

# FINAL BILL REPORT

## ESSB 5525

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**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).

**Senate Committee on Labor & Commerce**  
**House Committee on Labor & Workplace Standards**

**Background:** The federal Worker Adjustment and Retraining Notification (WARN) Act requires certain employers to provide employees with a 60-day advanced notification of a plant closing or mass layoff. The WARN Act applies if an 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 six-month period.

The WARN Act requires notice to individual employees to be in writing and contain certain information, including:

- a statement as to whether the plant closure or layoff is expected to be permanent or temporary;
- the expected date of the closure or mass layoff; and
- the expected date when the individual will be separated from employment.

An employer who violates the WARN Act is liable to each affected employee for back pay and the amount of any lost benefits for up to 60 days. An employee alleging a violation of the WARN Act may bring a civil action in federal court. 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.

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*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.*

Employers must also notify the Employment Security Department (ESD). The notice must include, among other things, the job titles of positions that will be affected and the number of affected employees in each job category. ESD maintains a WARN Act notification page on its website that lists the businesses that have issued WARN Act notifications. ESD also contacts the appropriate local workforce investment system partner that provides rapid response services when mass layoffs occur. A rapid response unit, which can comprise of state, local, and nonprofit workforce development partners, contacts employers and worker representatives to offer transitional services and information to affected employees. The rapid response unit offers assistance with unemployment insurance information, job seeker and retraining services, and other information. Rapid response services can be offered on-site or at the local workforce development office.

**Summary:** Mass Layoff and Business Closing Notifications. An employer of 50 or more full-time employees may not order a business closing or a mass layoff until 60 days after the employer provides written notice to ESD and to the affected employees, or if the employees are represented, to the employees' bargaining representative.

A business closing is a permanent or temporary shutdown of a single site of employment of one or more facilities that will result in employment loss for 50 or more full-time employees. A mass layoff is a reduction in employment force and results in an employment loss during any 30-day period of 50 or more full-time employees.

An employer who previously announced a mass layoff of less than three months that is extended beyond three months due to business circumstances not reasonably foreseeable is required to give notice when it becomes reasonably foreseeable that an extension is required. In the case of the sale of a business, the seller is responsible for providing notice up to the effective date of the sale and the buyer is responsible for providing notice after the date of the sale.

The notice must be in written form and include the elements required under the WARN Act, as well as:

- the name and address of the employment site where the business closing or mass layoff will occur, and the name and contact of a company official to contact for further information;
- a statement whether the planned action is expected to be permanent or temporary, and, if the business is to be permanently closed, a statement to that effect. If the planned action is expected to be temporary, the statement must also include whether the planned action is expected to last longer 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 the affected jobs. Notice to ESD must also include the addresses of the affected employees; 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 employees' positions.

The employer must provide additional notice of the date or schedule of dates for any business closing or mass layoff extended beyond the date of the period announced in the original notice.

Exceptions. An employer is not required to provide notice if:

- at the time notice would have been required, the employer was actively seeking capital or business;
- the capital or business sought would have enabled the employer to avoid or postpone the business closing or mass layoff; and
- the employer reasonably and in good faith believed that the notice would have precluded the employer from obtaining the needed capital or business.

An employer is also not required to provide notice if the business closing or mass layoff is:

- caused by business circumstances that were not reasonably foreseeable at the time notice would have been required. The unforeseeable business circumstances must be caused by a sudden, dramatic, and unexpected action or condition outside the employer's control;
- due to a natural disaster, such as a flood, earthquake, drought, storm, tornado, or similar effects of nature; or
- at: (1) a construction project, and the affected employees were hired with the understanding that their employment was limited to the duration of the project, or (2) a multi-employer construction project and the only affected employees are subject to a full union referral or dispatch system.

If an exception applies for only part of the 60-day notice window, notice is required at the time the exception no longer applies. ESD is required to establish documentation requirements for the exceptions. ESD may not determine an exception applies unless the employer meets the documentation and other requirements established by ESD.

Enforcement. An employer that fails to provide the required notice is liable to each aggrieved employee who suffers an employment loss because of the business closing or mass layoff for:

- back pay for each day of the violation not less than the higher of the employee's average regular rate of compensation for the previous three years or the employee's final rate of compensation; and
- the value of the cost of any benefits to which the employee would have been entitled.

The liability must be calculated for the period of the violation up to a maximum of 60 days.

The employer's liability must be reduced by any:

- wages paid to the employee during the period of the violation;

- voluntary and unconditional payment made by the employer to the employee that is not required by any legal obligation;
- amount paid to the employee under the WARN Act; and
- amount paid to a third party or trustee, such as premiums for health benefits or payments to a pension plan, on behalf of the employee for the period of the violation.

ESD, an aggrieved employee, or the bargaining representative of the aggrieved employee may bring a civil action within three years of the alleged violation. The court may award reasonable attorneys' fees to a prevailing plaintiff. The court may reduce the amount of any penalty if it determines the employer conducted a reasonable investigation in good faith and had reasonable grounds to believe its conduct was not a violation. A court may not enjoin a mass layoff or business closing under the bill.

An employer who fails to provide notice to ESD is subject to a civil penalty of not more than \$500 for each day of the violation. An employer is not liable for the civil penalty if it pays to all employees the amounts for which the employer is liable within three weeks from the date the employer orders the mass layoff, relocation, or termination. Any payment of a civil penalty under the WARN Act must be considered a payment of the civil penalty under the bill.

Paid Family and Medical Leave. An employer may not include an employee in an order of a mass layoff if the employee is currently on paid family or medical leave. This prohibition does not apply to mass layoffs where notification is not required due to one of the following exceptions:

- the mass layoff is caused by business circumstances that were not reasonably foreseeable;
- the mass layoff is due to a natural disaster; or
- the mass layoff is the result of the completion of certain construction projects specified in the bill.

**Votes on Final Passage:**

Senate	30	19	
House	59	38	(House amended)
Senate	29	19	(Senate concurred)

**Effective:** Ninety days after adjournment of session in which bill is passed.