

BILL NUMBER: AB 2957 CHAPTERED
BILL TEXT

CHAPTER 780

FILED WITH SECRETARY OF STATE SEPTEMBER 22, 2002

APPROVED BY GOVERNOR SEPTEMBER 21, 2002

PASSED THE ASSEMBLY AUGUST 30, 2002

PASSED THE SENATE AUGUST 28, 2002

AMENDED IN SENATE AUGUST 26, 2002

AMENDED IN SENATE AUGUST 14, 2002

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 17, 2002

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, 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.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

CHAPTER 4. RELOCATIONS, TERMINATIONS, AND MASS LAYOFFS

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

(a) "Covered establishment" means any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 75 or more persons.

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

(c) "Layoff" means a separation from a position for lack of funds or lack of work.

(d) "Mass layoff" means a layoff during any 30-day period of 50 or more employees at a covered establishment.

(e) "Relocation" means the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away.

(f) "Termination" means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.

(g) (1) This chapter does not apply where the closing or layoff is the result of the completion of a particular project or undertaking of an employer subject to Wage Order 11, regulating the Broadcasting Industry, Wage Order 12, regulating the Motion Picture Industry, or Wage Order 16, regulating Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries, of the

Industrial Welfare Commission, and the employees were hired with the understanding that their employment was limited to the duration of that project or undertaking.

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

(h) "Employee" means a person employed by an employer for at least 6 months of the 12 months preceding the date on which notice is required.

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

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

(2) The Employment Development Department, the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.

(b) An employer required to give notice of any mass layoff, relocation, or termination under this chapter shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

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

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

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

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

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

(c) The amount of an employer's liability under subdivision (a) is

reduced by the following:

(1) Any wages, except vacation moneys accrued prior to the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

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

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

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

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

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

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

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

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

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

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

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

1403. An employer who fails to give notice as required by paragraph (2) of subdivision (a) of Section 1401 is subject to a civil penalty of not more than five hundred dollars (\$500) for each day of the employer's violation. The employer is not subject to a civil penalty under this section, however, if the employer pays to

all applicable employees the amounts for which the employer is liable under Section 1402 within three weeks from the date the employer orders the mass layoff, relocation, or termination.

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

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

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

1407. (a) Payments to a person under subdivision (a) of Section 1402 by an employer who has failed to provide the advance notice of facility closure required by this chapter or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.) may not be construed as wages or compensation for personal services under Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1 of the Unemployment Insurance Code.

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

1408. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.