

104TH CONGRESS
2D SESSION

H. R. 3369

To provide notice to employees when there are reductions in business operations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1996

Ms. WATERS introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

A BILL

To provide notice to employees when there are reductions in business operations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EMPLOYER REDUCTIONS.**

4 (a) IN GENERAL.—An employer planning a reduction
5 in operations at a workplace shall provide written notice
6 to all of the following:

7 (1) All employees of the employer who are em-
8 ployed at the affected workplace.

1 (2) The labor organization which represents
2 those employees for collective bargaining, if such an
3 organization exists.

4 (3) The elected officials of the community in
5 which the affected workplace is located.

6 (4) The Secretary of Labor.

7 (b) GIVING OF NOTICE.—The notice required by sub-
8 section (a) shall be given not less than 3 months before
9 the actual reduction in operations is effected, unless the
10 provisions of any bona fide collective bargaining agree-
11 ment covering the affected workplace requires a longer ad-
12 vance notification period, in which case the provisions of
13 the collective bargaining agreement shall take precedence.

14 (c) NOTICE CONTENT.—The notice required by sub-
15 section (a) shall contain the following:

16 (1) The name, location, and nature of the work-
17 place affected by the planned reduction in oper-
18 ations.

19 (2) The reasons for the reduction in operations.

20 (3) An estimate of the duration of the reduction
21 in operations.

22 (4) The number of employees to be affected by
23 the planned reduction in operations.

24 (5) A description of rights and benefits relating
25 to due process, seniority, and severance pay that are

1 guaranteed to employees under collective bargaining
2 agreements or the personnel policies of the employer
3 in the event of a reduction in operations.

4 (d) APPLICATION.—The notice required by subsection
5 (a) shall not apply—

6 (1) if any unforeseen event causes a reduction
7 in operations;

8 (2) to reductions in operations resulting solely
9 from labor disputes;

10 (3) to reductions in operations that occur in
11 any of the commercial, industrial, or agricultural en-
12 terprises operated by a State or any of its political
13 subdivisions;

14 (4) to reductions in operations that occur at
15 construction sites or other workplaces that were
16 never intended as other than a temporary or sea-
17 sonal workplace;

18 (5) to reductions in operations resulting from
19 seasonal factors that are determined by the Sec-
20 retary of Labor to be customary in the industry of
21 which the employer is a part; and

22 (6) to reductions in operations resulting from
23 any employer who has filed for bankruptcy in ac-
24 cordance with Federal bankruptcy laws.

1 **SEC. 2. ACTION BY THE SECRETARY OF LABOR.**

2 When a reduction in operations will result from a
3 complete workplace closure or relocation, not later than
4 130 days after receipt of the notice of a reduction in oper-
5 ations under section 1, the Secretary of Labor, with the
6 assistance of State agencies as necessary or appropriate,
7 shall do the following:

8 (1) Coordinate all State government services for
9 the alleviation of the economic distress suffered by
10 displaced workers.

11 (2) When the reduction in operations will result
12 from a workplace closure or relocation, complete an
13 initial study of the feasibility of establishing a com-
14 munity-owned, employee-owned, or jointly owned
15 business to continue operations at the workplace.

16 **SEC. 3. ACTION BY EMPLOYER.**

17 An employer planning to effect a reduction in oper-
18 ations at a workplace, after giving notice of the reduction
19 in operations as required by section 1, shall do the follow-
20 ing:

21 (1) When the reduction in operations is a com-
22 plete closure or relocation of the workplace, make a
23 good faith offer of sale at fair market value of the
24 workplace, equipment, and inventory to the commu-
25 nity in which the workplace is located, or to an orga-
26 nization of the employees of the workplace which

1 singly or in combination attempts to form a commu-
2 nity-owned, employee-owned, or jointly owned busi-
3 ness at the workplace to be closed or relocated. Any
4 offer made under this paragraph shall not be with-
5 drawn earlier than the 50th day after the commu-
6 nity and employee organization officials have been
7 notified in writing by the employer of the assistance
8 available under section 5.

