

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 403

Session of
1987

INTRODUCED BY KUKOVICH, DALEY, PRESSMANN, LEVDANSKY, PISTELLA,
JOSEPHS, TRELLO, FATTAH, FREEMAN, HAYDEN, CAWLEY, MICHLOVIC,
VEON, BUNT, OLIVER, HUGHES, MRKONIC, RYBAK, WOZNIAK AND
STUBAN, FEBRUARY 23, 1987

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 21, 1988

AN ACT

1 Establishing a program for employee protection and community
2 stabilization; and providing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Employee
7 Protection and Community Stabilization Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Closing." The permanent shutting down of operations of any
13 establishment for any reason other than the filing of a petition
14 in bankruptcy in accordance with Federal law by the employer.

15 "EMPLOYEE." ANY PERSON EMPLOYED BY AN EMPLOYER FOR 20 HOURS <—
16 OR MORE A WEEK FOR AT LEAST 12 WEEKS OVER THE PAST YEAR.

1 "Employer." Any person, corporation or entity which employs
2 at least 50 individuals and which operates an industrial,
3 commercial or business enterprise within this Commonwealth, not
4 including the Commonwealth, its political subdivisions, a not-
5 for-profit corporation or an employer who has been doing
6 business in this Commonwealth for less than three years.

7 "Establishment." Any factory, plant, office or working
8 facility of an employer, but not including any construction site
9 or workplace intended to be a temporary workplace. A BUSINESS <—
10 ENTERPRISE WITH SITES IN TWO OR MORE DIFFERENT LOCALITIES WITHIN
11 THIS COMMONWEALTH SHALL HAVE ALL SITES CONSIDERED AS BEING
12 WITHIN ONE ESTABLISHMENT.

13 "Industrial development agency." Any incorporated not-for-
14 profit organization, foundation, corporation or agency which has
15 as its purpose the promotion, encouragement or development of
16 industrial, commercial or business enterprises in a target area.

17 "Reduction in operations." The ~~permanent~~ shutting down of a <—
18 portion of the operations of an establishment which reduces the
19 number of employees of that establishment by ~~15%~~ 33% or more <—
20 over a ~~one year period, or by 25 employees, whichever is~~ <—
21 ~~greater.~~ SIX CONSECUTIVE MONTH PERIOD, OR BY 500 EMPLOYEES, <—
22 WHICHEVER IS LESS.

23 "Relocation." The transfer of all or part of an employer's
24 operations from one establishment to an existing establishment
25 or to a new establishment, owned or operated by the employer or
26 parent corporation or a subsidiary thereof. The term includes
27 any transfer of operations to another location which is located
28 beyond a reasonable commuting distance from the first location.

29 Section 3. Notice of intention to close, relocate or reduce
30 operations.

1 (a) Employer.--Whenever an employer makes a decision to
2 close, relocate or reduce all or part of the operations of an
3 establishment of that employer and the actions will result in
4 the loss of employment of ~~15%~~ 33% or more of the employees, the <—
5 employer shall give notice pursuant to this section.

6 (b) Parties notified.--The employer shall be required to
7 give written notice to:

8 (1) The employees of the establishment.

9 (2) Any employee organization which represents the
10 employees of the establishment.

11 ~~(3) The local government and news media of the community <—~~
12 ~~in which the establishment is located.~~

13 (3) THE SECRETARY OF LABOR AND INDUSTRY. IT WILL BE THE <—
14 RESPONSIBILITY OF THE SECRETARY OF LABOR AND INDUSTRY TO
15 NOTIFY THE LOCAL GOVERNMENT, NEWS MEDIA AND ALL PUBLIC AND
16 SERVICE AGENCIES WHICH MAY BE AFFECTED. APPLICABLE
17 INFORMATION SHALL BE IMMEDIATELY MADE AVAILABLE TO THE
18 DEPARTMENT OF COMMERCE, DEPARTMENT OF EDUCATION, DEPARTMENT
19 OF PUBLIC WELFARE, ECONOMIC DEVELOPMENT PARTNERSHIP,
20 PERTINENT DIVISIONS WITHIN THE DEPARTMENT OF LABOR AND
21 INDUSTRY (SUCH AS THE BUREAU OF JOB SERVICES, UNEMPLOYMENT
22 COMPENSATION BENEFITS AND ALLOWANCES, THE "RAPID RESPONSE"
23 TEAM, ETC.), THE "RAPID RESPONSE" TEAM OF THE UNITED STATES
24 DEPARTMENT OF LABOR, AND LOCAL JOB TRAINING PROGRAMS AS
25 FUNDED BY THE JOB TRAINING PARTNERSHIP ACT (PUBLIC LAW 97-
26 300, 96 STAT. 1322), PRIVATE INDUSTRY COUNCIL, UNITED STATES
27 DEPARTMENT OF LABOR AND UNITED STATES VETERANS
28 ADMINISTRATION.

