

AB 2957
California W.A.R.N.
Effective 1/1/03

This bill would preclude employers that employs (or employed) 75 or more persons in the preceding 12-month period from ordering a mass layoff, relocation, or termination, as defined, of an industrial or commercial facility employing a prescribed number of people, without first giving 60 days' notice to affected employees and specified government agencies. No layoff, relocation or termination can occur until 60 days after the notice is provided.

This bill will not apply where the closing or layoff is the result of the following:

1. The completion of a particular project or undertaking of an employer subject to Wage Order 11, regulating the Broadcasting Industry, Wage Order 12, regulating the Motion Picture Industry, or Wage Order 16, regulating Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries, of the Industrial Welfare Commission, and the employees were hired with the understanding that their employment was limited to the duration of that project or undertaking.
2. Employees who are employed in seasonal employment where the employees were hired with the understanding that their employment was seasonal and temporary.
3. Mass layoff, relocation or termination is necessitated by a physical calamity or act of war.

Notice must be provided to the following:

1. Each individual employee affected
2. The Employment Development Department;
3. The local workforce investment board;
4. The chief elected official of each city and county government within which the termination, relocation or mass layoff occurs.

In addition, the notification must be provided in compliance with the requirements of the federal Worker Adjustment and Retraining Notification Act. The notice can be mailed to the employee's most recent known address or included with a paycheck. The notice must be in writing

Employers Seeking Capital

An employer would not be required to comply with the 60-day notice requirement established by this bill if the employer is actively seeking capital or business that would enable the employer to avoid or postpone a relocation or termination, and the employer reasonably and in good faith believed that giving the 60 days' notice would preclude the employer from obtaining the capital or business. In such case, the employer is required to provide the following:

1. A written record consisting of all documents relevant to the determination of whether the employer was actively seeking capital or business, as specified by the department.
2. An affidavit verifying the contents of the documents contained in the record.
3. The affidavit provided to the department pursuant to paragraph (2) of subdivision (b) shall contain a declaration signed under penalty of perjury stating that the

affidavit and the contents of the documents contained in the record submitted pursuant to paragraph (1) of subdivision (b) are true and correct

Penalties

This bill would further provide for civil penalties against an employer who fails to provide the required notices. The penalty is not more than \$500 for each day of the employer's violation payable to each employee. This is waived if the employer pays all applicable employees the amounts due (as shown below) within three weeks from the date the employer orders the mass layoff, relocation or termination.

A failure to provide proper and timely notice will involve employer liability to each employee entitled to the notice as follows:

1. Back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.
2. The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

Liability is calculated for the period of the employer's violation, up to a maximum of 60 days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller. Liability can be reduced by wages paid (except accrued vacation pay) during the violation period and any voluntary and unconditional payments made by the employer that were not paid to satisfy a legal obligation.

Employees who bring a civil action to enforce the provisions of this bill would, at the discretion of the court, be entitled to recover attorney's fees. The court would also have discretion to reduce the amount of an employer's liability if the employer conducted a reasonable investigation in good faith and had reasonable grounds to believe that it was not violating the law. Payments to a person by an employer who is liable to that person under this bill would not be considered wages or compensation for personal services for purposes of unemployment insurance, and unemployment insurance benefits would not be denied or reduced by those payments.

Definitions

An employer is also considered to include a parent corporation to any covered establishment directly owned and operated by its corporate subsidiary

"Layoff" is separation from a position for lack of funds or lack of work.

"Mass layoff" means a layoff during any 30-day period of 50 or more employees at a covered establishment.

"Relocation" means the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away.

"Termination" means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.

“Employee” means a person employed by the employer for at least 6 months of the 12 months preceding the date on which notice is required.