

House Bill 2567

Sponsored by Representative WITT; Representative NOSSE (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires employers with 75 or more employees to provide 60 days' notice to employees and certain officials before ceasing operations, relocating or ordering mass layoff involving 50 or more employees. Creates exceptions.

Requires employer attempting to invoke exception involving active pursuit of capital or business to provide, under penalty of perjury, written documentation of efforts to court or Commissioner of Bureau of Labor and Industries.

Requires commissioner to adopt rules related to requirements.

Provides that employer is liable for back pay to employee and other relief. Authorizes compensatory damages to employee of up to \$500 for each day for period during which employer failed to give notice.

A BILL FOR AN ACT

1 Relating to a requirement that certain employers provide notice before a reduction in workforce.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. As used in sections 1 to 7 of this 2017 Act:**

4 (1) **"Covered establishment" means any industrial or commercial facility or part thereof**
5 **that employs, or has employed within the preceding 12 months, 75 or more employees.**

6 (2) **"Employee" means a person employed by an employer for at least six months of the**
7 **12 months preceding the date on which notice is required.**

8 (3)(a) **"Employer" means any individual, corporation, partnership, association, firm,**
9 **trust, estate or any other legal entity that directly or indirectly owns and operates a covered**
10 **establishment. A parent corporation is an employer of any covered establishment directly**
11 **owned and operated by its corporate subsidiary.**

12 (b) **"Employer" does not mean a public employer as defined in ORS 659A.200.**

13 (4)(a) **"Employment site" means a single location of an employer or a group of contiguous**
14 **locations, including groups that form a campus, industrial park or separate facilities that are**
15 **connected by an employer or affiliate as defined in ORS 735.150.**

16 (b) **"Employment site" does not include offices or contiguous buildings owned by the**
17 **same employer that have separate management, produce different products and have sepa-**
18 **rate workforces.**

19 (5) **"Layoff" means a separation from a position of employment with an employer due to**
20 **lack of employer funds or lack of work for the employee.**

21 (6) **"Mass layoff" means a layoff during any 30-day period of an aggregate amount of 50**
22 **or more employees at a covered establishment.**

23 (7) **"Relocation" means the removal of all or substantially all of the industrial or com-**
24 **mercial operations in a covered establishment to a different location 100 miles or more away.**

25 (8) **"Termination" means the cessation or substantial cessation of industrial or commer-**
26 **cial operations in a covered establishment.**

27
NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **SECTION 2.** (1) Except as provided in sections 4 and 5 of this 2017 Act, an employer may
 2 not order a mass layoff, relocation or termination at a covered establishment unless, 60 days
 3 before the order takes effect, the employer gives written notice of the order to the following:

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

5 (b) The Employment Department, the Office of Community Colleges and Workforce De-
 6 velopment, the local workforce development board and the chief elected official of each city
 7 and county within which the mass layoff, relocation or termination will occur.

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

11 (3) Notwithstanding subsection (1) of this section, an employer is not required to provide
 12 notice if a mass layoff, relocation or termination is necessitated by a natural disaster or
 13 other catastrophic event, an act of war or terrorism.

14 (4) For purposes of this section, layoffs that occur at an employment site that involve
 15 fewer than 50 employees, but in the aggregate exceed 50 employees, and that occur within a
 16 90-day period, are an event for the purpose of subsection (1) of this section unless the em-
 17 ployer demonstrates that the employment loss is the result of separate and distinct actions
 18 and causes and is not an attempt by the employer to evade the requirements of this section.

19 **SECTION 3.** (1) Except as provided in subsection (4) of this section, any employee who
 20 alleges a violation under section 2 of this 2017 Act has a right of action against the employer,
 21 to be paid to the employee, for the recovery of:

22 (a) Back pay at the average regular rate of compensation received by the employee dur-
 23 ing the last three years of the employee's employment, or the employee's final rate of com-
 24 pensation, whichever is higher, for the period during which the employer failed to provide
 25 notice under section 2 of this 2017 Act.

26 (b) The value of the cost of any benefits to which the employee would have been entitled
 27 had the employee's employment not been lost, including the cost of any medical expenses
 28 incurred by the employee that would have been covered under an employee benefit plan for
 29 the period during which the employer failed to provide notice under section 2 of this 2017
 30 Act.

