

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1989**

---

---

**Introduced by Assembly Member Swanson**

February 14, 2008

---

---

An act to amend Sections 1400, 1401, 1402, 1402.5, and 1403 of, and to add Sections 1400.5, 1401.5, and 1409 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1989, as amended, Swanson. Employment.

Existing law provides that an employer, with certain exceptions, may not order a mass layoff, relocation, or termination, *as defined*, at a covered establishment without giving 60 days' prior written notice to employees and the Employment Development Department and other local agencies, as well as complying with specified federal guidelines.

*This bill would also require notice to be given if an employer orders an offshoring, which is defined as the removal of an employer's operations to a location outside the borders of the United States, and would increase the layoff notice period from 60 to 90 days. This bill would also require employers, when notice is given, to provide employees with information regarding benefits and services available to them once the notice of layoff is given.*

Existing law provides that an employer who fails to comply with the layoff notice requirements may be subject to civil penalties, including back pay, and liability under civil actions brought by employees unless the employer can demonstrate specified exemptions.

~~This bill would also require notice to be given if an employer orders an offshoring, which is defined as the removal of an employer's operations to a location outside the borders of the United States and increase the layoff notice period from 60 to 90 days. This bill would also require employers, when notice is given, to provide employees with information regarding benefits and services available to them once the notice of layoff is given.~~

This bill would require the Labor and Workforce Development Agency to create an Office of Rapid Response and Layoff Aversion to maintain a guide of benefits and services that may be available to employees who are the subject of a layoff, including unemployment assistance and COBRA information, and to transmit the guide to an employer who gives notice of an impending layoff, and to post the guide on the agency's Internet Web site.

~~This bill would also require the Office of Rapid Response and Layoff Aversion~~ *Labor and Workforce Development Agency* to maintain a guide for employers containing development benefits and services, including trade adjustment assistance and tax credits, that could be used to avert mass layoffs or relocations of workforce employees and to transmit the guide to an employer who gives notice of an impending layoff, and to post the guide on the agency's Internet Web site.

This bill would require the Employment Development Department, ~~in consultation with the Office of Rapid Response and Layoff Aversion~~ to gather and analyze state and federal layoff data to ascertain economic, industry, and labor-market trends.

This bill would increase the civil penalties for employers who violate these provisions and would provide that up to 10% of the civil penalties be used *by the Labor and Workforce Development Agency* to fund *their new duties under this bill*. ~~Office of Rapid Response and Layoff Aversion. The remainder of the penalties would be used to establish a designated account to provide retraining for employees who are laid off.~~

~~This bill would also make technical changes to these provisions.~~

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. Section 1400 of the Labor Code is amended to
- 2 read:

1 1400. The definitions set forth in this section shall govern the  
2 construction and meaning of the terms used in this chapter:

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

6 (b) “Employee” means a person employed by an employer for  
7 at least 6 months of the 12 months preceding the date on which  
8 notice is required.

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

14 (d) “Layoff” means a separation from a position for lack of  
15 funds or lack of work.

16 (e) “Mass layoff” means a layoff during any ~~30-day~~ 90-day  
17 period of 25 or more employees at a covered establishment.

18 (f) “Offshoring” means the removal of all or substantially all  
19 of the industrial or commercial operations in a covered  
20 establishment to a location outside the borders of the United States.

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

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

26 SEC. 2. Section 1400.5 is added to the Labor Code, to read:

27 1400.5. (a) This chapter does not apply where the closing or  
28 layoff is the result of the completion of a particular project or  
29 undertaking of an employer subject to Wage Order 11, regulating  
30 the Broadcasting Industry, Wage Order 12, regulating the Motion  
31 Picture Industry, or Wage Order 16, regulating Certain On-Site  
32 Occupations in the Construction, Drilling, Logging and Mining  
33 Industries, of the Industrial Welfare Commission, and the  
34 employees were hired with the understanding that their employment  
35 was limited to the duration of that project or undertaking.

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

39 SEC. 3. Section 1401 of the Labor Code is amended to read:

1 1401. (a) An employer may not order a mass layoff, relocation,  
2 offshoring, or termination at a covered establishment unless, 90  
3 days before the order takes effect, the employer gives written notice  
4 of the order to the following:

5 (1) The employees of the covered establishment affected by the  
6 order and their representative or union.

7 (2) The Labor and Workforce Development Agency, the  
8 Department of Industrial Relations, the Employment Development  
9 Department, the local workforce investment board, and the chief  
10 elected official of each city and county government within which  
11 the termination, relocation, offshoring, or mass layoff occurs.

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

17 (c) Concurrent with or immediately after providing the notice  
18 required under subdivision (a), an employer shall provide the  
19 employees of the covered establishment with information regarding  
20 the benefits and services available to the employees, as described  
21 in the guide compiled by the Labor and Workforce Development  
22 Agency under Section 1401.5.

