B. 701 will have on the market in California. Part IV will argue that adopting similar legislation in Illinois should be done but with some hesitation.

⁸ Arkan Somo, *Opinion: Assembly Bill 701 Would Force E-Commerce Warehouse Jobs Out of California*, TIMES OF SAN DIEGO (June 9, 2021), <https://timesofsandiego.com/opinion/2021/06/09/assembly-bill-701-would-force-e-commerce-warehouse-jobs-out-of-california/>.

⁹ Todd Bishop, *Amazon Tops 1M U.S. Employees*, GEEKWIRE (Feb. 9, 2022), <https://www.geekwire.com/2022/amazon-tops-1m-u-s-employees/>.

¹⁰ Avi Asher-Schapiro, *Amazon Labor Conditions Under Scrutiny by California Lawmakers*, REUTERS (Sept. 8, 2021), <https://www.reuters.com/article/us-usa-amazon-com-lawmaking/amazon-labor-conditions-under-scrutiny-by-california-lawmakers-idUSKBN2G41U1>.

¹¹ *Id.*

¹² *Id.*

¹³ *Why Is IT Impossible to Find California Warehouse Space?*, WEBER LOGISTICS (Mar. 17, 2022), <https://www.weberlogistics.com/blog/california-logistics-blog/find-california-warehouse-space>.

¹⁴ Somo, *supra* note 8.

¹⁵ *Mapping Amazon Warehouses: How Much Square Footage Does Amazon Own?*, BIG RENTZ (JAN. 7, 2022), <https://www.bigrentz.com/blog/amazon-warehouses-locations#:~:text=Methodology-,States%20With%20the%20Most%20Amazon%20Warehouses,warehouses%2C%20also%20called%20fulfillment%20centers>.

¹⁶ Kari Lydersen, *Warehouse Workers Are on the Front Lines of the Covid Crisis. They're Worried They'll Be Passed Over for the Vaccine*, INTHESSETIMES (Dec. 10, 2020), <https://inthesetimes.com/article/warehouse-workers-for-justice-covid-vaccine-illinois-temporary-low-wage>.

¹⁷ Bishop, *supra* note 9.

¹⁸ BIG RENTZ, *supra* note 15.

¹⁹ Lisa Burden, *Illinois Law Regulating Use of AI in Hiring Goes Into Effect*, ZENEFITS (Feb. 3, 2020), <https://www.zenefits.com/workest/illinois-law-regulating-use-of-ai-in-hiring-goes-into-effect/>; *See also* 820 Ill. Comp. Stat. Ann. 42/1.

²⁰ BIG RENTZ, *supra* note 15.

II. BACKGROUND

A. Warehouse Industry's movement towards AI monitoring

A.B. 701 impacts all single warehouse distribution center with 100 or more employees or 1,000 or more employees at one or more warehouse distribution centers in the state.²¹ The warehouse industry is particularly in need of protection because warehouses injuries often “involve musculoskeletal injuries: sprains, strains, and tears to the shoulder, back, knee, wrist, and foot.”²² These injuries are common in highly repetitive, forceful exertions—bending, twisting, and awkward postures—that are common to most warehouse roles.²³ “Further, the types of severe injuries that workers are suffering from are injuries that can stay with workers for the rest of their lives, leading to chronic pain and an elevated risk of reinjury and long-term disability.”²⁴ “According to U.S. Census data, 27 percent of workers in the warehousing industry are younger than 25 years old, and 56 percent of warehouse workers are younger than 35 years old.”²⁵ Severe injuries amongst this age group is particularly damaging to the states workforce.²⁶

Although affecting a large portion of the warehouse industry, Amazon is an obvious target for legislative change as it plays a crucial part in the California warehouse market.²⁷ As of 2022, Amazon is the second-largest private employer in the US and its massive growth set a standard for the rest of the industry.²⁸ Amazon employs a total of 1.1 million people in the U.S, up 18% from 935,000 a year earlier.²⁹ That amounts to nearly one out of every 153 employed workers in the US.³⁰ However, this massive number of employees is not because of high retention rates. The turnover rate of hourly employees is 150%.³¹ Before the pandemic, Amazon lost 3% of its warehouse staff each week.³² This is nearly double the rate of similar businesses.³³ That works out to replacing the entire work force every eight months.³⁴ And this seems to be by design. David Niekerk, a former member of Amazon that helped design the company's warehouse-management system, told the New York Times that founder Jeff Bezos' “believed that people were inherently lazy” and “that our nature as humans is to expend as little energy as possible to get what we want or need.”³⁵ “That

²¹ Cal. Lab. Code § 2100(f).