31 (c) Except as provided in subsection (2) of this section, compensatory damages of not
 32 more than \$500 for each day for the period during which the employer failed to provide notice
 33 under section 2 of this 2017 Act.

34 (2) An employer is not subject to compensatory damages described in subsection (1) of
 35 this section if:

36 (a) The employer pays to all applicable employees the amounts for which the employer
 37 is liable under this section within three weeks from the date the employer orders the mass
 38 layoff, relocation or termination.

39 (b) The court or the Commissioner of the Bureau of Labor and Industries finds that the
 40 employer conducted a reasonable investigation in good faith and had reasonable ground to
 41 believe that its conduct was not a violation of section 2 of this 2017 Act.

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

45 (4) The amount of an employer's liability under subsection (1) of this section is reduced

1 by the following:

2 (a) Any wages paid by the employer to the employee during the period of the employer's
3 violation.

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

6 (c) Any payments by the employer to a third party or trustee, such as premiums for
7 health benefits or payments to a retirement or pension plan, on behalf of and attributable
8 to the employee for the period of the violation.

9 (5) The court shall award reasonable attorney fees to the prevailing plaintiff in an action
10 under this section.

11 (6) The action described under this section may be maintained by one or more employees
12 on behalf of themselves or other employees similarly situated.

13 **SECTION 4.** (1) An employer is not required to comply with the notice requirement in
14 section 2 of this 2017 Act for the purpose of relocation or termination if a court or the
15 Commissioner of the Bureau of Labor and Industries determines that all of the following
16 conditions are met:

17 (a) At the time that notice would have been required, the employer was actively seeking
18 capital or business.

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

21 (c) The employer reasonably and in good faith believed that giving the notice required
22 by section 2 of this 2017 Act would have precluded the employer from obtaining the needed
23 capital or business.

24 (2) The court or the commissioner may not determine that the employer was actively
25 seeking capital or business under subsection (1)(a) of this section unless the employer pro-
26 vides the court or the commissioner with both of the following:

27 (a) A written record consisting of all documents relevant to the determination of whether
28 the employer was actively seeking capital or business, as specified by the commissioner by
29 rule.

30 (b) A declaration in the form required by ORCP 1 E verifying the contents of the docu-
31 ments contained in the record described in paragraph (a) of this subsection are true and
32 correct.

33 (3) This section does not apply to notice of a mass layoff.

34 **SECTION 5.** (1) Sections 1 to 3 of this 2017 Act do not apply if a termination or layoff is
35 the result of the completion of a particular project or undertaking of an employer and if, at
36 the time the employee was hired, the employee was hired with the understanding that the
37 employee's employment was limited to the duration of that project or undertaking.

38 (2) Sections 1 to 3 of this 2017 Act do not apply to an employee who is employed in sea-
39 sonal employment if, at the time the employee was hired, the employee was hired with the
40 understanding that the employee's employment was seasonal and temporary.

41 **SECTION 6.** (1) Payments to an employee under section 3 of this 2017 Act by an employer
42 that has failed to provide the advance notice of termination of a covered establishment re-
43 quired by section 2 of this 2017 Act or the federal Worker Adjustment and Retraining No-
44 tification Act (29 U.S.C. 2101 et seq.) may not be construed as wages or compensation for
45 purposes of ORS chapter 657.

1 **(2) Benefits payable under ORS chapter 657 may not be denied or reduced because of the**
2 **receipt of payments related to an employer's violation of section 2 of this 2017 Act or the**
3 **federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).**

4 **SECTION 7. The Commissioner of the Bureau of Labor and Industries:**

5 **(1) Shall adopt rules to implement and enforce sections 1 to 6 of this 2017 Act.**

6 **(2) Shall have the same enforcement powers with respect to the rights established under**
7 **sections 2 to 6 of this 2017 Act as are established in ORS chapters 652 and 653.**

8 **(3) May join in a single proceeding and in one cause of action any number of claims**
9 **against the same employer. If the commissioner does not prevail in the action in which the**
10 **commissioner joins, the commissioner shall pay all costs and disbursements from the Bureau**
11 **of Labor and Industries Account.**

12 **SECTION 8. Nothing in sections 1 to 7 of this 2017 Act, except as specifically provided,**
13 **interferes with, impedes or diminishes in any way the right to strike, or affects the limita-**
14 **tions or qualifications on that right.**