

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2957

Introduced by Assembly Member Koretz

February 25, 2002

An act to add Chapter 4 (commencing with Section 1400) to Part 4 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2957, as amended, Koretz. Employment: mass layoffs, relocations, and terminations.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner.

This bill would preclude employers from ordering a mass layoff, relocation, or termination, as defined, of an industrial or commercial facility employing a prescribed number of people, without first giving 60 days' notice to affected employees and specified government agencies. *An employer would not be required to comply with the 60-day notice requirement established by this bill if the employer is actively seeking capital or business that would enable the employer to avoid or postpone a relocation or termination, and the employer reasonably and in good faith believed that giving the 60 days' notice would preclude the employer from obtaining the capital or business.*

This bill would further provide for civil penalties against an employer who fails to provide the required notices. Employees who bring a civil action to enforce the provisions of this bill would, at the

discretion of the court, be entitled *to* recover attorney’s fees. The court would also have discretion to reduce the amount of an employer’s liability if the employer conducted a reasonable investigation in good faith and had reasonable grounds to believe that it was not violating the law. *Payments to a person by an employer who is liable to that person under this bill would not be considered wages or compensation for personal services for purposes of unemployment insurance, and unemployment insurance benefits would not be denied or reduced by those payments.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4 (commencing with Section 1400) is
2 added to Part 4 of Division 2 of the Labor Code, to read:

3
4 CHAPTER 4. RELOCATIONS, TERMINATIONS, AND MASS LAYOFFS

5
6 1400. The definitions set forth in this section shall govern the
7 construction and meaning of the terms used in this chapter:

8 (a) “Covered establishment” means any industrial or
9 commercial facility or part thereof that employs, or has employed
10 within the preceding 12 months, 50 or more persons.

11 (b) “Employer” means any person, as defined by Section 18,
12 who directly or indirectly owns and operates a covered
13 establishment. A parent corporation is an employer as to any
14 covered establishment directly owned and operated by its
15 corporate subsidiary.

16 (c) “Layoff” means a separation from a position for lack of
17 funds or lack of work.

18 (d) “Mass layoff” means a layoff during any 30-day period of
19 50 or more employees, or 33 percent or more of the employees, at
20 a covered establishment.

21 (e) “Relocation” means the removal of all or substantially all
22 of the industrial or commercial operations in a covered
23 establishment to a new location 100 miles or more away.

24 (f) “Termination” means the cessation or substantial cessation
25 of industrial or commercial operations in a covered establishment.



1 (g) (1) This chapter does not apply where the closing or layoff
2 is the result of the completion of a particular project or undertaking
3 of an employer subject to Wage Order 11, regulating the
4 Broadcasting Industry, or Wage Order 12, regulating the Motion
5 Picture Industry, of the Industrial Welfare Commission, and the
6 employees were hired with the understanding that their
7 employment was limited to the duration of that project or
8 undertaking.

9 (2) This chapter does not apply to employees who are
10 employed in seasonal employment where the employees were
11 hired with the understanding that their employment was seasonal
12 and temporary.

13 1401. (a) An employer may not order a mass layoff,
14 relocation, or termination at a covered establishment unless, 60
15 days before the order takes effect, the employer gives written
16 notice of the order to the following:

17 (1) The employees of the covered establishment affected by the
18 order.

19 (2) The Employment Development Department, the local
20 workforce investment board, and the chief elected official of each
21 city and county government affected by the order.

22 (b) An employer required to give notice of any mass layoff,
23 relocation, or termination under this chapter and the federal
24 Worker Adjustment and ~~Restraining~~ *Retraining* Notification Act
25 (29 U.S.C. Sec. 2101 et seq.) may utilize the form required by the
26 federal act to give notice under this chapter.

27 (c) Notwithstanding the requirements of subdivision (a), an
28 employer is not required to provide notice if a mass layoff,
29 relocation, or termination is necessitated by a physical calamity or
30 act of war.

31 1402. (a) An employer who fails to give notice as required by
32 paragraph (1) of subdivision (a) of Section 1401 before ordering
33 a mass layoff, relocation, or termination is liable to each employee
34 entitled to notice who lost his or her employment for:

35 (1) Back pay at the average regular rate of compensation
36 received by the employee during the last three years of his or her
37 employment, or the employee's final rate of compensation,
38 whichever is higher.

39 (2) Benefits under any employee benefit plan to which the
40 employee would have been entitled had his or her employment not



1 been lost, including the cost of any medical expenses incurred by
2 the employee that would have been covered under an employee
3 benefit plan.