9 (2) Sales under paragraph (1) shall be predi-
10 cated on the continued compliance with the provi-
11 sions of any bona fide collective bargaining agree-
12 ment covering the workplace to be closed or relo-
13 cated. If the collective bargaining agreement at the
14 workplace to be closed has expired, or will expire
15 during the 1-year period after notification of the
16 complete closure or relocation, the prospective buyer
17 shall agree, as a condition for sale, to bargain in
18 good faith with employee representatives at the
19 workplace to be closed.

20 **SEC. 4. REDUCTION IN OPERATIONS IN EFFECT.**

21 When a reduction in operations takes effect, the em-
22 ployer shall provide a choice of the following benefits to
23 each affected employee:

24 (1)(A) Permanent preference rights in hiring
25 and employment at other workplaces of the employer

1 and, when the employee accepts employment at an-
2 other workplace, vacation benefits, and health, wel-
3 fare, and pension benefits earned while previously
4 employed by the employer.

5 (B) Severance pay benefits equal to one week's
6 wages for each completed year of service up to the
7 date of termination, computed on the basis of 40
8 straight time hours at the employee's regular wage
9 rate. A bonus of 1 week of pay shall be paid for each
10 5 years of service up to the termination date in addi-
11 tion to 1 week's pay per year of service up to the
12 termination date. In no case shall any affected em-
13 ployee receive severance pay benefits for less than 3
14 weeks of wages computed on the basis of 40 straight
15 time hours at the employee's regular wage rate.

16 (2) When the employee accepts a transfer to a
17 workplace of the employer which is 40 miles or more
18 from the employee's residence, payment for the
19 movement of normal household goods, reimburse-
20 ment for the reasonable one-way transportation
21 costs for the employee and the employee's depend-
22 ents to the new residence, and reimbursement for
23 reasonable legal fees and other fees and closing costs
24 associated with purchase or rental of a new resi-
25 dence up to a maximum of \$500.

1 (3) Employers shall give the affected employees
2 30 days to choose between the severance pay bene-
3 fits and preference rights benefits. If, at the end of
4 30 days, an affected employee has failed to choose
5 1 of the 2 options, the employer may assign one of
6 the options to that affected employee.

7 (4) In all cases of a reduction in operation, the
8 employer shall maintain a continuation of the em-
9 ployer's share of premiums and contributions for
10 any employee health and insurance benefit plans in
11 effect at the start of the reduction in operations for
12 one year, or until the employee becomes eligible for
13 health and insurance benefits as a result of reem-
14 ployment, whichever is sooner.

15 (5) The terms of a lawful collective bargaining
16 agreement shall prevail over any provision of this
17 Act with which they conflict.

18 **SEC. 5. TECHNICAL ASSISTANCE.**

19 The Secretary of Labor shall provide the following
20 technical assistance upon request of employees or commu-
21 nities adversely affected by reductions in operations:

22 (1) Conducting informational meetings for em-
23 ployees, employee organizations, and community or-
24 ganizations about the advantages and disadvantages
25 of community-owned businesses and about the serv-

1 ices and technical assistance available through the
2 Secretary of Labor.

3 (2) Evaluation of the feasibility and economic
4 viability of a proposed community-owned business,
5 based on the results of the study described in section
6 2.

7 (3) Technical assistance as needed to commu-
8 nity groups.

9 **SEC. 6. ENFORCEMENT.**

10 The Secretary of Labor shall enforce this Act. The
11 Secretary may issue subpoenas, subpoenas duces tecum,
12 administer oaths, obtain evidence, and take testimony in
13 all matters relating to the requirements of this Act.

14 **SEC. 7. PENALTIES.**

15 (a) CIVIL PENALTY.—An employer that fails to pro-
16 vide notice of a planned reduction in operations as re-
17 quired under section 1 shall be liable to the United States
18 for a civil penalty of not more than \$1,000 for each af-
19 fected employee.

20 (b) CIVIL PENALTY ORDER.—When an order assess-
21 ing a civil penalty becomes final by operation of law or
22 on appeal, unless the amount of the penalty is paid within
23 10 days after the order becomes final, it constitutes a
24 judgment and may be filed with the county clerk in any
25 State. The clerk shall thereupon record the name of the

1 person incurring the penalty and the amount of the pen-
2 alty in the judgment docket. The penalty provided in the
3 order so docketed shall become a lien upon the title to
4 any interest in property owned by the person against
5 whom the order is entered, and execution may be issued
6 upon the order in the same manner as execution upon the
7 judgment of a court of record.