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

27 SEC. 4. Section 1401.5 is added to the Labor Code, to read:

28 1401.5. ~~There is within the Labor and Workforce Development~~  
29 ~~Agency the Office of Rapid Response and Layoff Aversion, which~~  
30 ~~shall prepare and maintain the following:~~ *The Labor and Workforce*  
31 *Development Agency shall prepare the following:*

32 (a) A guide of benefits and services that may be available to  
33 employees of covered establishments, including unemployment  
34 compensation, trade adjustment assistance, COBRA benefits, and  
35 early access to training and other services, including counseling  
36 services, available under the federal Workforce Investment Act of  
37 1998 (29 U.S.C. Sec. 2801 et seq.). This guide shall be available  
38 on the Internet Web site of the Labor and Workforce Development  
39 Agency and shall include a description of the benefits and services,  
40 the eligibility requirements, and the means of obtaining those

1 benefits and services. ~~Upon receiving notice from an employer~~  
2 ~~pursuant to paragraph (2) of subdivision (a) of Section 1401, the~~  
3 ~~Labor and Workforce Development Agency shall immediately~~  
4 ~~transmit the guide to the employer.~~

5 (b) A guide of economic development benefits and services,  
6 including workforce services, that may be available to employers  
7 of covered establishments to avert mass layoff, relocation,  
8 *offshoring*, or termination; feasibility studies; data and statistics;  
9 trade adjustment assistance; and available tax credits, financial  
10 assistance, and other incentives provided through the departments  
11 and agencies of the California state government. The guide shall  
12 focus particularly on resources for retooling to achieve greater  
13 energy efficiency. This guide shall be available on the Internet  
14 Web site of the Labor and Workforce Development Agency and  
15 shall include a description of benefits and services, their eligibility  
16 requirements, and the means of obtaining the benefits and services.  
17 ~~Upon receiving notice from an employer pursuant to paragraph~~  
18 ~~(2) of subdivision (a) of Section 1401, the Labor and Workforce~~  
19 ~~Development Agency shall immediately transmit the guide to the~~  
20 ~~employer.~~

21 SEC. 5. Section 1402 of the Labor Code is amended to read:

22 1402. (a) An employer who fails to give notice as required by  
23 paragraph (1) of subdivision (a) of Section 1401 before ordering  
24 a mass layoff, relocation, *offshoring*, or termination is liable to an  
25 employee entitled to notice who lost his or her employment for  
26 the following:

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

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

36 (b) Liability under this section is calculated for the period of  
37 the employer's violation, up to a maximum of 90 days, or one-half  
38 the number of days that the employee was employed by the  
39 employer, whichever period is smaller.

1 (c) The amount of an employer's liability under subdivision (a)  
2 is reduced by the following:

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

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

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

13 SEC. 6. Section 1402.5 of the Labor Code is amended to read:

14 1402.5. (a) An employer is not required to comply with the  
15 notice requirement contained in subdivision (a) of Section 1401  
16 if the department determines that all of the following conditions  
17 exist:

18 (1) As of the time that notice would have been required, the  
19 employer was actively seeking capital or business in consultation  
20 with the state or local government, local economic development  
21 agency, or Workforce Investment Board. Information provided to  
22 the state, local government, local economic development agency,  
23 ~~or local~~ Workforce Investment Board shall be kept confidential.

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

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

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

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

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

39 (c) The affidavit provided to the department pursuant to  
40 paragraph (2) of subdivision (b) shall contain a declaration signed

1 under penalty of perjury stating that the affidavit and the contents  
2 of the documents contained in the record submitted pursuant to  
3 paragraph (1) of subdivision (b) are true and correct.

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

6 SEC. 7. Section 1403 of the Labor Code is amended to read:

7 1403. (a) An employer who fails to give notice as required by  
8 paragraph (2) of subdivision (a) of Section 1401 is subject to a  
9 civil penalty of not more than one thousand dollars (\$1,000) for  
10 each day of the employer's violation. The employer is not subject  
11 to a civil penalty under this section, however, if the employer pays  
12 to all applicable employees the amounts for which the employer  
13 is liable under Section 1402 within three weeks from the date the  
14 employer orders the mass layoff, relocation, offshoring, or  
15 termination.

16 (b) Up to 10 percent of the civil penalties levied on employers  
17 pursuant to subdivision (a) shall be utilized, upon appropriation,  
18 by the Labor and Workforce Development Agency to fund the  
19 activities specified under Sections 1401.5 and 1409. ~~The remainder~~  
20 ~~of the civil penalties shall be utilized, upon appropriation, to~~  
21 ~~establish a designated account for incumbent worker retraining to~~  
22 ~~avert layoffs or to retrain dislocated workers for new employment.~~

23 SEC. 8. Section 1409 is added to the Labor Code, to read:

24 1409. ~~The Employment Development Department, in~~  
25 ~~consultation with the Office of Rapid Response and Layoff~~  
26 ~~Aversion and the Economic Strategy Panel, shall gather and~~  
27 analyze layoff data from the federal government concerning  
28 economic, industry, and labor-market trends.