

File No. 230275

Committee Item No. _____

Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: March 14, 2023

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Prepared by: Arthur Khoo

Date: March 9, 2023

Prepared by: _____

Date: _____

1 [Supporting California State Assembly Bill No. 1356 (Haney) - Mass Layoffs]

2

3 **Resolution supporting California State Assembly Bill No. 1356, Mass Layoffs, authored**
4 **by Assembly Member Matt Haney, to expand the California Worker Adjustment and**
5 **Retraining (WARN) Act to include coverage for contract workers, extend the required**
6 **advance notice to 90 days, and ban companies from forcing workers to sign a non-**
7 **disclosure agreement as a condition of receiving the WARN Act notice or pay.**

8

9 WHEREAS, The California Worker Adjustment and Retraining (WARN) Act, governs
10 relocations, terminations, and mass layoffs; and

11 WHEREAS, The existing law prohibits an employer from ordering a mass layoff,
12 relocation, or termination at a covered establishment unless, 60 days before the order takes
13 effect, the employer gives written notice of the order, as prescribed; and

14 WHEREAS, The existing law exempts certain types of employment from the act,
15 including seasonal employment where the employees were hired with the understanding that
16 their employment was seasonal and temporary (seasonal employment exemption), including
17 contract workers; and

18 WHEREAS, The existing law makes an employer who fails to give notice as required
19 liable to each employee entitled to notice who lost their employment for prescribed
20 compensation, calculated for the period of the employer's violation, up to a maximum of 60
21 days, or half the number of days that the employee was employed by the employer, whichever
22 period is smaller; and

23 WHEREAS, The California WARN Act was established in 1988 and did not anticipate
24 the current situation of employment where many companies employ workers as contract
25 workers; and

1 WHEREAS, Assembly Bill No. 1356 (AB 1356), authored by Assembly Member Matt
2 Haney will expand the WARN Act to include the definition of “employer” to include a client
3 employer of a labor contractor, as well as a definition of “employee” to include a person
4 employed by a labor contractor and performing labor with the client employer for at least six-
5 months of the 12-months preceding the date on which notice is required; and

6 WHEREAS, AB 1356 will prohibit an employer from ordering a mass layoff, relocation,
7 or termination unless 90 days (instead of the current 60 days) before the order of a written
8 notice is provided to employees and the state; and

9 WHEREAS, In addition, AB 1356 would add that an employer is prohibited from
10 utilizing compliance with the WARN Act in connection with a severance agreement and waiver
11 of an employee’s right to claims through non-disclosure or non-disparagement agreements;
12 and

13 WHEREAS, AB 1356 will update the California WARN Act to reflect the current
14 environment of employment and modern work structures; now, therefore, be it

15 RESOLVED, That the San Francisco Board of Supervisors hereby supports California
16 Assembly Bill No. 1356 and urges the California State Legislature to pass this bill in order to
17 expand the WARN Act to include all workers; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the
19 Board to transmit a copy of this Resolution to the California Senate President pro Tempore
20 Toni Atkins, California Assembly Speaker Anthony Rendon, Governor Gavin Newsom, and
21 the Bill’s primary sponsor, Assembly Member Matt Haney.

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23
24
25

ASSEMBLY BILL

No. 1356

Introduced by Assembly Member Haney

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 introduced, 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 $\frac{1}{2}$ 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."

This bill would require the prescribed notice 90 days before the order takes effect. The bill would make a conforming change to the calculation

of employer liability. The bill would require that an employee working with the employer through a labor contractor and affected by a mass layoff be compensated for the remainder of the contract or 90 days, whichever is fewer, by the equivalent of the pay and benefits received by the employee during the last month of employment, or the employee’s final rate of compensation, whichever is higher.

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.

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. The bill would provide that any agreement in violation of this prohibition is void as a matter of law and against public policy.

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 1400.5 of the Labor Code is amended to
- 2 read:
- 3 1400.5. The definitions set forth in this section shall govern
- 4 the construction and meaning of the terms used in this chapter:
- 5 (a) “Covered establishment” means any industrial or commercial
- 6 facility or part thereof that employs, or has employed within the
- 7 preceding 12 months, 75 or more persons.

1 (b) “Employer” means any person, as defined by Section 18,
2 who directly or indirectly owns and operates a covered
3 establishment. A parent corporation is an employer as to any
4 covered establishment directly owned and operated by its corporate
5 subsidiary. *“Employer” includes a client employer of a labor*
6 *contractor.*

7 (c) “Layoff” means a separation from a position for lack of
8 funds or lack of work.

9 (d) “Mass layoff” means a layoff during any 30-day period of
10 50 or more employees at a covered establishment.

11 (e) “Relocation” means the removal of all or substantially all
12 of the industrial or commercial operations in a covered
13 establishment to a different location 100 miles or more away.

14 (f) “Termination” means the cessation or substantial cessation
15 of industrial or commercial operations in a covered establishment.

16 (g) (1) This chapter does not apply where the closing or layoff
17 is the result of the completion of a particular project or undertaking
18 of an employer subject to Wage Order 11, regulating the
19 Broadcasting Industry, Wage Order 12, regulating the Motion
20 Picture Industry, or Wage Order 16, regulating Certain On-Site
21 Occupations in the Construction, Drilling, Logging and Mining
22 Industries, of the Industrial Welfare Commission, and the
23 employees were hired with the understanding that their employment
24 was limited to the duration of that project or undertaking.