8 (c) CIVIL ACTIONS AGAINST EMPLOYERS.—(1) Any
9 employer that fails to provide notice of a planned reduc-
10 tion in operations as required under section 1 shall be lia-
11 ble to each aggrieved employee who suffers an employment
12 loss as a result of such failure for—

13 (A) back pay for each day of violation at a rate
14 of compensation not less than the higher of—

15 (i) the average regular rate received by
16 such employee during the last 3 years of the
17 employee's employment; or

18 (ii) the final regular rate received by such
19 employee; and

20 (B) benefits under an employee benefit plan de-
21 scribed in section 3(3) of the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C. 1002(3)),
23 including the cost of medical expenses incurred dur-
24 ing the employment loss which would have been cov-

1 ered under an employee benefit plan if the employ-
2 ment loss had not occurred.

3 Such liability shall be calculated for the period of the viola-
4 tion, up to a maximum of 60 days, but in no event for
5 more than one-half the number of days the employee was
6 employed by the employer.

7 (2) The amount for which an employer is liable under
8 paragraph (1) shall be reduced by—

9 (A) any wages paid by the employer to the em-
10 ployee for the period of the violation;

11 (B) any voluntary and unconditional payment
12 by the employer to the employee that is not required
13 by any legal obligation; and

14 (C) any payment by the employer to a third
15 party or trustee (such as premiums for health bene-
16 fits or payments to a defined contribution pension
17 plan) on behalf of and attributable to the employee
18 for the period of the violation.

19 In addition, any liability incurred under paragraph (1)
20 with respect to a defined benefit pension plan may be re-
21 duced by crediting the employee with service for all pur-
22 poses under such a plan for the period of the violation.

23 **SEC. 8. DEFINITIONS.**

24 As used in this Act:

1 (1) The term “affected employee” means any
2 employee who has been an employee for at least 13
3 weeks during the preceding 52 weeks at a workplace
4 and whose employment is terminated by a reduction
5 in operations at that workplace.

6 (2) The term “employer” means any business
7 enterprise that employs 100 or more employees, ex-
8 cluding part-time employees, or 100 or more employ-
9 ees who in the aggregate work at least 4000 hours
10 per week (exclusive of hours of overtime).

11 (3) The term “community” means, for any par-
12 ticular employer, the city in which the employer is
13 located or, if not located in a city, the county in
14 which the employer is located.

15 (4) The term “community-owned business”
16 means a business which is either of the following:

17 (A) At least 51 percent owned by a not-
18 for-profit corporation established primarily for
19 the purpose of advancing the economic develop-
20 ment of the community, as defined in para-
21 graph (3), provided that the majority of the
22 members of the controlling board of directors of
23 the not-for-profit corporation shall be comprised
24 of elected representatives of the community.

1 (B) At least 51 percent owned by the city
2 or county in which the workplace of the em-
3 ployer is located and which is controlled by the
4 electorate of the city or county through elected
5 officials or an elected or appointed board of di-
6 rectors.

7 (5) The term “reductions in operations” means
8 either the transfer of any part of an employer’s op-
9 eration from one workplace to another existing or
10 proposed site, or the shutting down of a workplace
11 or any part of a workplace so as to reduce the num-
12 ber of employees at the workplace being shut down
13 or relocated by at least 25 percent or 15 employees,
14 whichever is greater, over any 3-month period.

15 (6) The term “taxing districts” means any city,
16 county, or special district permitted by law to tax
17 employers with workplaces located within its bound-
18 aries.

19 (7) The term “workplace” means any factory,
20 plant, office, or other facility where an employer has
21 hired employees to produce goods or provide serv-
22 ices.

23 (8) The term “employee-owned business”
24 means a employer owned entirely by the employees

1 of the employer and controlled by those employees or
2 by a board of directors selected by those employees.

3 (9) The term “jointly-owned business” means a
4 employer owned jointly by a city or county and the
5 employees of the employer and controlled by a board
6 of directors selected by the city, county, or employ-
7 ees.

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