
HOUSE BILL 1477

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Heavey, Prentice, Jacobsen, Franklin, R. King, Orr, Jones, Cole, Phillips, Leonard, Wineberry and Anderson.

Read first time January 30, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to notice of reductions in business operations;
2 adding a new chapter to Title 49 RCW; and declaring an emergency.

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

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

7 (1) "Affected employee" means an employee who in any work week may
8 reasonably expect to be unemployed or is unemployed as a result of a
9 reduction in business operations.

10 (2) "Employer" means a person, firm, partnership, corporation,
11 trust, association, or other form of private business organization that
12 employs one hundred or more employees per week, excluding part-time
13 employees.

14 (3) "Community" means the county, city, or town, or a combination,
15 in which an employer's business is located.

1 (4) "Community-owned business" means a business, at least fifty-
2 one percent of which is owned by a not-for-profit corporation,
3 established primarily for the purpose of advancing the economic
4 development of the community, if the majority of the members of the
5 controlling board of directors of the not-for-profit corporation are
6 comprised of elected representatives of the community.

7 (5) "Department" means the department of trade and economic
8 development.

9 (6) "Director" means the director of the department of trade and
10 economic development.

11 (7) "Employee-owned business" means a business in which:

12 (a) The majority of the business is owned by a majority of the
13 employees of that business; and

14 (b) The business is controlled by those employees or by a board of
15 directors the majority of whom are selected by those employees.

16 (8) "Jointly owned business" means a business owned by both parties
17 named in subsections (4) and (7) of this section, and controlled by a
18 board of directors selected by those parties.

19 (9) "Local government" means the legislative authority of the
20 county, city, or town, or a combination, in which an employer's
21 business is located.

22 (10) "Reduction in business operations" means the total or partial
23 closure of a workplace, relocation of a workplace, the layoff of
24 employees, or any other action, whether temporary or permanent, taken
25 by an employer during any thirty-day period that results in a loss of
26 employment, for six months or more, for the following number of
27 employees at a workplace:

28 (a) At least thirty-three percent of the employees and at least
29 fifty employees; or

30 (b) At least five hundred employees.

1 Layoffs of two or more groups of employees at a workplace within
2 any ninety-day period that, taken individually, are below the limits
3 stated in (a) and (b) of this subsection shall be aggregated and shall
4 constitute a reduction in business operations under this section if the
5 aggregate is above the limit of (a) or (b) of this subsection, unless
6 the employer can show by a preponderance of the evidence that each
7 individual layoff resulted from separate and distinct causes.

8 (11) "Relocation of a business or part of a business" means the
9 removal of all or substantially all of the operations of the business,
10 of a workplace, or of a distinct division or department of the business
11 to a location that is not within a reasonable commuting distance from
12 the original location of the workplace for a period exceeding thirty
13 days.

14 (12) "Taxing district" means a county, city, town, or special
15 district permitted by law to tax businesses with workplaces located
16 within the district's boundaries.

17 (13) "Workplace" means a single site of employment in this state,
18 and includes a factory, plant, office, or other facility, whether the
19 site exists as a separate branch, operating unit, division, or
20 department of the employer.

21 NEW SECTION. **Sec. 2.** This chapter does not apply to
22 reductions in business operations:

23 (1) Occurring at construction sites or other workplaces that were
24 intended to be temporary or seasonal workplaces at the commencement of
25 employment at the workplace;

26 (2) Resulting from seasonal factors that are customary in the
27 industry of which the employer is a part; or

28 (3) Resulting from any form of natural disaster, including but not
29 limited to flood, fire, drought, or earthquake.