25 (2) This chapter does not apply to employees who are employed
26 in seasonal employment ~~where~~ *when the season is complete and*
27 *the employees were hired with the understanding that their*
28 *employment was seasonal and temporary.*

29 (h) “Employee” means a person employed by an employer for
30 at least 6 months of the 12 months preceding the date on which
31 notice is required. *“Employee” includes a person employed by a*
32 *labor contractor and performing labor with the client employer*
33 *for at least 6 months of the 12 months preceding the date on which*
34 *notice is required.*

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

36 1401. (a) An employer ~~may~~ *shall* not order a mass layoff,
37 relocation, or termination at a covered establishment unless, ~~60~~
38 *90* days before the order takes effect, the employer gives written
39 notice of the order to the following:

1 (1) The employees of the covered establishment affected by the
2 order.

3 (2) The Employment Development Department, the local
4 workforce investment board, and the chief elected official of each
5 city and county government within which the termination,
6 relocation, or mass layoff occurs.

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

11 (c) *An employer shall not utilize compliance with this chapter
12 in connection with a severance agreement and waiver of an
13 employee's right to claims.*

14 (e)

15 (d) Notwithstanding the requirements of subdivision (a), an
16 employer is not required to provide notice if a mass layoff,
17 relocation, or termination is necessitated by a physical calamity
18 or act of war.

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

20 1402. (a) An employer who fails to give notice as required by
21 paragraph (1) of subdivision (a) of Section 1401 before ordering
22 a mass layoff, relocation, or termination is liable to each employee
23 entitled to notice who lost ~~his or her~~ *their* employment for:

24 (1) Back pay at the average regular rate of compensation
25 received by the employee during the last three years of ~~his or her~~
26 *their* employment, or the employee's final rate of compensation,
27 whichever is higher.

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

33 (3) *An employee working with the employer through a labor
34 contractor and affected by a mass layoff shall be compensated for
35 the remainder of the contract or 90 days, whichever is fewer, by
36 the equivalent of the pay and benefits received by the employee
37 during the last month of employment, or the employee's final rate
38 of compensation, whichever is higher. When this compensation is
39 provided as an additional payment from the employer to the labor
40 contractor, the labor contractor shall ensure that compensation*

1 *is provided to the employee and shall not take an additional*
2 *markup above the rate charged on the contract prior to the date*
3 *on which notice is required.*

4 (b) Liability under this section is calculated for the period of
5 the employer's violation, up to a maximum of ~~60~~ 90 days, or
6 one-half the number of days that the employee was employed by
7 the employer, whichever period is smaller.

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

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

13 (2) Any voluntary and unconditional payments made by the
14 employer to the employee that were not required to satisfy any
15 legal obligation.

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

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

21 1403. (a) An employer who fails to give notice as required by
22 paragraph (2) of subdivision (a) of Section 1401 is subject to a
23 civil penalty of not more than five hundred dollars (\$500) for each
24 day of the employer's violation. The employer is not subject to a
25 civil penalty under this ~~section, however,~~ *section however* if the
26 employer pays to all applicable employees the amounts for which
27 the employer is liable under Section 1402 within three weeks from
28 the date the employer orders the mass layoff, relocation, or
29 termination. *Any general release, waiver of claims, or*
30 *nondisparagement or nondisclosure agreement that is made a*
31 *condition of the payment of amounts for which the employer is*
32 *liable under Section 1402 is void as a matter of law and against*
33 *public policy.*

34 (b) *An employer who is required to give notice pursuant to*
35 *paragraph (2) of subdivision (a) of Section 1401 shall not offer*
36 *an employee a separate agreement that includes a general release,*
37 *waiver of claims, or nondisparagement or nondisclosure*
38 *agreement, unless the agreement is offered in exchange for*
39 *reasonable consideration that is in addition to anything of value*
40 *to which the individual already is entitled to under Section 1402.*

- 1 *Any agreement in violation of this subdivision is void as a matter*
- 2 *of law and against public policy.*

O

From: [Gee, Natalie \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Walton, Shamann \(BOS\)](#); [Barnes, Bill \(BOS\)](#)
Subject: Walton - Introduction - Resolution in Support of AB 1356
Date: Tuesday, March 7, 2023 12:56:25 PM
Attachments: [Walton - Introduction Form - Resolution Supporting AB 1356.pdf](#)
[Walton - Reso - AB 1356.doc](#)
[20230AB1356_99.pdf](#)

Good morning Clerk Team,

Attached is Supervisor Walton's Introduction Form, Resolution in Support of AB 1356, Mass Layoffs, and text of AB 1356. We can confirm that this matter is routine and not contentious in nature, and of no special interest.

The CSAC and LCC have not taken a position on this bill.

Looping in Supervisor Safai's team to confirm co-sponsorship.

Thank you,
Natalie

Natalie Gee 朱凱勤, Chief of Staff

Supervisor Shamann Walton, District 10

1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282

Direct: 415.554.7672 | **Office:** 415.554.7670

District 10 Community Events Calendar: <https://bit.ly/d10communityevents>

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: