
Labor & Workplace Standards Committee

ESSB 5525

Brief Description: Concerning employment loss due to businesses closing or mass layoffs.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Cleveland, Saldaña, Hasegawa, Riccelli, Dhingra, Conway, Nobles and Valdez).

Brief Summary of Engrossed Substitute Bill

- Requires employers with 50 or more employees to provide 60 days' notice before a business closing or mass layoff.
- Creates penalties for employers who fail to provide the required notice, subject to certain exceptions.
- Prohibits employers from including employees who are on paid family or medical leave in a mass layoff, except under certain circumstances.

Hearing Date: 3/25/25

Staff: Benjamin McCarthy (786-7116).

Background:

The Federal Worker Adjustment and Retraining Notification Act.

Notice Requirements. 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. 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:

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- 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 federal WARN Act, and the act's notice requirement, is not triggered if an employer closes: (1) 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; or (2) if an employer closes a facility or operating unit due to a strike or lockout.

Notice Contents. The employer must give notice to unrepresented employees, the representative of unionized employees, 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. An employer is exempt from providing 60 days' notice if:

- at the time notice would be required, the employer is: (1) actively seeking capital or business; (2) the employer reasonably in good faith believes that advance notice would preclude its ability to obtain the capital or business; and (3) this new capital or business would allow the employer to avoid or postpone the shutdown for a reasonable period;
- the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time notice would have been required; or
- a plant closing or mass layoff is the direct result of a natural disaster.

Penalties for Failure to Provide Notice. 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, or 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 award the prevailing party a reasonable attorney's fee as part of the costs.

Paid Family Medical Leave Act.

The Washington Paid Family and Medical Leave (PFML) Program, which is administered by the Employment Security Department (ESD), provides partial wage replacement benefits to employees on leave for specified family and medical reasons.

An employer with 50 or more employees is required to restore an eligible employee to an equivalent position with equivalent pay and benefits upon returning from leave in the PFML Program, often referred to as "employment protection" or "employment restoration."

Summary of Bill:

Securing Timely Notification and Benefits for Laid-off Employees Act.

The state Securing Timely Notification and Benefits for Laid-off Employees Act is created.

Notice Requirements. Covered employers are required to provide at least 60 days' notice before a business closing or mass layoff. A "covered employer" is a person who employs 50 or more employees in Washington, excluding part-time employees. The state, political subdivisions of the state, and local governments are not employers.

A covered employer must provide notice before it orders a:

- "business closing" where it permanently or temporarily shuts down a single site of employment that result in an employment loss for 50 or more employees, excluding part-time employees; or
- "mass layoff" where there is a reduction in the employment force that is not the result of a business closing but that causes employment loss for 50 or more employees during a 30-day period, excluding part-time employees.

Subject to certain exceptions, "employment loss" means an employment termination, a layoff exceeding six months, or a reduction of an individual employee's work hours of more than 50 percent during each month in a six-month period.

If a short-term layoff of three months or less is extended for longer than three months, notice may be required depending on whether the business circumstances requiring the extension were

reasonably foreseeable at the time of the initial layoff. If a short-term layoff of three months or less is extended due to business circumstances that were not reasonably foreseeable at the time of the initial layoff, notice of the layoff is only required when it becomes reasonably foreseeable that the extension is required. If a short-term layoff is extended for any reason besides business circumstances that were not reasonably foreseeable at the time of the initial layoff employment loss is calculated from the time of the initial short-term layoff.

Notice Contents. An employer must give notice to the ESD, and either the affected employee or if the employee is represented by a union, the affected employee's bargaining representative. An "affected employee" is an employee who may reasonably expect to experience employment loss because of a proposed business closing or mass layoff.

The notice must be written and include the requirements of the federal WARN Act as they exist on the effective date of this act. The notice must also include:

- the name and address of the site where the business closing or mass layoff will occur;
- the name and contact information of a company official to contact for further information;
- a statement of whether the planned action is expected to be permanent or temporary;
- if the entire business is to be closed, a statement to that effect;
- if the planned action is expected to be temporary, the statement must include whether the planned action is expected to last longer or shorter than three months;
- the expected date of the first employment loss and the anticipated schedule for employment losses;
- the job titles of positions to be affected and the names of the employees currently holding affected jobs; and
- whether the mass layoff or business closing is the result of, or will result in, the relocation or contracting out of the employer's operations or the affected employees' positions.

The notice provided to the ESD must also include the address of each affected employee.

The employer must provide additional notice if a planned business closing or mass layoff extends beyond the period announced in the original notice.

Exceptions to the 60 Days' Notice Requirement. An employer does not have to provide 60-days' notice if:

- at the time notice would be required, the employer is: (1) actively seeking capital or business; (2) the employer reasonably in good faith believes that advance notice would preclude its ability to obtain the capital or business; and (3) this new capital or business would allow the employer to avoid or postpone the shutdown for a reasonable period;
- the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time notice would have been required;
- a plant closing, or mass layoff is the direct result of a natural disaster;
- the mass layoff is the result of 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; or

- the mass layoff is the result of the completion of a multiemployer construction project employing persons who are subject to a full union referral or dispatch system.

If one of these exceptions only applies for part of the 60 days' notice window, notice is required at the time the exception no longer applies.

Penalties for Failure to Provide Notice. An employer who violates this act is liable to each affected employee for an amount equal to back pay and benefits—including medical expenses that would have been covered by the employee benefit plan—for the period of violation, up to 60 days. This amount may be reduced by:

- any wages the employer pays during the period of violation;
- any voluntary and unconditional payment not required by a legal obligation;
- any amount paid by the employer to the employee pursuant to the federal WARN Act; and
- any payment by the employer to a third party or trustee on behalf of and attributable to the employee during the period of violation.

The ESD, an aggrieved employee, or the bargaining representative of an aggrieved employee may bring a civil action on behalf of a person, a class of similarly situated people, or both within three years of the alleged violation. The court may award reasonable attorneys' fees to a prevailing plaintiff.

An employer who fails to provide the required notice is also 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 employer orders the mass layoff, termination, or closing. Any civil penalty paid by the employer under the federal WARN Act must be considered a payment of the civil penalty under this act.

Rulemaking. The ESD must enforce the provisions of this act. The ESD may adopt rules to carry out the purposes of the act, except that the ESD is required to adopt rules regarding the documentation requirements for exceptions to the notice requirement.

Paid Family and Medical Leave Act.

An employer may not include an employee in a mass layoff if the employee is currently on paid family or medical leave unless the mass layoff is the result of an unforeseeable business circumstance, a natural disaster, the completion of a construction project, or the completion of a multiemployer construction project.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.