

HOUSE BILL REPORT

HB 1313

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to addressing mass layoffs, relocations, and terminations at covered establishments.

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 History:

Committee Activity:

Labor & Workplace Standards: 1/28/25, 2/14/25 [DPS].

Brief Summary of Substitute Bill

- Requires employers with over 100 employees 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 employers to pay for continuing group health care for affected employees and their dependents for a specified period after a mass layoff, relocation, or termination.
- Requires the Employment Security Department to study the effects of mass layoffs.
- Makes changes regarding mass layoffs to statutes pertaining to nondisclosure conditions placed on severance pay, noncompete covenants, and unfair competition or unfair and deceptive acts in trade or commerce.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Bronoske, Obras and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; McEntire.

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 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 the covered employer:

- 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 Unit, and the chief elected official of the local government where the closing or mass layoff will occur. The notice requirements vary based on the 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 or 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.

Lastly, the federal 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 federal 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 federal 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 or mass layoff. In a lawsuit related to the federal WARN Act, 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 United States 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 State Employment Laws.

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. Circumstances that qualify as unfair competition or unfair or deceptive acts in trade are specified in statute and include monopolies, agreements not to use commodities or services of a competitor, and acquisition of corporate stock by another corporation to lessen competition.

Summary of Substitute Bill:

A Washington Worker Adjustment and Retraining Notification (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 a facility that employs 100 or more employees.

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, the chief elected official of each city and county where the mass layoff, relocation, or termination occurs, and the exclusive bargaining representative of organized employees.

The ESD must specify the required content of the notice. 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 describing reasons behind the decision to conduct the mass layoff. The notice to the ESD and the chief elected official of the locality where the mass layoff, relocation, or termination occurs, must also include data to support the employer's reasons for conducting a mass layoff. This data must include, if applicable:

operational data, market data, workforce data, and other external factors.

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 four 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 postpone 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 particular project or undertaking and the affected employees were hired with the understanding that their employment was limited to the duration of the project or undertaking.

Fourth, a multiemployer construction project whose employees are subject to a full union referral or dispatch system, is not required to provide notice under this act.

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 made to employees, under the Washington WARN Act, who are terminated without proper notice do not constitute 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 an administrative penalty of up to \$500 per day of violation. An employer is not subject to this penalty if it satisfies its liability to each affected employee within three

weeks from the time the employer 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, 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 the court concludes that the employer conducted a reasonable investigation in good faith and had reasonable ground to believe the employer was not violating the notice requirement. Prevailing plaintiffs may be awarded reasonable attorney's fees.

Continuing Health Insurance Coverage for Employees Laid Off During a Mass Layoff, Relocation, or Termination.

An employer who conducts a mass layoff, relocation, or termination must pay for the continuation of existing group health insurance for affected employees and their dependents for the lesser of 120 days or until the employee becomes eligible for other group coverage.

The ESD may investigate alleged violations of the requirement to provide continuing health insurance, issue notices of violation of this requirement, and order payment.

Mass Layoff Survey.

The ESD must develop an online mass layoff survey to collect data on the demographics of people affected by mass layoffs. Employers must inform laid off employees about how to access this survey. The ESD will compile the data they receive 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 at 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 Changes to State Employment Law Relating to Mass Layoffs.

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.

Substitute Bill Compared to Original Bill:

The substitute bill expands the definition of employer to include any entity that owns or operates a facility that employs 100 or more employees.

The substitute bill adds the exclusive bargaining representatives of organized employees to the parties entitled to notice under the Washington Worker Adjustment and Retraining Notification Act.

The substitute bill requires the notice to the Employment Security Department (ESD) and chief elected official of the locality where the mass layoff, relocation, or termination occurs to include data supporting its reasoning for conducting a mass layoff, and provides a list of relevant data that must be included if appropriate.

The substitute bill expands the construction project-based notice requirement exemption to mass layoffs, relocations, and terminations caused by the completion of any project or undertaking. Further, it adds an exemption from the notice requirement for multiemployer construction projects whose employees are subject to a full union referral or dispatch system.

The substitute bill requires employers to pay in full for the continuation of existing group health insurance for laid off employees for the lesser of: (1) 120 days after a mass layoff, relocation, or termination; or (2) until the employee becomes eligible for other group coverage. It also authorizes the ESD to investigate and issue notices of violation of the requirement to pay for the continuation of health insurance and provides a process for employers to appeal such notices.

The substitute bill characterizes penalties for violations of the act as administrative penalties rather than civil penalties. The administrative penalties are paid into the State General Fund.

Finally, the substitute bill specifies that the ESD must develop an online survey and requires employers to inform laid off employees on how to access the online survey.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2025.

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

Staff Summary of Public Testimony:

(In support) Having notice of a mass layoff is a matter of survival for workers; it gives them time to prepare. Mass layoffs create mass traumas and have significant impacts on the community. The threat of them creates economic insecurity, and families are less likely to make big decisions. The crack cocaine epidemic demonstrates how mass layoffs affect communities. This will ease labor mobility, provide notice to social services and policy makers, make things more accountable to workers, and this requires employers to explain their decision making. The survey will help us learn who is being impacted the most.

(Opposed) None.

(Other) There are a few issues with this bill. The Employment Security Department is not empowered to collect civil penalties, and there are difficulties with having these penalties placed in the Unemployment Trust Fund. Construction work can be cyclical where large numbers of workers leave a project once their work is done, but before the project is complete. Changing the exception to remove the word "completion" would be helpful.

Persons Testifying: (In support) Representative Shaun Scott, prime sponsor; John Traynor, Washington State Labor Council, AFL-CIO; and Brandon Anderson, SPEEA (Aerospace Engineers).

(Other) Michael Transue, Mechanical Contractors Association of Western Washington; and Josh Dye, Employment Security Department.

Persons Signed In To Testify But Not Testifying: None.