

HOUSE BILL REPORT

HB 2352

As Reported by House Committee On:

Commerce & Labor

Title: An act relating to workers required to train successors.

Brief Description: Prohibiting employers from requiring employees to train their successors.

Sponsors: Representatives Hudgins, Romero, O'Brien, Conway, Simpson, G., Moeller and Morrell.

Brief History:

Committee Activity:

Commerce & Labor: 1/21/04, 2/5/04 [DPS].

Brief Summary of Substitute Bill

- Requires certain employers to give affected employees and the Department of Labor and Industries (Department) 10 days' advance notice of a layoff of workers required to train other persons to perform their job duties.
- Provides for administration by the Department, and for enforcement through the courts.
- Establishes damages and civil penalties for failing to comply with the notice requirement.
- Provides that certain workers have good cause for leaving work, and are not disqualified from receiving unemployment benefits.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 4 members: Representatives McMorris, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Jill Reinmuth (786-7134).

Background:

Under the federal Worker Adjustment and Retraining Notification Act (the WARN Act), employers are required to give employees and certain government entities 60 days' advance notice of plant closings and mass layoffs. A plant closing is a shutdown that results in an employment loss during any 30-day period of 50 or more employees. A mass layoff is a reduction in force that results in an employment loss during any 30-day period of either:

33 percent of the employees, and at least 50 or more employees; or at least 500 employees. The notice requirement applies only to employers that employ 100 or more employees. Unless otherwise subject to the WARN Act, employers are not required to give notice of a layoff of workers required to train persons to perform their job duties.

Individuals are eligible to receive unemployment benefits if they: (1) worked at least 680 hours in covered employment in their base year; (2) were separated from employment through no fault of their own; and (3) are able to work and are actively searching for suitable work. However, individuals are not disqualified from receiving benefits if they left work for good cause.

Summary of Substitute Bill:

Employers are required to give 10 days' notice of a layoff of workers who were required to train other persons to perform their job duties. This notice requirement applies only if the workers will be laid off within 90 days of the date on which they begin training other persons to perform their job duties.

The written notice must be given to the affected workers and the Department of Labor and Industries (Department). The written notice must include the number of affected positions, the number of affected positions being relocated or outsourced to a different location 100 miles or more away, the job titles and wages of the affected positions, the locations to which affected positions are relocated or outsourced, and additional information specified in rule by the Department.

"Employer" is defined as an employer that has 100 or more workers. "Layoff" is defined as a separation from employment of employees or a termination of certain independent contractors.

Administration and Enforcement

The Department administers the law and investigates alleged violations. In investigations and other proceedings, the Department may examine an employer's books and records.

The Department must adopt rules necessary to carry out the law, which may include additional information to be specified in the layoff notice.

Enforcement is through the courts. Employees and their representatives may bring civil actions against employers believed to be in violation of the notice requirement. A prevailing plaintiff may be awarded attorneys' fees.

Damages and Civil Penalties

An employee may be awarded wages and benefits for each day of violation, up to a maximum of 90 days. If the employee was employed for less than 180 days, the maximum is one-half the number of days the employee was employed. Damages are not "wages" for purposes of unemployment compensation.

An employer that fails to give notice is also subject to a civil penalty of \$100 per employee for each day of the violation. Civil penalties are paid into the Unemployment Trust Fund.

Unemployment Insurance

Certain workers have good cause for leaving work, and are not disqualified from receiving unemployment benefits. These workers include workers who receive notice that they will be laid off within 90 days of the date on which they begin training other persons to perform their jobs. They also include workers who are required to train other persons to perform their job duties, who reasonably expect to be laid off within 90 days of the date they begin training the other persons, and whose positions are relocated or outsourced to a different location 100 miles or more away.

Substitute Bill Compared to Original Bill:

A provision specifying that the notice requirement applies only if the workers will be laid off within 90 days of the date on which they begin training other persons to perform their job duties is added. The amount of the civil penalty is reduced from \$500 per day per worker to \$100 per day per worker. A section providing that certain workers have good cause for leaving work, and are not disqualified from receiving unemployment benefits is added.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is a simple idea. It gives individuals a little bit of notice and some information. It gives them time to make plans for their family. It does not prohibit employers from laying off workers. It just requires notice.

Employers are increasingly forcing employees to transfer knowledge to their replacements. These employers develop and implement "knowledge transfer plans." There are multiple examples of employers in Washington that have done this. It is difficult to lose a job without any notice. It is humiliating to be forced to train your replacement.

Forcing employees to train replacement employees should be illegal. Employers force employees to do this by making their eligibility for unemployment insurance and other benefits (e.g., severance packages) contingent on the employees successfully training their replacements.

Testimony Against: It is not clear how widespread this practice is. There are both policy and practical concerns. For employers, it would create uncertainty and increase potential liability. It also goes against the concept of at-will employment. Intrusions in the employer-employee relationship are not justified unless there is a compelling need.

Persons Testifying: (In support) Representative Hudgins, prime sponsor; Marcus Courtney, Washington Alliance of Technology Workers; and Myra Bronstein.

(Opposed) Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.