²² Deborah Berkowitz & Irene Tung, *Amazon's Disposable Workers: High Injury and Turnover Rates at Fulfillment Centers in California*, NAT'L EMP. LAW PROJECT (Mar. 6, 2020), https://www.nelp.org/publication/amazons-disposable-workers-high-injury-turnover-rates-fulfillment-centers-california/#_edn7.

²³ *Id.*

²⁴ *Id.*

²⁵ Transportation and Warehousing: Summary Statistics for the U.S., States, and Selected Geographies: 2017, U.S. CENSUS BUREAU (2017), <https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-48-49.html>.

²⁶ Berkowitz & Tung, *supra* note 22.

²⁷ Asher-Schapiro, *supra* note 10.

²⁸ David Brancaccio et al., *Is Amazon's High Turnover a Huge Red Flag or The Secret to Its Dominance?*, MARKETPLACE (June 18, 2021), <https://www.marketplace.org/2021/06/18/amazon-workforce-turnover-dominance-investigation/>.

²⁹ Bishop, *supra* note 9.

³⁰ Dominick Reuter, *1 Out of Every 153 American Workers is an Amazon Employee*, INSIDER (July 30, 2021), <https://www.businessinsider.com/amazon-employees-number-1-of-153-us-workers-head-count-2021-7>.

³¹ Brancaccio et al., *supra* note 28.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Jodi Kantor et al., *The Amazon That Customers Don't See*, N.Y. TIMES (June 15, 2021), <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html>.

conviction was embedded throughout the business, from the ease of instant ordering to the pervasive use of data to get the most out of employees.”³⁶

To achieve high turnover rates, Amazon warehouses created an environment that increased pressure to meet quotas.³⁷ Since then, Amazon has outsourced many of the roles traditionally played by human managers to machines.³⁸ Productivity demands began to be tracked via automated tracking and termination processes as early as 2019.³⁹ Amazon’s tracking system monitors the rates of each individual associate’s productivity.⁴⁰ This system then “determines and automatically generates any warnings or terminations regarding quality or productivity without input from supervisor.”⁴¹

Increasingly aggressive production demands ultimately are putting the bodies of employees at risk for the convenience of customers.⁴² A 2020 report by the union-backed Strategic Organizing Center found that the serious injury rate for Amazon workers last year was more than double the rest of the warehouse sector.⁴³ The injury rates were found to be 80% higher than the rest of the industry.⁴⁴

Amazon is not alone in its usage of AI technology to monitor employees’ productivity. Rideshare apps like Uber utilize AI technology to rank drivers based on their star rankings.⁴⁵ Uber’s systems will even go as far as to remove the driver for receiving too many low ratings.⁴⁶ Likewise, as Covid-19 shifted work into the home, many companies have begun to experiment with AI monitoring.⁴⁷ Companies can monitor employees’ work productivity by tracking emails sent, collaboration tools, web browsing, video tracking, attention tracking, and key-logging.⁴⁸

When major industry innovators begin moving towards AI monitoring, others are sure to follow. AI technology can be an effective tool to explore productivity in the workplace,⁴⁹ however, AI monitoring technology in the warehouse industry is being used to pursue aggressive quotas with the intention of fast turnover rates amongst young employees and is resulting in increased injuries to a particularly vital workforce. This abuse of innovation begs the question as to how Congress plans to address worker protections from over-aggressive AI technology productivity quotas.

