
SUBSTITUTE HOUSE BILL 1944

State of Washington

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2003 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Hudgins, Campbell, Kenney, Conway, Wood, Upthegrove, Flannigan, McCoy, Cooper, Berkey, Simpson, Hunt, Romero, Voloria, Dunshee, Cody and Edwards)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to notice of mass layoffs, relocations, and
2 terminations; adding a new section to chapter 50.04 RCW; adding a new
3 chapter to Title 49 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Covered establishment" means any industrial or commercial
8 facility or part thereof that employs, or has employed within the
9 preceding twelve months, seventy-five or more persons.

10 (2) "Department" means the department of labor and industries.

11 (3) "Employee" means a person who, under the usual common law rules
12 applicable in determining the employer-employee relationship, has had
13 the status of an employee for at least six months of the twelve months
14 preceding the date on which notice is required.

15 (4) "Employer" means any employer who directly or indirectly owns
16 and operates a covered establishment. A parent corporation is an
17 employer as to any covered establishment directly owned and operated by
18 its corporate subsidiary.

1 (5) "Layoff" means a separation from employment for lack of funds
2 or lack of work.

3 (6) "Mass layoff" means a layoff during any thirty-day period of
4 fifty or more employees at either a covered establishment or at one or
5 more parts of a covered establishment.

6 (7) "Relocation" means the removal of all or substantially all of
7 the industrial or commercial operations in a covered establishment to
8 a different location one hundred miles or more away.

9 (8) "Termination" means the cessation or substantial cessation of
10 industrial or commercial operations in a covered establishment.

11 NEW SECTION. **Sec. 2.** (1) An employer may not order a mass layoff,
12 relocation, or termination at a covered establishment unless, sixty
13 days before the order takes effect, the employer gives written notice
14 of the order to the following:

15 (a) The employees of the covered establishment affected by the
16 order;

17 (b) The employment security department, the local workforce
18 development council, and the chief elected official of each city and
19 county government within which the termination, relocation, or mass
20 layoff occurs; and

21 (c) The legislature through the offices of the chief clerk of the
22 house of representatives and the secretary of the senate.

23 (2) An employer required to give notice of any mass layoff,
24 relocation, or termination under this chapter shall include in its
25 notice the elements specified by the department in rule. In order to
26 ensure that appropriate public services are made available to employers
27 and affected employees, the elements of the notice must include the
28 number of affected positions, the number of affected positions being
29 relocated or outsourced to a different location one hundred miles or
30 more away, and the job titles and wages of the affected positions.

31 NEW SECTION. **Sec. 3.** (1) An employer is not required to comply
32 with the notice requirement contained in section 2(1) of this act if
33 the department determines that all of the following conditions exist:

34 (a) As of the time that notice would have been required, the
35 employer was actively seeking capital or business;

1 (b) The capital or business sought, if obtained, would have enabled
2 the employer to avoid or postpone the relocation or termination; and

3 (c) The employer reasonably and in good faith believed that giving
4 the notice required by section 2(1) of this act would have precluded
5 the employer from obtaining the needed capital or business.

6 (2) The department may not determine that the employer was actively
7 seeking capital or business under subsection (1) of this section unless
8 the employer provides the department with both of the following:

9 (a) A written record consisting of all documents relevant to the
10 determination of whether the employer was actively seeking capital or
11 business, as specified by the department; and

12 (b) An affidavit verifying the contents of the documents contained
13 in the record.

14 (3) The affidavit provided to the department pursuant to subsection
15 (2)(b) of this section shall contain a declaration signed under penalty
16 of perjury stating that the affidavit and the contents of the documents
17 contained in the record submitted pursuant to subsection (2)(a) of this
18 section are true and correct.

19 (4) An employer is not required to comply with the notice
20 requirement contained in section 2(1) of this act if a mass layoff,
21 relocation, or termination is necessitated by a physical calamity or
22 act of war.

23 (5) An employer is not required to comply with the notice
24 requirement contained in section 2(1) of this act if a mass layoff,
25 relocation, or termination is the result of the completion of a
26 construction project, and the affected employees were hired with the
27 understanding that their employment was limited to the duration of the
28 construction project.

29 NEW SECTION. **Sec. 4.** (1) An employer who fails to give notice as
30 required by section 2(1)(a) of this act before ordering a mass layoff,
31 relocation, or termination is liable to each employee entitled to
32 notice who lost his or her employment for:

33 (a) The value of wages at the average regular rate of compensation
34 received by the employee during the last three years of his or her
35 employment, or the employee's final rate of compensation, whichever is
36 higher; and

1 (b) The value of any benefits to which the employee would have been
2 entitled had his or her employment not been lost, including, but not
3 limited to: (i) The value of any pension, profit sharing, stock bonus,
4 stock purchase, and stock option plans; and (ii) the cost of any
5 medical expenses incurred by the employee that would have been covered
6 under an employee benefit plan.

7 (2) Liability under this section is calculated for the period of
8 the employer's violation, up to a maximum of sixty days, or one-half
9 the number of days that the employee was employed by the employer,
10 whichever period is smaller.

11 (3) The amount of an employer's liability under subsection (1) of
12 this section is reduced by the following:

13 (a) Any wages, except vacation moneys accrued prior to the period
14 of the employer's violation, paid by the employer to the employee
15 during the period of the employer's violation;

16 (b) Any voluntary and unconditional payments made by the employer
17 to the employee that were not required to satisfy any legal obligation;
18 and

19 (c) Any payments by the employer to a third party or trustee, such
20 as premiums for health benefits or payments to a defined contribution
21 pension plan, on behalf of and attributable to the employee for the
22 period of the violation.

23 NEW SECTION. **Sec. 5.** (1) An employer who fails to give notice as
24 required by section 2(1)(b) of this act is subject to a civil penalty
25 of not more than ten dollars per employee entitled to notice for each
26 day of the employer's violation. The employer is not subject to a
27 civil penalty under this section, however, if the employer pays to all
28 applicable employees the amounts for which the employer is liable under
29 section 4 of this act within three weeks from the date the employer
30 orders the mass layoff, relocation, or termination.

31 (2) Any civil penalties collected under this section shall be paid
32 into the unemployment trust fund.

33 NEW SECTION. **Sec. 6.** (1) The department shall administer and
34 investigate violations of this chapter. In any investigation or
35 proceeding under this chapter, the director of the department has, in

1 addition to all other powers granted by law, the authority to examine
2 the books and records of an employer.

3 (2) The department shall adopt rules necessary to carry out this
4 act. The rules specifying the content of the notice required under
5 section 2 of this act shall be consistent with the rules specifying the
6 content of the notice required under the federal worker adjustment and
7 retraining act, 29 U.S.C. 2101 et seq.

8 NEW SECTION. **Sec. 7.** (1) A person, including a local government
9 or an employee representative, seeking to establish liability against
10 an employer may bring a civil action on behalf of the person, other
11 persons similarly situated, or both, in any court of competent
12 jurisdiction.

13 (2) If the court determines that an employer conducted a reasonable
14 investigation in good faith, and had reasonable grounds to believe that
15 its conduct was not a violation of this act, the court may reduce the
16 amount of any penalty imposed against the employer under this act.

17 (3) The court may award reasonable attorneys' fees as part of costs
18 to any plaintiff who prevails in a civil action brought under this act.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 50.04 RCW
20 to read as follows:

21 Payments to a person under section 4 of this act may not be
22 construed as wages or used to deny or reduce benefits under this title.

23 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute
24 a new chapter in Title 49 RCW.

25 NEW SECTION. **Sec. 10.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

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