
**Labor & Workplace Standards
Committee**

HB 1313

Brief Description: Addressing mass layoffs, relocations, and terminations.

Sponsors: Representatives Scott, Farivar, Berry, Alvarado, Ryu, Goodman, Simmons, Thai, Reed, Ormsby, Macri, Ramel, Pollet and Doglio.

Brief Summary of Bill

- Requires certain employers to provide 60-days' notice before a mass layoff, relocation, or termination and requires those employers to allow reasonable access for rapid response partners.
- Requires the Employment Security Department to study the effects of mass layoffs.
- Makes changes regarding mass layoffs to statutes pertaining to permissible severance and compensation agreements, noncompete covenants, and unfair competition or unfair and deceptive acts in trade or commerce.

Hearing Date: 1/28/25

Staff: Benjamin McCarthy (786-7116).

Background:

Notice Requirements under the Federal Worker Adjustment and Retraining Notification Act.

The federal Worker Adjustment and Retraining Notification (WARN) Act requires covered employers to provide at least 60 days' notice before plant closings and mass layoffs, as described

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below. Covered employers are businesses with 100 or more full-time workers, or 100 or more full- or part-time workers who work at least a combined 4,000 hours per week.

A covered employer must provide notice if it:

- permanently or temporarily closes a facility or operating unit affecting 50 or more full-time employees at a single site of employment;
- lays off 500 or more full-time employees during a 30-day period or lays off 50 to 499 full-time workers and the layoffs constitute 33 percent of the employer's total active workforce at a single employment site;
- extends a temporary layoff that meets either of the above criteria for longer than six months; or
- reduces the hours of 50 or more workers by 50 percent or more for each month in a 6-month period.

For the purposes of calculating business size or the number of affected employees during a mass layoff or plant closing, part-time employees are not counted. Part-time employees are workers who average less than 20 hours per week or who have been employed for fewer than 6 of the last 12 months before notice is due.

The employer must give notice to unrepresented employees, employees represented by a union, the state Rapid Response Dislocated Worker Units, and the chief elected official of the local government where the closing or mass layoff will occur. The notice requirements vary based off recipient, but generally must contain the name and address where the mass layoff or plant closing is to occur, an explanation of whether the loss of employment will be temporary or permanent, whether the entire plant is being closed, the expected day of the first job loss/separation, the anticipated schedule for future separations, the job titles of positions to be affected, and the number of affected employees in each job classification.

Exceptions to the 60-days' Notice Requirement Under the Federal Worker Adjustment and Retraining Notification Act.

An employer does not have to provide 60-days' notice under three circumstances. First, an employer does not have to give notice if at the time notice is required: the employer is actively seeking capital or business, the employer reasonably in good faith believes that advance notice would preclude its ability to obtain such capital or business, and this new capital or business would allow the employer to avoid or postpone the shutdown for a reasonable period.

Second, an employer is excused from the notice requirement if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time notice would have been required.

Third, an employer is excused from the notice requirement when a plant closing, or mass layoff is the direct result of a natural disaster.

Although not an exception, the WARN Act is not triggered if an employer closes a temporary

facility or completes a temporary project and the employees were hired with the clear understanding that their employment would end with the facilities' closing or the project's completion. The WARN Act is also not triggered if an employer closes a facility or operating unit due to a strike or lockout.

Penalties for Violating the Federal Worker Adjustment and Retraining Notification Act.

An employer who violates the WARN Act is liable to each affected employee for an amount equal to back pay and benefits for the period of violation, up to 60 days. This amount may be reduced by any wages the employer pays over the notice period. The amount may also be reduced by any voluntary and unconditional payment not required by a legal obligation.

An employer who fails to provide the required notice is subject to a civil penalty not to exceed \$500 for each day of violation. The penalty may be avoided if the employer satisfies its liability to each affected employee within three weeks after the closing. In any suit, the court may allow the prevailing party a reasonable attorney's fee as part of the costs.

Rapid Response.

Rapid response is a partner of the US Department of Labor that helps businesses and workers deal with the effects of layoffs and plant closures. Rapid response partners are organized by states and local workforce development agencies. Rapid response partners respond to layoffs and plant closings by coordinating services and providing aid to companies and their affected workers.

Miscellaneous.

Nondisclosure conditions of severance pay. State law prohibits employers from entering into agreements with employees that limit an employee's ability to discuss an employer's conduct in certain situations relating to discrimination, harassment, retaliation, sexual assault, and wage and hour violations, as a condition of receiving severance pay or other compensation. An employer that engages in such acts may be liable for damages.

Noncompetition covenants. Certain noncompetition covenants are void and unenforceable, including when an employee is terminated as the result of a layoff, unless the enforcement of the noncompetition covenant includes compensation equivalent of the employee's base salary at the time of termination.

Unfair competition and unfair or deceptive acts. Employers may not engage in unfair competition or unfair or deceptive acts in trade or commerce.