³⁶ *Id.*

³⁷ Will Evans, *Amazon’s Warehouse Quotas Have Been Injuring Workers for Years. Now, Officials Are Taking Action*, REVEAL NEWS (Jan. 19, 2022), <https://revealnews.org/article/amazons-warehouse-quotas-have-been-injuring-workers-for-years-now-officials-are-taking-action/>.

³⁸ Spencer Soper et al., *Amazon’s Machine Bosses Are Targeted in California Legislation*, BLOOMBERG LAW (Dec. 30, 2021), https://www.bloomberglaw.com/bloomberglawnews/safety/X6GLOV40000000?bna_news_filter=safety.

³⁹ Colin Lecher, *How Amazon Automatically Tracks and Fires Warehouse Workers for ‘Productivity’*, VERGE (Apr. 25, 2019), <https://www.theverge.com/2019/4/25/18516004/amazon-warehouse-fulfillment-centers-productivity-firing-terminations>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Evans, *supra* note 37.

⁴³ *Primed For Pain: Amazon’s Epidemic of Workplace Injuries*, STRATEGIC ORG. CTR. (May 2020), <https://thesoc.org/wp-content/uploads/2021/02/PrimedForPain.pdf>.

⁴⁴ *Id.*

⁴⁵ Leonie Carter et al., *Your Boss is Watching: How AI-Powered Surveillance Rules the Workplace*, POLITICO (May 27, 2021), <https://www.politico.eu/article/ai-workplace-surveillance-facial-recognition-software-gdpr-privacy/>.

⁴⁶ *Id.*

⁴⁷ Mathew Finnegan, *Rise in Employee Monitoring Prompts Calls for New Rules to Protect Workers*, COMPUTERWORLD (Nov. 30, 2021), <https://www.computerworld.com/article/3642712/rise-in-employee-monitoring-prompts-calls-for-new-rules-to-protect-workers.html>.

⁴⁸ *Id.*

⁴⁹ *Id.*

B. Federal AI Monitoring protections

Congress has largely avoided addressing any protections in growing technological spaces.⁵⁰ The lack of comprehensive Federal legislation tackling a growing technology, like AI monitoring, is a race legislation often fails to win.⁵¹ Moore's Law on the doubling of computing power every 18-24 months has driven the growth of technology to the extent that congressional action is often a band-aid that will be outdated in months.⁵²

As a starting point of addressing AI technology, in 2016 the Equal Employment Opportunity Commission (EEOC) held a public meeting to hone in on employers using AI technology to discriminate in the employment process.⁵³ Unsurprisingly in 2020, the EEOC has failed to create any written guidance.⁵⁴ This resulted in ten U.S. Senators authoring a letter pleading for the agency to focus on employers' use of artificial intelligence, machine learning, and other hiring technologies that may result in discrimination.⁵⁵ The senators argued specifically for protections from "tools used in the employee selection process to manage and screen candidates after they apply for a job", "new modes of assessment, such as gamified assessments or video interviews that use machine-learning models to evaluate candidates," "general intelligence or personality tests," and "modern applicant tracking systems."⁵⁶ Nevertheless, despite what federal inquiry there has been, neither Congress nor an administrative agency has promulgated laws addressing the issue.

C. Illinois AI Monitoring Protections

Since no Federal regulations have been passed to protect employees, states have chosen to pass their own legislation. In August of 2019, Illinois Gov. J.B. Pritzker signed the "Illinois Artificial Intelligence Video Interview Act" ("Video Interview Act") into law.⁵⁷ The "Video Interview Act" is a job applicant protection bill that "places requirements on employers who video record interviews with job applicants and then use an artificial intelligence system to analyze the responses, demeanor, and mannerisms of the prospective employees."⁵⁸ The bill requires "disclosure of the use of artificial intelligence analysis."⁵⁹ "An employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos" must "(1) [n]otify each applicant before the interview that artificial intelligence may be used"; "(2) [p]rovide each applicant with information before the interview explaining how the artificial intelligence works"; and (3) [o]btain,

⁵⁰ Cameron F. Kerry, *Protecting Privacy in an AI-Driven World*, BROOKINGS (Feb. 10, 2020) <https://www.brookings.edu/research/protecting-privacy-in-an-ai-driven-world/>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *EEOC Launches Initiative on Artificial Intelligence and Algorithmic Fairness*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N (Oct. 28, 2021), <https://www.eeoc.gov/newsroom/eeoc-launches-initiative-artificial-intelligence-and-algorithmic-fairness>.