1 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2)
2 or (3) of this section, an employer that intends to implement a
3 reduction in business operations shall provide notice at least sixty
4 days before the reduction is to take effect. Notice shall be in
5 writing and shall:

6 (a) Be transmitted to:

7 (i) All affected employees of the employer, including part-time
8 employees, or the organization that represents the affected employees
9 for purposes of collective bargaining, if any;

10 (ii) The dislocated worker unit in the employment security
11 department;

12 (iii) The business and job retention program of the department of
13 trade and economic development; and

14 (iv) The chief elected official of the community in which the
15 affected workplace is located; and

16 (b) Provide the following information:

17 (i) Name, location, and nature of the workplace subject to the
18 reduction in business operations;

19 (ii) Reasons for and expected length of the reduction in business
20 operations and the date when the reduction in business operations is
21 expected to occur;

22 (iii) Number of affected employees;

23 (iv) Possible alternatives to the reduction in business operations;
24 and

25 (v) Rights of the affected employees and procedures for ensuring
26 due process in implementing the rights, including seniority, severance
27 pay, and continuance of health benefits, that are guaranteed by a
28 collective bargaining agreement between the employee organization and
29 the employer.

1 (2) An employer may provide reduced notice of reductions in
2 business operations if:

3 (a) The employer shows by clear and convincing evidence that the
4 reduction in business operations resulted from the employer operating
5 under a contractual or financial arrangement fulfillment of which was
6 made impracticable by the occurrence of a contingency that was not
7 reasonably foreseeable at the inception of the contract or arrangement.
8 To comply with the reduced notice requirement under this subsection,
9 the employer shall give as much notice as possible, in accordance with
10 subsection (1)(a) and (b) of this section, and shall include in the
11 notice a statement of the reason for the reduced notice;

12 (b) The employer is receiving, or has aggressively made a bona fide
13 attempt to seek, technical assistance and consultation from the
14 business and job retention program. To comply with the reduced notice
15 requirement under this subsection, the employer shall provide as much
16 notice as is practicable in accordance with subsection (1)(a) and (b)
17 of this section; or

18 (c) The reduction in business operations is caused by business
19 circumstances that were not reasonably foreseeable as of the time that
20 notice would have been required.

21 (3) Notice in accordance with subsection (1) of this section shall
22 be required for a reduction in business operations of more than six
23 months which, at its outset, was announced to be a reduction of less
24 than six months unless:

25 (a) The extension beyond six months is caused by business
26 circumstances, including unforeseeable changes in price or cost, not
27 reasonably foreseeable at the time of the initial reduction in business
28 operations; and

29 (b) Notice is given at the time it becomes reasonably foreseeable
30 that the extension beyond six months will be required.

1 (4) If the date when a previously announced reduction in business
2 operations is expected to occur is delayed by less than sixty days, the
3 employer shall provide notice of the delay in any manner that
4 effectively communicates the information to all affected employees. If
5 the date when a previously announced reduction in business operations
6 is expected to occur is delayed by sixty days or more, the employer
7 shall issue a new notice conforming with the requirements of subsection
8 (1) of this section.

9 (5) If all or part of an employer's business is sold or otherwise
10 transferred, the selling or transferring employer shall be responsible
11 for providing notice of a reduction in business operations as required
12 by this chapter, up to and including the effective date of the sale or
13 transfer. After the effective date of the sale or transfer, the
14 purchaser of the business shall be responsible for providing notice of
15 a reduction in business operations as required by this chapter. For
16 the purposes of this subsection, any person who is an employee of the
17 selling or transferring employer, other than a part-time employee, on
18 the effective date of the sale or transfer shall be deemed an employee
19 of the purchaser immediately after the effective date of the sale or
20 transfer.

21 NEW SECTION. **Sec. 4.** (1) Upon receipt of the notice
22 specified in section 3 of this act, or upon receipt of other notice of
23 a reduction in business operations or of an intent to reduce business
24 operations, the department shall, within five working days, notify:

25 (a) The governor's office;

26 (b) The department of social and health services;

27 (c) The department of labor and industries; and

28 (d) The clerks of all taxing districts that could be adversely
29 affected by the decision to reduce business operations.

