AMENDED IN ASSEMBLY APRIL 26, 2023

AMENDED IN ASSEMBLY MARCH 30, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL No. 1356

Introduced by Assembly Member Haney
(Principal coauthors: Assembly Members Connolly and Kalra)
(Coauthors: Assembly Members Bonta, Lee, and Ting)
(Coauthors: Senators Smallwood-Cuevas and Wiener)

February 17, 2023

An act to amend Sections 1400.5, 1401, 1402, and 1403 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, Haney. Relocations, terminations, and mass layoffs.

Existing law, the California Worker Adjustment and Retraining Act, governs relocations, terminations, and mass layoffs. Existing law prohibits an employer from ordering 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, as prescribed. Existing law exempts certain types of employment from the act, including seasonal employment where the employees were hired with the understanding that their employment was seasonal and temporary (seasonal employment exemption). Existing law makes an employer who fails to give notice as required liable to each employee entitled to notice who lost their employment for prescribed compensation, calculated for the period of the employer's violation, up to a maximum of 60 days, or ½ the number of days that the employee was employed by the employer, whichever period is smaller. Existing law authorizes the Labor Commissioner to enforce specified provisions of existing law, as prescribed. Existing law defines terms for its purposes, including definitions for the terms “employer” and “employee.” Existing law defines “mass layoff” for purposes of the act to mean a layoff during any 30-day period of 50 or more employees at a covered establishment, and defines “covered establishment” as an industrial or commercial facility that employs, or has employed within the preceding 12 months, 75 or more persons.

This bill would require the prescribed notice 90 days before the order takes effect, and would make a conforming change to the calculation of employer liability. The bill would require a labor contractor to remit *to the employee* the payment provided to the client employer in the full amount calculated, as specified, for a violation of the notice requirement, and would define a “labor contractor” for purposes of the act.

This bill would additionally require for the application of the seasonal employment exemption that the season be complete.

This bill would include within the term “employer” a client employer of a labor contractor. The bill would include within the term “employee” a person employed by a labor contractor and performing labor with the client employer for at least 6 months of the 12 months preceding the date on which notice is required. The bill would revise the definition of “covered establishment” to instead mean a place of employment that employs, or has employed within the preceding 12 months, 75 or more persons, and would specify that a “covered establishment” may be a single location or a group of locations, as specified. The bill would revise the definition of “mass layoff” to also include employees reporting to a covered establishment.

This bill would prohibit an employer from utilizing compliance with the act in connection with a severance agreement and waiver of an employee’s right to claims. The bill would provide that any general release, waiver of claims, or nondisparagement or nondisclosure agreement that is made a condition of the payment of amounts for which the employer is liable is void as a matter of law and against public policy. The bill would prohibit an employer who is required to give notice from offering an employee a separate agreement that includes a general release, waiver of claims, or nondisparagement or nondisclosure agreement, unless the agreement is offered in exchange for reasonable consideration that is in addition to anything of value to which the individual already is entitled and includes a statement to this effect, as specified. The bill would provide that any agreement in violation of this prohibition is void as a matter of law and against public policy, and would make an employer who violates this provision subject to a civil penalty of up to $500 for each violation.

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

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

SECTION 1. Section 1400.5 of the Labor Code is amended to read:

1400.5. 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 place of employment that employs, or has employed within the preceding 12 months, 75 or more persons. "Covered establishment" may be a single location or a group of locations, including any facilities located in this state.

(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. "Employer" includes a client employer of a labor contractor.

(c) "Labor contractor" means an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.

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

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

(f) "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.

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

(h) (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 when the season is complete and the employees were hired with the understanding that their employment was seasonal and temporary.

(i) "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. "Employee" includes a person employed by a labor contractor and performing labor with the client employer for at least 6 months of the 12 months preceding the date on which notice is required.

SEC. 2. Section 1401 of the Labor Code is amended to read:

1401. (a) An employer shall not order a mass layoff, relocation, or termination at a covered establishment unless, 90 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) An employer shall not utilize compliance with this chapter in connection with a severance agreement and waiver of an employee's right to claims.~~

~~(d)~~

(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.

SEC. 3. Section 1402 of the Labor Code is amended to read:

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 their employment for:

(1) Backpay at the average regular rate of compensation received by the employee during the last three years of their 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 their 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 90 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.

(d) The labor contractor shall remit *to the employee* the payment provided by the client employer in the full amount calculated pursuant to paragraphs (1) and (2) of subdivision (a).

SEC. 4. Section 1403 of the Labor Code is amended to read:

1403. (a) 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.

(b) *(1)* An employer *shall not use utilize compliance with this chapter in connection with a severance agreement and waiver of an employee's right to claims. An employer* who includes a general release, waiver of claims, or nondisparagement or nondisclosure agreement that is made a condition of the payment of amounts for which the employer is liable under Section 1402 is subject to a civil penalty of not more than five hundred dollars ($500) for each violation. ~~Any~~

(2) Any general release, waiver of claims, or nondisparagement or nondisclosure agreement that is made a condition of the payment of amounts for which the employer is liable under Section 1402 is void as a matter of law and against public policy.

(c) An employer who is required to give notice pursuant to paragraph (2) of subdivision (a) of Section 1401 shall not offer an employee a separate agreement that includes a general release, waiver of claims, or nondisparagement or nondisclosure agreement, unless the agreement is offered in exchange for reasonable consideration that is in addition to anything of value to which the individual already is entitled to under Section 1402 and states in clear and unequivocal language that the consideration being offered to the employee is in addition to anything of value to which the individual already is entitled under Section 1402. Any agreement in violation of this subdivision is void as a matter of law and against public policy.

O