⁵⁴ Daniel J. Butler et al., *Employers Beware: The EEOC is Monitoring Use of Artificial Intelligence*, HUNTON ANDREWS KURTH (Sept. 21, 2021), <https://www.huntonlaborblog.com/2021/09/articles/eeoc-developments/employers-beware-the-eeoc-is-monitoring-use-of-artificial-intelligence/>.

⁵⁵ Letter from Michael Bennet, U.S. Senator, et al., to Janet Dhillon, Commissioner of the Equal Employment Opportunity Commission (Dec. 8, 2020) (on file with the U.S. Senate).

⁵⁶ *Id.*

⁵⁷ 820 Ill. Comp. Stat. Ann. 42/1.

⁵⁸ Burden, *supra* note 19.

⁵⁹ 820 Ill. Comp. Stat. Ann. 42/5.

before the interview, consent from the applicant to be evaluated by the artificial intelligence."⁶⁰ The bill is the first Illinois legislation to place restrictions on employer AI systems.⁶¹

In terms of Warehouse protections, employees have few resources to rely upon. Under 820 Ill. Comp. Stat. Ann. 140/3, employees that work 7 1/2 continuous hours or more shall be provided a meal period of at least 20 minutes.⁶² No legislation mentions the monitoring of quotas that thwart basic worker rights such as rest periods, bathroom breaks and safety.⁶³ Nevertheless, warehouse workers were singled out by the legislature during the Covid-19 pandemic for being essential workers.⁶⁴ Gov. J.B. Pritzker, specifically noted warehouse work is essential to the Illinois economy.⁶⁵ Since warehouse work is vital, protections for this group is key to Illinois' economy. The need to balance the rights of warehouse workers with the essentiality of the warehouse industry to the Illinois economy and to the way retail markets operate in today's world has led to difficult questions concerning a feasible legislative model to achieve that balance. The central question this paper seeks to resolve is whether application of a bill similar to A.B. 701 is the right fit to strike this balance in the state of Illinois.

III. ANALYSIS

A. Warehouse Protections Under A.B. 701

A.B. 701 was specifically intended to have broad effects to all medium and large size warehouses.⁶⁶ The statute targets what are labeled "warehouse distribution centers."⁶⁷ "Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System (NAICS) Codes, however that establishment is denominated: (A) 493110 for General Warehousing and Storage⁶⁸; "(B) 423 for Merchant Wholesalers, Durable Goods"⁶⁹; "(C) 424 for Merchant Wholesalers, Nondurable Goods";⁷⁰ and "(D) 454110 for Electronic Shopping and Mail-Order Houses."⁷¹ In plain terms these are "establishments that are primarily engaged in operating merchandise warehousing and storage facilities, that sell durable and/or nondurable goods to other businesses, or that are primarily engaged in selling merchandise using non-store means, such as through the Internet or catalogs."⁷² Likewise, the bill applies to "employers that employ or exercise control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center, or 1,000 or more employees at one or more distribution warehouse centers in California."⁷³

⁶⁰ *Id.*

⁶¹ Burden, *supra* note 19.

⁶² 820 Ill. Comp. Stat. Ann. 140/3.

⁶³ *Worker Rights*, ILLINOIS DEPARTMENT OF LABOR (2022), <https://www2.illinois.gov/idol/Employees/Pages/default.aspx>.

⁶⁴ Ill. Exec. Order 20-10 (March 9, 2020).

⁶⁵ Lydersen, *supra* note 16.

⁶⁶ Steven Eheart, *Distribution Centers Face First-in-Nation Law Regulating Production Quotas*, FISHER PHILIPS (Sept. 23, 2021), <https://www.fisherphillips.com/news-insights/california-employers-warehouse-distribution-centers.html>; *See also* Cal. Lab. Code § 2103(a).