29 Section 4. Notice requirements.

30 (A) GENERAL RULE.--Written notice by the employer to any <—

1 party under section 3 shall contain a statement of intention to
2 close, relocate or reduce its operations, not less than ~~six~~ <—
3 ~~months~~ 60 DAYS prior to the date of the closing, relocation or <—
4 reduction.

5 ~~Section 5. Employer obligations to employees.~~ <—

6 ~~(a) Duty. Whenever an employer closes, relocates or reduces~~
7 ~~all or part of the operations of an establishment of that~~
8 ~~employer and the action results in the loss of employment of 15%~~
9 ~~or more of the employees, the employer shall have a duty with~~
10 ~~regard to its employees.~~

11 ~~(b) Insurance benefits. The employer shall continue~~
12 ~~coverage of any health insurance benefits for each employee who~~
13 ~~loses employment as a result of the closing, relocation or~~
14 ~~reduction for six months or until the employee finds other full~~
15 ~~time employment, whichever comes first.~~

16 (B) REDUCTION OF NOTIFICATION PERIOD.--THE NOTIFICATION <—
17 PERIOD MAY BE REDUCED IF, AT THE TIME NOTICE WOULD HAVE BEEN
18 REQUIRED, THE EMPLOYER WAS ACTIVELY SEEKING CAPITAL OR BUSINESS
19 WHICH, IF OBTAINED, WOULD HAVE ENABLED THE EMPLOYER TO AVOID OR
20 POSTPONE INDEFINITELY THE SHUTDOWN AND THE EMPLOYER REASONABLY
21 AND IN GOOD FAITH BELIEVED THAT PROVIDING THE NOTICE WOULD HAVE
22 PRECLUDED THE EMPLOYER FROM OBTAINING THE NEEDED CAPITAL OR
23 BUSINESS.

24 (C) EARLY CLOSING.--AN EMPLOYER MAY ORDER A PLANT CLOSING OR
25 MASS LAYOFF BEFORE THE CONCLUSION OF THE 60-DAY PERIOD IF THE
26 CLOSING OR MASS LAYOFF IS CAUSED BY BUSINESS CIRCUMSTANCES THAT
27 WERE NOT REASONABLY FORESEEABLE AT THE TIME THE NOTICE WOULD
28 HAVE BEEN REQUIRED.

29 (D) STATEMENT OF BASIS FOR CLOSING.--AN EMPLOYER RELYING ON
30 SUBSECTIONS (B) AND (C) SHALL GIVE AS MUCH NOTICE AS IS

1 PRACTICABLE AND AT THAT TIME SHALL GIVE A BRIEF STATEMENT OF THE
2 BASIS FOR REDUCING THE NOTIFICATION PERIOD OR CLOSING EARLY.

3 SECTION 5. EXCLUSION FROM REDUCTION OF OPERATION CALCULATION.

4 FOR PURPOSES OF DETERMINING THE NUMBER OF REDUCTION IN
5 EMPLOYEES, THE FOLLOWING SHALL NOT BE INCLUDED TOWARDS THE
6 NUMBER OF EMPLOYEES REMOVED:

7 (1) WHEN EMPLOYEES ARE TERMINATED FOR CAUSE, VOLUNTARY
8 DEPARTURE OR RETIREMENT.

9 (2) WHEN THE LAYOFF IS THE RESULT OF THE SALE OF PART OR
10 ALL OF AN EMPLOYER'S BUSINESS AND:

11 (I) THE PURCHASER AGREES IN WRITING, AS PART OF THE
12 PURCHASE AGREEMENT, TO OFFER EMPLOYMENT TO THE EMPLOYEE
13 WITH NO MORE THAN A SIX MONTH BREAK IN EMPLOYMENT AND THE
14 AGREEMENT SPECIFIES THAT THE EMPLOYEE IS A THIRD PARTY
15 BENEFICIARY; OR

16 (II) THE PURCHASER, WITHIN 30 DAYS AFTER THE
17 PURCHASE, OFFERS EMPLOYMENT TO THE EMPLOYEE WITH NO MORE
18 THAN A SIX-MONTH BREAK IN EMPLOYMENT.

19 (3) WHEN THE LAYOFF IS THE RESULT OF THE RELOCATION OR
20 CONSOLIDATION OF PART OR ALL OF THE EMPLOYER'S BUSINESS AND
21 PRIOR TO THE CLOSING OR LAYOFF THE EMPLOYER EITHER:

22 (I) OFFERS TO TRANSFER THE EMPLOYEE TO A DIFFERENT
23 SITE OF EMPLOYMENT WITHIN A REASONABLE COMMUTING DISTANCE
24 WITH NO MORE THAN A SIX-MONTH BREAK IN EMPLOYMENT; OR

25 (II) OFFERS TO TRANSFER THE EMPLOYEE TO ANY OTHER
26 SITE OF EMPLOYMENT REGARDLESS OF DISTANCE WITH NO MORE
27 THAN A SIX MONTH BREAK IN EMPLOYMENT AND THE EMPLOYEE
28 ACCEPTS WITHIN 30 DAYS OF THE OFFER OR OF THE LAYOFF,
29 WHICHEVER IS LATER.