4 (b) Liability under this section is calculated for the period of the
5 employer’s violation, up to a maximum of 60 days, or one-half the
6 number of days that the employee was employed by the employer,
7 whichever period is smaller.

8 (c) The amount of an employer’s liability under subdivision (a)
9 is reduced by the following:

10 (1) Any wages paid by the employer to the employee during the
11 period of the employer’s violation.

12 (2) Any voluntary and unconditional payments made by the
13 employer to the employer that were not required to satisfy any
14 legal obligation.

15 (3) Any payments by the employer to a third party or trustee,
16 such as premiums for health benefits or payments to a defined
17 contribution pension plan, on behalf of and attributable to the
18 employee for the period of the violation.

19 (d) An employer may reduce a liability incurred under this
20 section with respect to a defined benefit pension plan by crediting
21 the employee with service for all purposes under such a plan for
22 the period of the violation.

23 *1402.5. (a) An employer is not required to comply with the*
24 *notice requirement contained in subdivision (a) of Section 1401 if*
25 *the department determines that all of the following conditions*
26 *exist:*

27 *(1) As of the time that notice would have been required, the*
28 *employer was actively seeking capital or business.*

29 *(2) The capital or business sought, if obtained, would have*
30 *enabled the employer to avoid or postpone the relocation or*
31 *termination.*

32 *(3) The employer reasonably and in good faith believed that*
33 *giving the notice required by subdivision (a) of Section 1401 would*
34 *have precluded the employer from obtaining the needed capital or*
35 *business.*

36 *(b) The department may not determine that the employer was*
37 *actively seeking capital or business under subdivision (a) unless*
38 *the employer provides the department with both of the following:*



1 (1) *A written record consisting of all documents relevant to the*
2 *determination of whether the employer was actively seeking*
3 *capital or business, as specified by the department.*

4 (2) *An affidavit verifying the contents of the documents*
5 *contained in the record.*

6 (c) *The affidavit provided to the department pursuant to*
7 *paragraph (2) of subdivision (b) shall contain a declaration signed*
8 *under penalty of perjury stating that the affidavit and the contents*
9 *of the documents contained in the record submitted pursuant to*
10 *paragraph (1) of subdivision (b) are true and correct.*

11 (d) *This section does not apply to notice of a mass layoff as*
12 *defined by subdivision (d) of Section 1400.*

13 1403. An employer who fails to give notice as required by
14 paragraph (2) of subdivision (a) of Section 1401 is subject to a civil
15 penalty of not more than five hundred dollars (\$500) for each day
16 of the employer's violation. The employer is not subject to a civil
17 penalty under this section, however, if the employer pays to all
18 applicable employees the amounts for which the employee is liable
19 under Section 1402 *within three weeks from the date the employer*
20 *orders the mass layoff, relocation, or termination.*

21 1404. A person seeking to establish liability against an
22 employer, including a local government or an employee
23 representative, may bring a civil action on behalf of such person,
24 other persons similarly situated, or both, in any court of competent
25 jurisdiction. The court may award reasonable attorney's fees as
26 part of costs to any plaintiff who prevails in a civil action brought
27 under this chapter.

28 1405. If the court determines that an employer conducted a
29 reasonable investigation in good faith, and had reasonable grounds
30 to believe that its conduct was not a violation of this chapter, the
31 court may reduce the amount of any penalty or liability of penalty
32 imposed against the employer under this chapter.

33 1406. In any investigation or proceeding under this chapter,
34 the Labor Commissioner has, in addition to all other powers
35 granted by law, the authority to examine the books and records of
36 an employer.

37 1407. (a) *Payments to a person under subdivision (a) of*
38 *Section 1402 by an employer who has failed to provide the advance*
39 *notice of facility closure required by this chapter or the federal*
40 *Worker Adjustment and Retraining Notification Act (29 U.S.C.*



1 *Sec. 2101 et seq.) may not be construed as wages or compensation*
2 *for personal services under Article 2 (commencing with Section*
3 *926) of Chapter 4 of Part 1 of Division 1 of the Unemployment*
4 *Insurance Code.*

5 *(b) Benefits payable under Chapter 5 (commencing with*
6 *Section 1251) of Part 1 of Division 1 of the Unemployment*
7 *Insurance Code may not be denied or reduced because of the*
8 *receipt of payments related to an employer's violation of this*
9 *chapter or the federal Worker Adjustment and Retraining*
10 *Notification Act (29 U.S.C. Sec. 2101 et seq.).*