⁶⁷ *Id.*; *See also* Cal. Lab. Code § 2100(i)(1).

⁶⁸ Cal. Lab. Code § 2100(i)(1)(A).

⁶⁹ Cal. Lab. Code § 2100(i)(1)(B).

⁷⁰ Cal. Lab. Code § 2100(i)(1)(C).

⁷¹ Cal. Lab. Code § 2100(i)(1)(D).

⁷² Eheart, *supra* note 66.

⁷³ *Id.*; *See also* Cal. Lab. Code § 2103(a).

Under the bill, quotas or “assigned standards of work” are limited in order to protect employees.⁷⁴ “Employers cannot require quotas that prevent compliance with meal or rest periods, use of bathroom facilities (including the time to travel to and from such facilities), or occupational health and safety laws.”⁷⁵ Likewise, break periods are not considered to be productivity time unless they are actively on call.⁷⁶ Furthermore, employers must notify new hires of quota prior to starting the position and upon the request of current or former employees.⁷⁷

In terms of protection from AI systems, the bill prevents usage of monitoring systems that thwart basic worker rights such as rest periods, bathroom breaks and safety.⁷⁸ Likewise, the bill protects from AI monitoring systems by preventing workers from being fired or retaliated against for failing to meet an unsafe quota.⁷⁹ The authors intended the monitoring portion of the bill to be incredibly broad.⁸⁰ This was with the expectation that regulators are constantly playing catch-up with the tech industry.⁸¹ By broadening the scope to any AI system, companies are forced to address any monitoring system that regulates the productivity of employees.⁸²

Failure to meet the requirements under the bill allows employees to take legal action.⁸³ Employees may seek a court order to force employers to comply with the rule, individually or under California's Private Attorney General Act.⁸⁴ Failure to comply with the legislation effectively allows workers to file lawsuits that would impose costs on employers.⁸⁵

Proponents of the bill focus on the creation of protective measures to aid the employees that are engaging in “back breaking conditions.”⁸⁶ “Many workers see no other job options and feel they must accept unsafe conditions to keep a roof over their heads.”⁸⁷ With increasing industry innovation “driving down workplace safety across the logistics industry” legislatures need to form some type of barrier of protection.⁸⁸ The expectation of the measures is “[i]f we raise standards at the biggest companies, we can create good jobs throughout the industry, particularly in the communities that need them most.”⁸⁹

Ultimately, the bill aims to target larger warehouse facilities with intentionally broad legislation.⁹⁰ Employers are forced to regulate out of fear of endless lawsuits. However, proponents argue his fear can be justified if employers are pushing the boundaries of an employee’s health.⁹¹ All in all, California's A.B. 701 is aimed primarily toward the benefit of employees. But concerns arise about the costs of California's new regulatory regime.

⁷⁴ *Id.*; *See also* Cal. Lab. Code § 2100(h).

⁷⁵ *Id.*; *See also* Cal. Lab. Code § 2100(h).

⁷⁶ *Id.*; *See also* Cal. Lab. Code § 2103(a).

⁷⁷ *Id.*; *See also* Cal. Lab. Code § 2101.

⁷⁸ S. CHINA MORNING POST, *supra* note 6; *see also* Cal. Lab. Code § 2103(a).

⁷⁹ SAFETY AND HEALTH MAGAZINE, *supra* note 2; *see also* Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3.

⁸⁰ Soper et al., *supra* note 38; *see also* Assem. Bill No. 701, *supra* note 3, at 3.

⁸¹ *Id.*; *see also* Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3.

⁸² *Id.*; *see also* Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3.

⁸³ Cal. Lab. Code §§ 2105-2107.

⁸⁴ Julie M. Capell et al., *California Enacts Law Aimed at Work "Quotas" Set by Employers with Warehouse Distribution Centers*, DAVIS WRIGHT TREMAINE LLP (Oct. 7, 2021), <https://www.dwt.com/blogs/employment-labor-and-benefits/2021/10/california-warehouse-distribution-center-law>; *See* Cal. Lab. Code §§ 2105-2107.

