

HOUSE BILL REPORT

HB 1944

As Reported by House Committee On:

Commerce & Labor

Title: An act relating to notice of mass layoffs, relocations, and terminations.

Brief Description: Requiring notice of mass layoffs.

Sponsors: Representatives Hudgins, Campbell, Kenney, Conway, Wood, Upthegrove, Flannigan, McCoy, Cooper, Berkey, Simpson, Hunt, Romero, Veloria, Dunshee, Cody and Edwards.

Brief History:

Committee Activity:

Commerce & Labor: 2/27/03, 3/5/03 [DPS].

Brief Summary of Substitute Bill

- Requires certain employers to give affected employees and others 60 days' advance notice of mass layoffs, relocations, or terminations.
- Makes exceptions for faltering companies, construction projects, physical calamities, and war.
- Provides for enforcement through the courts, and for administration by the Department of Labor and Industries.
- Establishes damages and civil penalties for failing to comply with the notice requirement.

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 Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Jill Reinmuth (786-7134).

Background:

Under state law employers are not required to give employees advance notice of certain events that result in employment loss. Under the federal Worker Adjustment and Retraining Notification Act (the WARN Act), however, such notice is required. The major provisions of the federal law are as follows:

Notice Requirement

In general, 60 days' notice of a plant closing or mass layoff is required. 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. Employment loss means termination, a layoff of more than six months, or a reduction in hours of more than 50 percent during each month of a 6-month period.

The notice requirement applies to employers (business enterprises) that employ 100 or more employees. The number of employees excludes part-time employees (employees employed for less than 20 hours per week, or less than six of the last 12 months).

The notice requirement mandates that employers give notice to a representative of the affected employees or, if there is no representative, the affected employees. Employers must also give notice to the state or the state entity responsible for "rapid response activities," and the chief elected official of the local government in which the triggering event is to occur.

Exceptions - Less Notice Permitted

Less than 60 days' notice is permitted if exceptions for faltering companies, unforeseeable business circumstances, or natural disasters apply.

The faltering company exception applies if the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the plant closing and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the capital or business. (This exception does not apply in the event of a mass layoff.)

The unforeseeable business circumstances exception applies if the plant closing or mass layoff is due to business circumstances that were not reasonably foreseeable at the time 60 days' notice would have been required.

The natural disaster exception applies if the plant closing or mass layoff is due to a natural disaster.

Exceptions - Notice Not Required

Notice is not required if exceptions for temporary facilities, temporary employment, or strikes, or lockouts apply.

The temporary facility exception applies if the closing is of a temporary facility, and the employees were hired with the understanding that their employment was limited to the duration of the facility.

The temporary employment exception applies if the closing or layoff is related to the completion of a project, and the employees were hired with the understanding that their employment was limited to the duration of the project.

The strike or lockout exception applies if the closing or layoff is a strike or lockout.

Enforcement and Administration

Enforcement is through the courts. Employees, their representatives, and units of local government may bring civil actions against employers believed to be in violation of the notice requirement. Rules are prescribed by the federal Secretary of Labor.

Damages and Civil Penalties

An employer may be required to pay an employee "back pay" and benefits for each day of a violation, up to a maximum of 60 days. The amount of damages is reduced for any wages paid to the employee for the period of the violation, any other payments made to the employee, and any payments made to third parties on behalf of and attributable to the employee for the period of the violation.

An employer that fails to give notice to the local government is subject to a civil penalty of \$500 for each day of the violation. The employer is not subject to civil penalties if it pays damages owed to affected employees within three weeks of the plant closing or mass layoff.

Summary of Substitute Bill:

State law is established to require employers to give employees advance notice of certain events that result in employment loss.

Notice Requirement

In general, 60 days' notice of a mass layoff, relocation, or termination is required. A mass layoff is a layoff during any 30-day period of 50 or more employees. A relocation

is the removal of operations to a location 100 or more miles away. Termination is the cessation of operations.

The notice requirement applies to employers (owners and operators of industrial or commercial facilities) that employ, or have employed within the last 12 months, 75 or more persons. The number of employees excludes employees employed for less than six of the last 12 months.

In addition to affected employees, employers must also give notice to the state Employment Security Department, the local workforce investment board, the chief elected official of the local government in which the triggering event is to occur, and the Legislature.

Exceptions - Notice Is Not Required

Notice is not required if exceptions for faltering companies, construction projects, physical calamities, or war apply.

The faltering company exception applies if the Department of Labor and Industries (Department) determines that the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the mass layoff, relocation, or termination, and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the capital or business.

The construction project exception applies if the mass layoff, relocation, or termination results from the completion of a construction project, and the employees were hired with the understanding that their employment was limited to the duration of the construction project.

The physical calamity or war exception applies if the mass layoff, relocation, or termination is necessitated by a physical calamity or an act of war.

Enforcement and Administration

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

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, including the elements of the notice, the elements of the notice must include the number of affected positions, the number of affected positions being relocated or outsourced, and the job titles and

wages of the affected positions. The rules specifying the content of the notice under state law must be consistent with such rules under the federal WARN Act.

Damages and Civil Penalties

Damages are similar to federal law. An employee may be awarded "back pay" and benefits for each day of violation, up to a maximum of 60 days. The amount of damages is reduced for any wages paid to the employee for the period of the violation, any other payments made to the employee, and any payments to third parties on behalf of and attributable to the employee for the period of the violation. Damages are not "wages" for purposes of unemployment compensation.

An employer that fails to give notice to the Employment Security Department, the local workforce development council, and the local government official is subject to a civil penalty of \$10 per employee for each day of the violation. The employer is not subject to civil penalties if it pays damages owed to affected employees within three weeks of the mass layoff, relocation, or termination. Civil penalties are paid into the Unemployment Trust Fund.

Substitute Bill Compared to Original Bill:

Employment on construction projects is exempt from the notice requirement. The elements of the notice must include the number of affected positions, the number of affected positions being relocated or outsourced, and the job titles and wages of the affected positions.

Appropriation: None.

Fiscal Note: Requested on February 19, 2003.

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 about helping workers plan for the future after being terminated without notice. At one company, 1,300 persons were terminated. Some were given notice, but some were not. These were people with mortgages and children. Employers may be resistant to giving notice, but they are less likely to have problems when they treat workers with respect. Prior notice is a matter of simple fairness. With notice workers will be better able to make transitions.

Washington is facing one of the worst recessions ever, and the potential of a jobless recovery. The state has lost more than 86,500 jobs in the past two years, including more than 20,000 in the technology sector. A significant number of these employees were let go without warning. The rapid response team reports that 4,500 technology workers were

laid off in King County last year without any notice, and without the opportunity to receive appropriate services.

This is not a radical idea. It simply puts ideas already in federal law into state law, and requires notification of a few more people. California recently passed a similar measure. Notification has been required in Europe for more than 30 years. When the federal WARN Act was enacted in the 1980s, there were no permatemps and few part-time workers.

Testimony Against: This bill attempts to alter the doctrine of at-will employment. It will cost employers money. At this time the notice requirements should not be made applicable to more employers. The notice requirements also should not apply to part-time and short-term workers. The definitions in the bill are vague, and other parts of the bill are too imprecise.

Testified: (In support) Representative Hudgins, prime sponsor; Marcus Courtney, Washington Alliance of Technology Workers; Dan Dileva; Julia O'Brien Fallon; and Jeff Johnson, Washington State Labor Council.

(Opposed) Amber Balch, Association of Washington Business.