30 (4) WHEN THE LAYOFF IS THE RESULT OF THE COMPLETION OF A

PARTICULAR PROJECT OR UNDERTAKING AND THE AFFECTED EMPLOYEE
WAS HIRED WITH THE UNDERSTANDING THAT EMPLOYMENT WAS LIMITED
TO THE DURATION OF THE FACILITY OR PROJECT OR UNDERTAKING.

(5) WHEN THE LAYOFF CONSTITUTES A STRIKE OR CONSTITUTES
A LOCKOUT NOT INTENDED TO EVADE THE REQUIREMENTS OF THIS ACT.

Section 6. Remedies.

(a) Standing.--Any employee, employer or representative
affected by an employer's noncompliance with the provisions of
this act may bring an action in the court of common pleas of the
county in which the affected establishment is located.

~~(b) Damages. The amount of damages shall be equal to the
average weekly salary of an employee multiplied by the number of
weeks for which the provisions of this act were violated by the
employer.~~

(B) AGGRIEVED EMPLOYEE REMEDIES AGAINST EMPLOYERS.--ANY
EMPLOYER WHO ORDERS OR CAUSES A PLANT CLOSING OR MASS LAYOFF IN
VIOLATION OF THIS ACT SHALL BE LIABLE TO EACH AGGRIEVED EMPLOYEE
WHO SUFFERS AN EMPLOYMENT LOSS AS A RESULT OF THE PLANT CLOSING
OR MASS LAYOFF FOR BACK PAY FOR EACH DAY OF VIOLATION AT A RATE
OF COMPENSATION NOT LESS THAN THE HIGHER OF:

(1) THE AVERAGE RATE RECEIVED BY SUCH EMPLOYEE DURING
THE LAST THREE YEARS OF THE EMPLOYEE'S EMPLOYMENT; OR

(2) THE FINAL REGULAR RATE RECEIVED BY SUCH EMPLOYEE AND
BENEFITS UNDER AN EMPLOYEE BENEFIT PLAN DESCRIBED IN SECTION
3(3) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974
(PUBLIC LAW 93-406, 88 STAT. 829), INCLUDING THE COST OF
MEDICAL EXPENSES INCURRED DURING THE EMPLOYMENT LOSS WHICH
WOULD HAVE BEEN COVERED UNDER AN EMPLOYEE BENEFIT PLAN IF THE
EMPLOYMENT LOSS HAD NOT OCCURRED. SUCH LIABILITY SHALL BE
CALCULATED FOR THE PERIOD OF THE VIOLATION, UP TO A MAXIMUM

1 OF 60 DAYS, BUT IN NO EVENT FOR MORE THAN ONE HALF OF THE
2 NUMBER OF DAYS THE EMPLOYEE WAS EMPLOYED BY THE EMPLOYER. THE
3 AMOUNT FOR WHICH THE EMPLOYER IS LIABLE UNDER THIS SUBSECTION
4 SHALL BE REDUCED BY ANY WAGES PAID BY THE EMPLOYER TO THE
5 EMPLOYEE FOR THE PERIOD OF THE VIOLATION AND ANY VOLUNTARY
6 AND UNCONDITIONAL PAYMENT BY THE EMPLOYER TO A THIRD PARTY OR
7 TRUSTEE, SUCH AS PREMIUMS FOR HEALTH BENEFITS OR PAYMENTS TO
8 A DEFINED CONTRIBUTION PENSION PLAN, ON BEHALF OF AND
9 ATTRIBUTABLE TO THE EMPLOYEE FOR THE PERIOD OF THE VIOLATION.
10 IN ADDITION, ANY LIABILITY INCURRED WITH RESPECT TO A DEFINED
11 BENEFIT PENSION PLAN MAY BE REDUCED BY CREDITING THE EMPLOYEE
12 WITH SERVICE FOR ALL PURPOSES UNDER SUCH A PLAN FOR THE
13 PERIOD OF THE VIOLATION.

14 (C) GOOD FAITH ACTIONS BY EMPLOYER.--IF AN EMPLOYER WHICH
15 HAS VIOLATED THIS ACT PROVES TO THE SATISFACTION OF THE COURT
16 THAT THE ACT OR OMISSION WAS IN GOOD FAITH AND THAT THE EMPLOYER
17 HAD REASONABLE GROUNDS FOR BELIEVING THAT THE ACT OR OMISSION
18 WAS NOT IN VIOLATION OF THIS ACT, THE COURT MAY, IN ITS
19 DISCRETION, REDUCE THE AMOUNT OF THE LIABILITY OR PENALTY
20 PROVIDED FOR IN THIS SECTION.

21 ~~Section 7. Penalty.~~ <—

22 ~~Any person who violates this act commits a misdemeanor of the~~
23 ~~third degree.~~

24 SECTION 7. RULES AND REGULATIONS. <—

25 THE DEPARTMENT OF LABOR AND INDUSTRY MAY PROMULGATE RULES AND
26 REGULATIONS TO ADMINISTER AND ENFORCE THIS ACT.

27 Section 8. Effective date.

28 This act shall take effect in 60 days.