⁸⁵ Soper et al., *supra* note 38.

⁸⁶ Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 3-4.

⁹⁰ Cal. Lab. Code § 2103(a).

⁹¹ Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3.

B. Fears of A.B. 701

Opponents of A.B. 701 argue the bill stifles innovation and the bill will move industry out of the state.⁹² In terms of innovation, there “many reasons an employer might track worker activity, such as for safety reasons or to protect highly sensitive data.”⁹³ By monitoring effective productivity, employees have a clear and quicker snapshot of job expectations in comparison to past usage of employee surveys.⁹⁴ Although AI monitoring can be used negatively, it can also provide insight into aspects of the role that are negatively impacting the well-being of employees, such as working too much or by becoming isolated.⁹⁵

The market effects in California are another large point of contention for opponents of the bill. Having major ports on the coast, California has a large warehouse market.⁹⁶ Similar to Amazon, in 2020 Nike announced a new distribution center in California that will bring 250 jobs, and Burlington has opened a new distribution center that will create more than 100 new jobs.⁹⁷ “Regions such as the Inland Empire and San Joaquin County have grown to have among the highest concentration of transportation and warehousing employment in the entire United States.”⁹⁸ Due to the growth resulting from e-commerce during the pandemic, warehouse demand exceeded supply in the fourth quarter of 2020 and 2021.⁹⁹

However, both innovation concerns and job loss are seemingly without merit. AI technology is not outright prohibited under A.B. 701 so long as it is not used to regulate unsafe working conditions.¹⁰⁰ Monitoring productivity to be used positively is still available under A.B. 701 if it does not thwart basic worker rights such as rest periods, bathroom breaks and safety.¹⁰¹ Likewise, there are seemingly no signs of job loss or warehouse market decline.¹⁰² Currently in California, there is a shortage of warehouse space.¹⁰³ California’s warehouse market has continued to rise even after A.B. 701 as gone into effect.¹⁰⁴ Although business are moving out of California due to the increasing prices of real estate¹⁰⁵, the warehouse market is seemingly unaffected.¹⁰⁶ Thus, the major concerns of the bill have had little effect.

⁹² Soper et al., *supra* note 38.

⁹³ Finnegan, *supra* note 47.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Somo, *supra* note 8.

⁹⁷ *Id.*

⁹⁸ Paul Granillo, *AB 701 Will Do More Harm Than Good*, ORANGE CNTY. REG. (Aug. 23, 2021), <https://www.ocregister.com/2021/08/23/ab-701-will-do-more-harm-than-good/#:~:text=But%20AB%20701%20lumps%20the,keeping%20up%20with%20rising%20costs>.

⁹⁹ Somo, *supra* note 8.

¹⁰⁰ Cal. Lab. Code § 2103(a).

¹⁰¹ *Id.*

¹⁰² Asher-Schapiro, *supra* note 10.

¹⁰³ WEBER LOGISTICS, *supra* note 13.

¹⁰⁴ Somo, *supra* note 8.

¹⁰⁵ Granillo, *supra* note 98.

¹⁰⁶ Somo, *supra* note 8.

IV. RECOMMENDATION

Applying A.B. 701 to California comes with benefits to employees as well as concerns about the warehouse market. Similar to California, Illinois relies heavily on warehouse jobs for blue-collar workers.¹⁰⁷ This has lead companies like Amazon to invest heavily into warehouse space in Illinois.¹⁰⁸ Amazon alone has over 43,000 individuals in Illinois,¹⁰⁹ and Illinois contains the third most square footage of Amazon warehouse space with nearly 15 million square feet of space.¹¹⁰ Thus, concerns about the protections provided to workers should be taken seriously. Currently, employees are being subjected to increased injury due to aggressive quotas established by AI monitoring.¹¹¹ As stated above, the legislature has attempted to address initial concerns of AI technology on the job market with the passage of the “Video Interview Act.”¹¹² Therefore, similar application of AI protections for warehouse workers is warranted.

