
SUBSTITUTE HOUSE BILL 2441

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Jones, Heavey, Franklin, Prentice, G. Cole and R. King)

Read first time 02/03/92.

1 AN ACT Relating to the economic adjustment and assistance act;
2 adding a new chapter to Title 49 RCW; prescribing penalties; and
3 declaring an emergency.

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

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

8 (1) "Affected employee" means an employee who may reasonably be
9 expected to experience or who has experienced an employment loss as a
10 consequence of a business closure or employee layoff by his or her
11 employer whether or not the employee is or was employed at the single
12 site of employment being closed or at which layoffs are occurring.

13 (2) "Aggrieved employee" means an employee who has worked for the
14 employer ordering the business closure or employee layoff and who, as

1 a result of the failure by the employer to comply with section 2 of
2 this act, did not receive timely notice as required under section 2 of
3 this act either directly or through the worker's representative.

4 (3) "Business closure" means the permanent or temporary shutdown of
5 a single site of employment, or one or more facilities or operating
6 units within a single site of employment, if the shutdown results in an
7 employment loss at the single site of employment during any thirty-day
8 period of twenty-five or more employees, excluding part-time employees.

9 (4) "Employer" means any person, firm, corporation, partnership,
10 business trust, legal representative, or other business entity which
11 engages in any business, industry, profession, or activity in this
12 state and employs: (a) Fifty or more employees, excluding part-time
13 employees; or (b) fifty or more employees who in the aggregate work at
14 least two thousand hours per week, exclusive of hours of overtime.

15 (5) "Employment loss" means: (a) An employment termination, other
16 than a discharge for cause, voluntary departure, or retirement; (b) a
17 layoff exceeding six months; or (c) a reduction in hours of work of
18 more than fifty percent during each month of any six-month period.

19 (6) "Employee layoff" means a reduction in work force that is not
20 the result of a business closure and that results in an employment loss
21 at the single site of employment during any thirty-day period for (a)
22 at least thirty-three percent of the employees, excluding any part-time
23 employees, and at least twenty-five employees, excluding any part-time
24 employees; or (b) at least five hundred employees, excluding any part-
25 time employees. Layoffs of two or more groups of employees at a single
26 site of employment within any ninety-day period, any one of which is
27 below the limits stated in (a) or (b) of this subsection, shall be
28 aggregated and shall constitute an employment layoff under this section
29 if the aggregate is above the limit of (a) or (b) of this subsection,

1 unless the employer can show by a preponderance of the evidence that
2 each individual layoff resulted from separate and distinct causes.

3 (7) "Labor-management committee" means a committee voluntarily
4 formed pursuant to section 5 of this act to respond to actual or
5 prospective employee dislocations and that is the primary means to
6 oversee delivery of state and local resources to affected employees.

7 (8) "Part-time employee" means an employee who is employed for an
8 average of fewer than twenty hours per week or who has been employed
9 for fewer than six of the twelve months preceding the date on which
10 notice under section 2 of this act is required.

11 NEW SECTION. **Sec. 2.** (1) No employer shall order a business
12 closure or employee layoff until the end of a sixty-day period after
13 the employer serves written notice of the order to the representative
14 of the affected employees or, if none, to the affected employees, to
15 the dislocated worker unit in the employment security department, and
16 to the chief elected official of the unit of local government within
17 which jurisdiction the closing or layoff is to occur.

18 (2) If all or part of a business is sold, the seller of the
19 business is responsible for giving the notice required by this section
20 for any business closure or employee layoff occurring on or before the
21 effective date of the sale, and the buyer is responsible for giving the
22 notice for any closure or layoff occurring after the effective date of
23 the sale.

24 (3)(a) An employer that orders a business closure or employee
25 layoff in violation of this section is liable to each aggrieved
26 employee who suffers an employment loss as a result of the closure or
27 layoff for back pay for each day of violation. Back pay shall be
28 computed at a rate of compensation not less than the higher of: (i)
29 The average regular rate of compensation received by the employee

1 during the preceding three years of the employee's employment; or (ii)
2 the final regular rate of compensation received by the employee.

3 (b) The employer's liability under (a) of this subsection is for
4 the period of the violation, up to a maximum of sixty days, but in no
5 event for more than one-half the number of days the employee was
6 employed by the employer.

7 (c) The amount by which an employer is liable under (a) of this
8 subsection is reduced by:

9 (i) Any wages paid by the employer to the employee for the period
10 for the violation; and

11 (ii) Any voluntary and unconditional payment by the employer to the
12 employee that is not required by a legal obligation.

13 (4) An employer who violates the notice provisions of this section
14 with respect to a unit of local government shall be subject to a civil
15 penalty of not more than five hundred dollars for each day of the
16 violation. However, the penalty does not apply if the employer pays to
17 each aggrieved employee the amount for which the employer is liable to
18 that employee within three weeks from the date the employer orders the
19 closure or layoff.