1 (2) Within thirty days of receipt of the notice specified in
2 section 3 of this act, the business and job retention program shall,
3 within appropriated funds, complete an appropriate assessment of
4 alternatives to reduction that would maintain the existing level of
5 employment at the affected workplace at wages and benefits
6 substantially equal to their current level. Assessments shall be
7 conducted in consultation with a labor-management team of affected
8 employees and the employer, and with the assistance of other state
9 agencies as necessary. An assessment may include, but is not limited
10 to, consideration of new sources of financing for the employer,
11 reorganization of management or production, opening new markets for
12 existing goods or services produced by the employer, and production of
13 modified or different goods or services.

14 (3) As needed to respond to a reduction in business operations, the
15 department shall coordinate, in cooperation with other state agencies
16 as appropriate, agency assistance to the rapid response team from the
17 state dislocated worker unit. The rapid response team shall establish
18 on-site contact with the business and the employees or the employee
19 representatives within forty-eight hours of receipt of the notice
20 specified in section 3 of this act.

21 NEW SECTION. **Sec. 5.** An employer that intends to reduce
22 business operations at a workplace shall:

23 (1) Cooperate in the assessment required under section 4(2) of
24 this act; and

25 (2) In the event of an intended total closure or relocation, first
26 make good faith offers of sale at fair market values for plant,
27 equipment, and inventory to the community in which that workplace is
28 located and, if a majority of the employees of that employer are singly
29 or in combination seeking to form a community-owned, employee-owned, or

1 jointly owned business at the workplace being closed, to the agents of
2 such employees. The community or employees shall exercise the right of
3 first refusal within one hundred days of receiving the offer of sale.

4 NEW SECTION. **Sec. 6.** (1) If a reduction in business
5 operations occurs for which notice is required but has not been given
6 as specified in this chapter, the employer shall, in addition to any
7 other requirements under this chapter:

8 (a) Pay to each affected employee for each day in which the
9 required notice was not given an amount equal to one day's wages and
10 benefits, computed as an average of the regular rate of compensation
11 received by the employee over the preceding three years or the final
12 regular rate of compensation received by the employee, whichever is
13 greater;

14 (b) Pay in full for the continuation of existing group health
15 insurance, regardless of where the policy was written, issued, or
16 delivered, for the benefit of each affected employee, and dependents if
17 covered under the group policy, for a maximum of sixty days from the
18 date of the reduction in business operations or until the employee
19 becomes eligible for other group coverage, whichever is the lesser
20 period;

21 (c) Pay an amount equal to the total amount paid or payable under
22 (a) of this subsection to the business and job retention program; and

23 (d) Provide to the director a relocation or retraining plan, or
24 both, as applicable, for the affected employees.

25 (2) An employer who fails to give the notice required by this
26 chapter:

27 (a) Shall not be eligible to enter into a contract to perform any
28 work for the state or its political subdivisions for ten years
29 following the last day of violation of the notice requirements;

1 (b) Shall not be eligible for state economic development loans or
2 grants or any other form of state-provided economic assistance for ten
3 years following the last day of violation of the notice requirements;
4 and

5 (c) Shall reimburse the appropriate governmental agency for any
6 loan, grant, or other economic assistance provided by that agency
7 during the ten-year period preceding the reduction in business
8 operations, together with interest at twelve percent per year. This
9 subsection (2)(c) shall apply only to loans, grants, or other economic
10 assistance provided after the effective date of this act.

11 NEW SECTION. **Sec. 7.** Any person aggrieved by a violation of
12 this chapter, including the organization representing the affected
13 employees for the purpose of collective bargaining or the affected
14 local government, may bring suit on his or her own behalf or on behalf
15 of other persons similarly situated, or both, in the superior court of
16 the county in which the violation occurred or in which the employer
17 transacts business.

18 NEW SECTION. **Sec. 8.** If a collective bargaining agreement
19 covering the workplace that is subject to a reduction in business
20 operations requires greater employee protection than required by this
21 chapter, the protections of the collective bargaining agreement shall
22 not be reduced or impaired by this chapter.

23 NEW SECTION. **Sec. 9.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** Sections 1 through 8 of this act shall
2 constitute a new chapter in Title 49 RCW.

3 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and shall take
6 effect immediately.