While Illinois has the has the third-highest average wage in the Midwest, the state’s low-income and blue-collar workers are the worst-paid in the region.¹¹³ Blue collar workers are often subjected anti-worker laws thwarting the growth of blue-collar jobs and leaving blue-collar workers with lower wages and fewer opportunities.¹¹⁴ And like California, many Illinois “workers see no other job options and feel they must accept unsafe conditions to keep a roof over their heads.”¹¹⁵ Warehouse workers in particular are essential to the Illinois economy and protection of these workers is vital.¹¹⁶ With increasingly aggressive production demands as a result of harsh quotas, they are ultimately employees' physical well-being at risk for the convenience of customers.¹¹⁷ Furthermore, the injuries sustained by warehouse workers can inflict chronic pain and elevate risk of reinjury and long-term disability.¹¹⁸ Protective legislation modelled after A.B. 701 would address this problem.

However, adoption of similar legislation to A.B. 701 should be taken with some reluctance. California law makers have the added protection of being a port state.¹¹⁹ Although businesses are actively leaving the state¹²⁰, the adoption of A.B. 701 has had little effect on the warehouse market.¹²¹ However, Illinois does not have the same tight grip on the market. Midwest states of Michigan and Ohio, have similar sized Amazon warehouse spaces.¹²² If adopting a warehouse worker protection bill, it is foreseeable that companies will move to nearby markets to protect themselves.

¹⁰⁷ Lydersen, *supra* note 16.

¹⁰⁸ BIG RENTZ, *supra* note 15.

¹⁰⁹ Bishop, *supra* note 9.

¹¹⁰ BIG RENTZ, *supra* note 15.

¹¹¹ Evans, *supra* note 37.

¹¹² Burden, *supra* note 19.

¹¹³ *State Occupational Employment and Wage Estimates – Illinois*, U.S. BUREAU OF LABOR STATISTICS (May 2021), https://www.bls.gov/oes/current/oes_il.htm#otherlinks.

¹¹⁴ Michael Lucci, *Illinois’ Low-Income and Blue-Collar Workers are the Worst-Paid in the Region*, ILLINOIS POLICY (Nov. 16, 2015), <https://www.illinoispolicy.org/illinois-low-income-and-blue-collar-workers-are-the-worst-paid-in-the-region/>.

¹¹⁵ Assem. Bill No. 701, (CA 2021-2022) Reg. Sess. Version Sep. 08, 2021, at 3.

¹¹⁶ Lydersen, *supra* note 16.

¹¹⁷ Evans, *supra* note 37.

¹¹⁸ Berkowitz & Tung, *supra* note 22.

¹¹⁹ WEBER LOGISTICS, *supra* note 13.

¹²⁰ Granillo, *supra* note 98.

¹²¹ *Id.*

¹²² BIG RENTZ, *supra* note 15.

Ultimately, the application of A.B. 701 in Illinois is vital to the protection of warehouse employees. Given the current importance of warehouse employees in Illinois, providing them with protection from harmful quotas will create a meaningful standard for other states to match. However, the application monitoring protections must be adopted with an eye to the realities of the Illinois marketplace. The location of Illinois does not provide the same market shield as California. California's location on the coast has created an incredible demand warehouse space.¹²³ Although hesitation when addressing warehouses in Illinois due to a significant loss of blue-collar working position potentially causing an immediate strain on the economy, it should not stop legislature from protecting employees from unsafe environments. A narrowly well drafted law could provide adequate protections to workers, without driving blue-collar jobs out of the state, but the legislature needs to weigh the economic considerations against the need for employee protections.

V. CONCLUSION

Ultimately, the California legislature was able to fearlessly move forward with A.B. 701 by relying heavily on California's inescapable grip on the west coast market. Companies have continued to expand their warehouse facilities regardless of any restrictions A.B. 701 would place on their business model. However, Illinois's reliance on warehouse jobs to support blue-collar workers and the lack of need for companies to continuously expand in the state make similar legislature challenging to pass. Moving forward with protections such as A.B. 701 must be done with some hesitation.

¹²³ WEBER LOGISTICS, *supra* note 13.