

AMENDED IN ASSEMBLY APRIL 17, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1570

**Introduced by Committee on Labor and Employment (~~Floyd~~
(*Assembly Members Floyd (Chair), Escutia, Havice, Knox,
Martinez, and Washington*)**

March 17, 1997

An act to add Article 1.5 (commencing with Section 245) to Chapter 1 of Part 1 of Division 2 of the Labor Code, relating to wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1570, as amended, Committee on Labor and Employment. Severance pay.

Under existing law, the wages earned and unpaid at the time of discharge of an employee are due and payable immediately.

This bill, in addition, would grant a severance pay entitlement to the employees of an employer who relocates or terminates a qualifying industrial or commercial facility, under specified conditions. The amount of the severance pay would be one week's pay for each 12 months of employment by the employee in that establishment.

The bill would authorize affected employees or, alternatively, the Labor Commissioner, to bring an action for payment of severance pay in any court of competent jurisdiction, as specified. The bill also would require a person proposing the relocation or termination of a qualifying

industrial or commercial facility to provide a 60-day prior written notice to the Employment Development Department, to the employees of the facility, and to the appropriate county clerk. The failure to provide the latter notice would subject the employer to a civil penalty, as specified, except under designated conditions.

In addition, the bill would authorize the Labor Commissioner, in any investigation or proceeding in this connection, to examine the books and records of an employer who is subject to the requirements described above.

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. Article 1.5 (commencing with Section
2 245) is added to Chapter 1 of Part 1 of Division 2 of the
3 Labor Code, to read:

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5 Article 1.5. Relocation or Termination of Businesses

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7 245. The following definitions apply for purposes of
8 this article, unless the context indicates otherwise:

9 (a) "Covered establishment" means any industrial or
10 commercial facility or part thereof that employs, or has
11 employed at any time in the preceding 12-month period,
12 100 or more persons.

13 (b) "Commissioner" means the Labor Commissioner.

14 (c) "Employer" means any person who directly or
15 indirectly owns and operates a covered establishment.
16 For purposes of this definition, a parent corporation is
17 considered the indirect owner and operator of any
18 covered establishment that is directly owned and
19 operated by its corporate subsidiary.

20 (d) "Person" means any individual, group of
21 individuals, partnership, corporation, association, or
22 other entity.

23 (e) "Physical calamity" means any calamity such as
24 fire, flood, or other natural disaster, or the final order of



1 any federal, state, or local governmental agency,
2 including an adjudicated bankruptcy.

3 (f) “Relocation” means the removal of all or
4 substantially all of the industrial or commercial
5 operations in a covered establishment to a new location,
6 whether or not within the State of California, 100 or more
7 miles distant from the original location.

8 (g) “Termination” means the substantial cessation of
9 industrial or commercial operations in a covered
10 establishment.

11 (h) “Week’s pay” means an amount equal to $\frac{1}{52}$ part
12 of the gross wages paid to an employee during the 12
13 months immediately preceding relocation or
14 termination.

15 245.1. (a) Any employer who relocates or terminates
16 a covered establishment shall pay, to each employee of
17 the covered establishment, severance pay at the rate of
18 one week’s pay for each 12 months of employment by the
19 employee in that covered establishment.
20 Notwithstanding any other provision of law, the
21 severance pay owed to each eligible employee shall be in
22 addition to any final wage payment to the employee and
23 shall be paid within one regular pay period after the
24 employee’s last full day of work.

25 (b) An employer is not required to make this
26 severance payment to an eligible employee under any of
27 the following conditions:

28 (1) The relocation or termination of a covered
29 establishment is necessitated by a physical calamity.

30 (2) The employee is covered by a written agreement
31 providing for severance pay.

32 (3) The employee accepts an offer of employment at
33 another place of employment of the employer.

34 (4) The employee has been employed by the
35 employer for less than 36 months.

36 (5) *The employer is a debtor, as defined in Section 101*
37 *of Title 11 of the United States Code, in any currently*
38 *pending voluntary case under the federal bankruptcy*
39 *laws that was commenced by a petition filed by the*



1 *employer prior to relocation or termination of the*
2 *covered establishment.*

3 (c) Any employer who violates this section shall be
4 liable to the employee or employees affected in the
5 amount of their unpaid severance pay. An action to
6 recover unpaid severance pay may be maintained against
7 any employer in any court of competent jurisdiction by
8 any one or more employees for and on behalf of himself,
9 herself, or themselves and any other employees similarly
10 situated. Any labor organization may maintain an action
11 on behalf of any or all of its members. In any action, the
12 court shall, in addition to any judgment awarded to the
13 plaintiff or plaintiffs, allow a reasonable attorney’s fee to
14 be paid by the defendant and costs of the action.

15 (d) The commissioner is authorized to supervise the
16 payment of severance pay owed to any employee under
17 this section. The commissioner may bring an action in any
18 court of competent jurisdiction to recover the amount of
19 any unpaid severance pay. The right provided under
20 subdivision (c) to bring an action shall terminate upon
21 the filing of a complaint by the commissioner in an action
22 under this subdivision, unless the action brought by the
23 commissioner under this subdivision is dismissed without
24 prejudice. Any sums recovered by the commissioner on
25 behalf of an employee pursuant to this subdivision shall
26 be held in a special deposit account and shall be paid, on
27 order of the commissioner, directly to the employee
28 affected. Any sums recovered under this subdivision not
29 paid to an employee within a period of three years
30 because of inability to do so shall be paid to the Controller
31 for deposit in the General Fund.

32 245.2. (a) Any person proposing a relocation or
33 termination of a covered establishment shall notify the
34 Employment Development Department in writing not
35 less than 60 days prior to the relocation or termination.

36 (b) Any person proposing a relocation or termination
37 of a covered establishment shall so notify all employees of
38 the covered establishment and the county clerk of the
39 county in which the covered establishment is located in
40 writing, not less than 60 days prior to the relocation or



1 termination. Any person violating this subdivision is
2 subject to a civil penalty of not more than five hundred
3 dollars (\$500) for any one relocation or termination of a
4 covered establishment, to be recovered by the
5 commissioner in the same manner specified in Section
6 225.5, provided that no civil penalty may be recovered if
7 the relocation is necessitated by a physical calamity or if
8 the failure to give notice is due to unforeseeable
9 circumstances.

10 245.3. In any investigation or proceeding under this
11 article, the commissioner shall have, in addition to all
12 other powers granted by law, the authority to examine
13 the books and records of any employer who directly or
14 indirectly owns and operates a covered establishment.

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