Summary of Bill:

A Washington Worker Adjustment and Retraining Notification Act (WARN) Act is created.

Notice Requirements under the Washington Worker Adjustment and Retraining Notification Act.

The Washington WARN Act requires covered employers to provide at least 60 days' written notice before a mass layoff, relocation, or termination. A covered employer is an industrial or commercial facility that has employed 100 or more employees within the preceding 12 months.

A mass layoff is any layoff where 50 or more employees are laid off at a single facility within a 30-day period. A relocation is when all, or substantially all, of an operation is moved 100 miles or more from the initial facility. A termination is when all, or substantially all, operations end at a single facility.

The employer must give notice to the employees at the affected facility, the Employment Security Department (ESD), the local workforce development council, and the chief elected official of each city and county where the mass layoff, relocation, or termination occurs.

The ESD must specify what the notice must contain. The notice requirements must be consistent with the federal WARN Act and must also include a statement declaring that the employer has considered alternatives to a mass layoff, a statement that the mass layoff is necessary, and a detailed explanation with data describing reasons behind the decision to conduct the mass layoff.

Exceptions to the 60-days' Notice Requirement Under the Washington Worker Adjustment and Retraining Notification Act.

An employer does not have to provide 60-days' notice under three circumstances. First, like the federal WARN Act, an employer does not have to give notice of a mass layoff, relocation, or termination if at the time notice is required: the employer is actively seeking capital or business; the capital or business, if obtained, would prevent or postponed the mass layoff, termination, or relocation; and the employer had a reasonable, good faith belief that giving the notice would prevent it from acquiring the capital or business.

Second, similarly to the federal WARN Act, an employer is excused from the notice requirement if the mass layoff, relocation, or termination is caused by a physical calamity. An employer is also excused if the mass layoff, relocation, or termination is caused by an act of war.

Third, similarly to the federal WARN Act, an employer is not required to give notice if the mass layoff, relocation, or termination is due to the completion of a construction project and the affected employees were hired with the understanding that their employment was limited to the duration of the project.

Penalties for Violating the Washington Worker Adjustment and Retraining Notification Act.

Like the federal WARN Act, an employer who violates the Washington WARN Act is liable to

each affected employee for an amount equal to back pay and benefits for the period of violation, up to 60 days. The amount of back pay is calculated as the greater of either the employee's average compensation over the last three years or the employee's final rate of compensation.

An employer's liability is reduced for any wages paid during the period of violation, except for vacation money accrued prior to the period of violation; any voluntary and unconditional payments not required by legal obligation; and payments made to a third party or trustee on behalf of and attributable to the employee for the period of violation. Payments to employees who are terminated without proper notice are not wages for the calculation of unemployment insurance payments.

Similar to the federal WARN Act, an employer who fails to provide the required notice is also liable for a civil penalty of up to \$500 per day of violation. The penalty may be avoided if an employer satisfies its liability to each affected employee within three weeks from the time it orders a mass layoff, relocation, or termination.

The ESD must administer and investigate violations of the notice requirement and must adopt rules necessary to carry out its duties under the Washington WARN Act.

Individuals, including local governments or employee representatives can bring a civil action to establish liability against an employer under this act. A court can reduce the penalty imposed on an employer if it concludes that the employer conducted a reasonable investigation in good faith and had reasonable ground to believe it was not violating the notice requirement. Prevailing plaintiffs may be awarded reasonable attorney's fees.

Mass Layoff Survey.

The ESD must develop a mass layoff survey to collect data on the demographics of people affected by mass layoffs. Employers must provide this survey to each employee who is being terminated and must give the ESD general demographic data about its workforce at the layoff site. The ESD will compile the data it receives and include it on its website.

Rapid Response.

Employers are required to allow rapid response partners reasonable access to employees who receive notice under this act. Reasonable access means rapid response partners must be able to present to employees during the employees' regular working hours, at the employees' regular worksite or customary work location. The presentation may also happen a location agreed on by the employer, the employees' exclusive bargaining representative, and the rapid response partner. The rapid response partners must be given at least 90 minutes for their presentation. Employees cannot be required to attend the rapid response presentation.

Miscellaneous.

The following changes in relation to mass layoffs are made to other labor laws.

Nondisclosure conditions of severance pay. Any agreement that limits an employee's ability to

discuss an employer's conduct regarding a mass layoff as a condition of receiving severance pay or compensation is void and unenforceable.

Noncompetition covenants. If an employer fails to give the notice required by this act, noncompetition covenants with employees terminated in mass layoffs are void and unenforceable.

Unfair competition and unfair or deceptive acts. Cooperation or coordination between competing employers regarding mass layoffs is unfair competition and an unfair or deceptive act in trade or commerce.

Appropriation: None.

Fiscal Note: Requested on January 22, 2025.

Effective Date: The bill takes effect on July 1, 2026.