
HOUSE BILL 1278

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Heavey, Cole, R. King, Prentice, Leonard and Riley.

Read first time January 25, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to employer obligations; adding a new chapter to
2 Title 49 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) Employment is vitally important to an individual's economic
6 well-being and self-respect. The employees of a business invest their
7 skills and efforts into a business and have a vital stake in its
8 continued operation and their continued employment. When their
9 employment with a business is terminated due to the closure, transfer
10 of ownership, or relocation of the business, they suffer a heavy
11 economic and personal loss.

12 (2) When an employer closes or relocates, particularly in cases in
13 which the employer employs a large number of employees in a locality or
14 within an industry, it is difficult, and sometimes impossible, for the

1 former employees to find employment with another employer that offers
2 comparable wages and benefits.

3 (3) Because local economies rely on the income of persons employed
4 in the community, the local government has a substantial stake in
5 mitigating the job and income loss that can result from the closure,
6 relocation, or transfer of local business.

7 (4) The potentially disastrous effects, on both the employees and
8 the community, of the sudden elimination of an employee's employment
9 should be shared by the employer, who has made the decision that
10 closure, sale, or relocation of the business is an economic advantage.
11 Moreover, continuity of employment is a desirable goal, which vitally
12 affects the well-being of thousands of individuals and the public as a
13 whole, and should be encouraged.

14 NEW SECTION. **Sec. 2.** Unless the context clearly requires
15 otherwise, the definitions in this section apply throughout this
16 chapter.

17 (1) "Employer" means an individual, partnership, association,
18 corporation, business trust, or other entity that employs eight or more
19 persons.

20 (2) "Employee" means an individual employed by an employer.

21 (3) "Relocation of a business or part of a business" means removal
22 of all or substantially all operations of the business, a separate
23 facility or branch, or a distinct division or department of a business
24 to a location at least sixty miles away from the original location.

25 (4) "Termination of a business or part of a business" means
26 cessation of all or substantially all operations of the business, of
27 one or more workplaces of the business, or of a distinct division or
28 department of the business for a period exceeding thirty days with no
29 specific plan for restarting operations.

1 (5) "Transfer of ownership of a business or part of a business"
2 means a transfer, by any means, of ownership in a business, a
3 workplace, or a distinct division or department of a business,
4 including, without limitation, a sale of stock, a sale of assets, a
5 foreclosure or other form of repossession by creditors, or a gift or
6 devise.

7 (6) "One month's pay" means the average monthly compensation of an
8 employee, including wages, premiums for health benefits, and payments
9 to pension plans, based on the amount of compensation paid by the
10 employer during the preceding twelve months.

11 (7) "Years of service" includes all years during which the employee
12 was employed by the employer, or an owner, subsidiary, division, or
13 entity otherwise related to the employer, or during which the employee
14 was employed in the same operation, workplace, or facility while it was
15 owned by a predecessor to the employer.

16 (8) "Successor employer" means an employer to whom the ownership of
17 a business or a part of a business has been transferred.

18 (9) "Predecessor employer" means an employer who has transferred
19 the ownership of a business or a part of a business to another.

20 (10) "Comparable position" means a position that requires
21 comparable education, skills, experience, and effort and is performed
22 under similar working conditions.

23 NEW SECTION. **Sec. 3.** An employer that relocates, terminates,
24 or transfers the ownership in a business or any part of a business is
25 liable to the employees for severance pay at the rate of one month's
26 pay for each year of service by the employee, not to exceed twelve
27 months' pay. The employer is liable to employees who have been
28 employed by the employer for at least one pay period but less than one
29 year for severance pay in the amount of one month's pay. The severance

1 pay owing is in addition to any final wage payment to the employee and
2 shall be paid within one regular pay period after the employee's last
3 day of work. An employer's liability for severance pay under this
4 section is limited to the value of the business at the time of the
5 relocation, termination, or transfer of the ownership of the business
6 or any part of the business.

7 NEW SECTION. **Sec. 4.** An employer is not liable for severance
8 pay under this chapter to an employee if the employee accepts
9 employment with the new owner of the business or with the predecessor
10 employer at a different workplace that provides wages and benefits
11 substantially equal in value to those the employee received prior to
12 the relocation, termination, or transfer of ownership of the business.