20 (5) A person aggrieved by a violation of this chapter, including
21 the organization representing affected employees for collective
22 bargaining or the affected unit of local government, may bring suit on
23 his or her own behalf or on behalf of other persons similarly situated,
24 or both, in the superior court of the county in which the violation
25 occurred or in which the employer transacts business. The court may
26 allow costs and reasonable attorney's fees to the prevailing party.

27 (6) Upon request, an affected employee, or the organization
28 representing an affected employee for collective bargaining, is
29 entitled to information from his or her employer about business
30 closures or the number of employee layoffs ordered by the employer

1 within ninety days of the closure or layoff that affected the employee
2 making the request for information. A unit of local government in the
3 jurisdiction in which a business closure or employee layoff is to occur
4 is also entitled to information from the employer about closures or
5 layoffs occurring within ninety days of the ordered closure or layoff.

6 NEW SECTION. **Sec. 3.** (1) No notice under this chapter is
7 required if the business closure or employee layoff results from a
8 natural disaster, including but not limited to flood, fire, drought, or
9 earthquake.

10 (2) Before the conclusion of the sixty-day notice period specified
11 in section 2 of this act, an employer may order:

12 (a) The shutdown of a single site of employment if, as of the time
13 that the notice would have been required, the employer was actively
14 seeking capital or business which, if obtained, would have enabled the
15 employer to avoid or postpone the shutdown and the employer reasonably
16 and in good faith believed that giving the notice required would have
17 precluded the employer from obtaining the needed capital or business.

18 (b) A business closure or employee layoff if the closing or layoff
19 is caused by business circumstances that a reasonable employer would
20 not have foreseen based on information that the employer knew or should
21 have known on or after the date when the notice would have been
22 required.

23 NEW SECTION. **Sec. 4.** If a collective bargaining agreement
24 covering a site of employment that is subject to a business closure or
25 employee layoff requires greater employee protection than is required
26 by this chapter, the protections of the collective bargaining agreement
27 shall not be reduced or impaired by this chapter.

1 NEW SECTION. **Sec. 5.** (1) Promotion of labor-management

2 committees with full authority to obtain and oversee the services
3 needed to meet the needs of dislocated workers shall be the primary
4 mechanism of the state dislocated worker unit's response to business
5 closure and employee layoffs. The state dislocated worker unit shall
6 report to the appropriate committees of the legislature on the number
7 of closure or employee layoff notices received, the number of labor-
8 management committees established, and the number of dislocated workers
9 served by labor-management committees.

10 (2) Labor-management committees shall ordinarily include, but are
11 not limited to, the following:

12 (a) Shared and equal participation by employees and the employer;

13 (b) Shared financial participation between the company and the
14 state, using funds provided under federal law for this purpose, in
15 paying for the operating expenses of the committee;

16 (c) A committee chair to provide oversight, advice, and guidance to
17 the committee, who is jointly selected by the employee and employer
18 committee members, who is not employed by or under contract with the
19 employees or employer at the site, and who shall prepare a report on
20 the committee's activities;

21 (d) The ability to respond flexibly to the needs of affected
22 employees by devising and implementing a strategy for assessing the
23 employment and training needs for each dislocated worker, and for
24 obtaining and overseeing the services and assistance necessary to meet
25 those needs;

26 (e) A formal agreement, terminable at will by the employees or
27 their employer, and terminable for cause by the governor of the state
28 of Washington; and

29 (f) Local job identification activities by the chair and members of
30 the committee on behalf of the affected employees.

1 (3) The dislocated worker unit of the employment security
2 department shall promote the formation of labor-management committees
3 by providing:

4 (a) Immediate assistance in the establishment of the labor-
5 management committee, including providing immediate financial
6 assistance to cover the start-up costs of the committee and committee
7 effectiveness training using funds provided under federal law for this
8 purpose;

9 (b) A list of individuals from which the chair of the committee may
10 be selected;

11 (c) Technical advice as well as information on sources of
12 assistance, and liaison, with other public and private services and
13 programs; and

14 (d) Assistance in the selection of employee representatives if the
15 employees are not represented by a labor organization for collective
16 bargaining.

17 (4) The dislocated worker unit shall distribute all closure notices
18 within one week of receipt of the notice to the appropriate state
19 agencies and the local reemployment support center, if a center exists
20 in the community in which the closure or layoffs occur. The dislocated
21 worker unit shall exchange information and coordinate programs with
22 community-based organizations that assist dislocated workers.

23 NEW SECTION. **Sec. 6.** This act may be known and cited as the
24 economic adjustment and assistance act.

25 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act shall
26 constitute a new chapter in Title 49 RCW.

1 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.