
HOUSE BILL 1944

State of Washington

58th Legislature

2003 Regular Session

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

Read first time 02/17/2003. Referred to Committee on Commerce & Labor.

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.

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

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

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

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

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

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

7 (b) An affidavit verifying the contents of the documents contained
8 in the record.

9 (3) The affidavit provided to the department pursuant to subsection
10 (2)(b) of this section shall contain a declaration signed under penalty
11 of perjury stating that the affidavit and the contents of the documents
12 contained in the record submitted pursuant to subsection (2)(a) of this
13 section are true and correct.

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

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

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

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

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

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

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

4 (b) Any voluntary and unconditional payments made by the employer
5 to the employee that were not required to satisfy any legal obligation;
6 and

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

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

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

21 NEW SECTION. **Sec. 6.** (1) The department shall administer and
22 investigate violations of this chapter. In any investigation or
23 proceeding under this chapter, the director of the department has, in
24 addition to all other powers granted by law, the authority to examine
25 the books and records of an employer.

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

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

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

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

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

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

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

13 NEW SECTION. **Sec. 10.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

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