13 NEW SECTION. **Sec. 5.** If a former employee of a predecessor
14 employer accepts a job with a successor employer and the employee is
15 discharged within one year after the employee's date of hire by the
16 successor employer, unless the discharge is for misconduct connected
17 with the employee's work, the employee shall receive, from the
18 predecessor employer, severance benefits as required by section 3 of
19 this act based on the employee's service with the predecessor employer.

20 NEW SECTION. **Sec. 6.** Section 5 of this act does not apply to
21 a former employee of a predecessor employer if:

22 (1) The former employee held a managerial position with the
23 predecessor employer in which the employee was responsible for setting
24 fundamental company policy; and

25 (2) It is necessary for the successor employer to replace the
26 employee in order to implement its management plan.

1 However, if the employee is not offered an alternative position for
2 which the employee is qualified, the employee shall receive severance
3 benefits as required by section 3 of this act.

4 NEW SECTION. **Sec. 7.** An employer may not avoid the obligation
5 under section 3 of this act by discharging or laying off employees
6 prior to the relocation, termination, or transfer of ownership of the
7 business or any part of the business. A successor employer's
8 obligation under section 5 of this act is not affected if the
9 predecessor employer discharges or lays off employees prior to the
10 relocation, termination, or transfer of ownership of the business or
11 any part of the business. An employer or a successor employer is
12 relieved of obligations to an employee employed during the twelve
13 months prior to the relocation, termination, or transfer of ownership
14 only if the employer or successor employer proves by clear and
15 convincing evidence that the employee's discharge or layoff was not a
16 result of the expected relocation, termination, or transfer of
17 ownership of the business or any part of the business.

18 NEW SECTION. **Sec. 8.** Any employee may bring suit in superior
19 court to enforce the employee's rights under this chapter. The courts
20 are authorized to direct specific performance of the successor
21 employer's obligation under section 5 of this act to offer employment
22 to an employee of its predecessor.

23 NEW SECTION. **Sec. 9.** The director of labor and industries is
24 authorized to take assignments of claims for severance pay under
25 section 3 of this act and prosecute actions for the collection of
26 severance pay under the same conditions provided for the assignment and
27 prosecution of claims for unpaid wages under RCW 49.48.040.

1 NEW SECTION. **Sec. 10.** A person who prevails in a claim for a
2 violation of this chapter shall be awarded costs and attorneys' fees,
3 including costs and attorneys' fees necessary to collect a judgment.

4 NEW SECTION. **Sec. 11.** (1) A person with a claim for a
5 violation of this chapter shall have a lien for moneys owing under this
6 chapter on: (a) All of the property used in the operation of the
7 business or part of the business that has been relocated, terminated,
8 or transferred creating an obligation under this chapter, and (b) all
9 proceeds of the sale or transfer of ownership of the property.

10 (2) Within sixty days of the employee's layoff or termination, a
11 notice of the claim shall be filed with the auditor of the county in
12 which the affected business or part of the business is or was located.
13 The notice of claim shall contain a statement of the employee's
14 demands, the name and address of the employer, the name and address of
15 the successor employer, if applicable, and the date of the employee's
16 last service. A copy of this notice shall be served or mailed to the
17 employer and, if applicable, to the successor employer at the time it
18 is filed.

19 (3) The lien may be enforced within the same time and in the same
20 manner as mechanics' liens are enforced when the lien is upon real
21 property, or in the same manner as chattel liens are enforced when the
22 lien is upon personal property.

23 (4) This lien shall be preferred to any encumbrance that may attach
24 after the relocation, termination, or transfer of ownership that
25 created the obligation under this chapter and to any encumbrance that
26 may have attached prior to that time but was not filed or recorded so
27 as to create constructive notice of the encumbrance at the time of the
28 relocation, termination, or transfer of ownership.

1 NEW SECTION. **Sec. 12.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 13.** Sections 2 through 12 of this act shall
6 constitute a new chapter in Title 49 RCW.