August 9, 2023

TO: Members, Senate Appropriations Committee

SUBJECT: AB 1356 (HANEY) RELOCATIONS, TERMINATIONS, AND MASS LAYOFFS
OPPOSE UNLESS AMENDED – AS AMENDED JULY 13, 2023

The California Chamber of Commerce and the undersigned organizations are respectfully **OPPOSED UNLESS AMENDED** to **AB 1356 (Haney). AB 1356** applies existing WARN Act requirements to employees of a labor contractor, including failing to take into account the amount of time a contractor works for a company or the terms of a contract or agreement between the labor contractor and client.

The Definition of "Labor Contractor" and "Employee" as it Relates to Labor Contractors Must Be Narrowed

The new group of workers that would fall under the WARN Act requirements is far too broad. "Labor contractor" is defined as "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." That definition has been interpreted broadly in other statutes. For example, just last year, Government Code Section 12999 was amended to require pay data reporting regarding employees of a labor contractor. Labor contractor has the same definition as is used here. The Civil Rights Department took significant liberty with the interpretation of that definition, far beyond what employers had understood when reading the statutory language. The CRD's FAQ provides:

"A client employer's "usual course of business" means the regular and customary work of the client employer. "Regular and customary work" means work that is performed on a regular or routine basis that is either part of the client employer's customary business *or necessary for its preservation or maintenance.* "Regular and customary work" does not include isolated or one-time tasks." (Emphasis added). An example would include cleaning or "general maintenance," which was not how employers understood this language to apply. To avoid liability, employers would therefore be forced to take a sweeping interpretation of who qualifies as an employee of a labor contractor.

Further, "employee" for purposes of those employed by labor contractors should be narrowed. Presently, the bill requires that the worker has performed labor with the client employer for at least 6 of the 12 months and performed at least 60 hours of work. We believe this threshold is far too low to be appropriate for the WARN Act.

The bill and these definitions also do not take into account whether the worker performs work at other sites, whether they can be reassigned by the contractor, or the terms of the contract. If the client employer is just one of a worker's five assignments, the justification for receiving a WARN Act notice of a closure is far less

than a worker who performs work at one site every single day. Or, if the labor contractor is able to immediately assign the worker to a new client upon learning of a closure or layoff, again the need to follow all of the WARN Act steps is obviated. The bill also does not address the terms of the contract or agreement between the labor contractor and client. This would include a situation where the length of the contract is set to expire before the anticipated closure or layoff or where there is no set term. Further, the payment requirements under section 1402 do not consider the fact that a contract between the labor contractor and employer may already address worker compensation in the event of a closure or layoff. The applicability of the bill to contract workers must be narrowed and reworked.

AB 1356 Unnecessarily Expands WARN Act Requirements

AB 1356 unnecessarily expands the requirements under California's WARN Act in two ways. First, it increases the amount of notice time from 60 days to 75 days without justification. Increasing the number of days is actually likely to disadvantage workers. If notices must be issued 75 days in advance, this means employers must know well before the 75 day mark who is subject to the closure or layoff at issue. The further that date moves up, the more the employer is in a position where it is guessing with less certainty exactly how many workers this could impact. Out of fear of violating the statute, the employer has no choice but to be overinclusive in who is receiving notices, leading to layoffs that may not actually be necessary or having to tell workers they are being laid off and then walking that back later, which is poor for worker morale and may lead workers to finding other jobs unnecessarily. This happens, for example, with teachers. Teachers are generally required to be given notice by March 15 regarding layoffs that finalized on May 15 if the teacher will not have a job the following school year. However, the California Federation of Teachers specifically informs teachers that, because finances are not well understood at the time of the layoff notices, it often happens that teachers who were told they would be laid off will actually not be and are subsequently told after May 15.[1] The same principle applies here – it is not realistic to think that a company will always have its finances worked out this far in advance, causing unnecessary layoff notices. There is no justification to increase the notice period to 75 days.

Second, recent amendments change the definition of "covered establishment" so that instead of applying to single locations with 75 or more employees, it now covers any business that employs 75 or more employees between all of their locations. That affects the definitions of mass layoff, relocation, and termination. For example, if a company lays off a few employees at different locations that altogether total 50 workers, the WARN Act is now triggered. This is a significant expansion of the law, imposing new burdensome requirements on small locations that were previously never subject to the WARN Act. It would also mean that if 100 layoffs were happening at a facility and one layoff was happening at a second facility across the state, that second facility is now also required to issue a WARN Act notice.

The change in definition of "covered establishment" may also negatively impact franchisees given how "employer" is defined. California has nearly 76,000 franchise units. Franchise establishments are locally owned small businesses operating under a national brand or identity. The local business owners are in charge of all employment decisions and would not know if another franchisee under the same national brand or identity had conducted layoffs or closures. It would not make sense to have these independent stores trying to keep track of the operations of every single other franchisee and would be impossible to do. The definition of covered establishment should remain as it is presently.

For these and other reasons, we are respectfully **OPPOSED UNLESS AMENDED** to **AB 1356.**

Sincerely,

Courtney Jensen, Fernandez Jensen Kimmelshue Government Affairs
On behalf of California Chamber of Commerce

Acclamation Insurance Management Services (AIMS), Dominic Russo

[1] Layoffs — Know Your Rights - CFT – A Union of Educators and Classified Professionals

Allied Managed Care (AMC), Dominic Russo
California Association for Health Services at Home, Dean Chalios
California Association of Winegrape Growers, Michael Miiller
California Attractions and Parks Association, Sabrina Demayo Lockhart
California Building Industry Association (CBIA), Nick Cammarota
California Business Properties Association (CBPA), Matthew Hargrove
California Business Roundtable (CBRT), Natalie Boust
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California Restaurant Association, Katie Hansen
California Retailers Association, Sarah Moo Pollo
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois
Family Business Association of California, Robert Rivinius
Flasher Barricade Association (FBA), Kenneth Johnston
Hollywood Chamber of Commerce, Chris Micheli
Independent Lodging Industry Association, Bobbie Singh-Allen
Official Police Garages Association of Los Angeles, Eric Rose
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cc: Legislative Affairs, Office of the Governor
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CJ:am