

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2390 Session of
2010

INTRODUCED BY WHITE, BELFANTI, BRADFORD, BRENNAN, DALEY,
DePASQUALE, FREEMAN, GIBBONS, HORNAMAN, JOSEPHS, KULA, MURT,
M. O'BRIEN, QUINN, SANTONI, SIPTROTH, K. SMITH AND THOMAS,
APRIL 7, 2010

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 7, 2010

AN ACT

1 Requiring notification of employees, the Department of Labor and
2 Industry and municipalities when mass layoffs and business
3 closings occur; and providing for civil penalties and for
4 powers and duties of the Department of Labor and Industry.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Worker
9 Adjustment and Retraining Notification Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The impact of business closings and job loss due to
13 mergers and downsizing can be devastating to both individuals
14 and communities.

15 (2) With adequate notice of business closings and job
16 loss due to mergers and downsizing, employees, unions, State
17 and local government, business and community leaders can take
18 action to prevent the job loss or to implement plans for new

1 employment opportunities.

2 Section 3. Definitions.

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

6 "Affected employee." An employee who may reasonably be
7 expected to experience an employment loss as a consequence of a
8 proposed business closing or mass layoff by the employee's
9 employer.

10 "Business closing." The permanent or temporary shutdown of a
11 single site of employment, or one or more facilities or
12 operating units within a single site of employment, if the
13 shutdown results in an employment loss at the single site of
14 employment during any 30-day period for 30 or more employees,
15 excluding any part-time employees.

16 "Department." The Department of Labor and Industry of the
17 Commonwealth.

18 "Employer." A business enterprise that employs:

19 (1) fifty or more employees, excluding part-time
20 employees, whether at one or multiple sites; or

21 (2) fifty or more employees who in the aggregate work at
22 least 2,000 hours per week, exclusive of hours of overtime.

23 "Employment loss." Any of the following:

24 (1) An employment termination, other than a discharge
25 for cause, voluntary departure or retirement.

26 (2) A mass layoff exceeding six months.

27 (3) A reduction in hours of work of more than 50% during
28 each month of any six-month period.

29 "Mass layoff." A reduction in force that meets both of the
30 following criteria:

1 (1) Is not the result of a business closing.

2 (2) Results in an employment loss at the single or
3 multiple sites of employment during any 30-day period for:

4 (i) at least 33% of the employees and at least 25
5 employees; or

6 (ii) at least 250 employees.

7 "Part-time employee." An employee who is employed for an
8 average of fewer than 20 hours per week or who has been employed
9 for fewer than six of the 12 months preceding the date on which
10 notice is required.

11 "Plant closing." The permanent or temporary shutdown of a
12 single site of employment, or one or more facilities or
13 operating units within a single site of employment, if the
14 shutdown results in an employment loss at the single site of
15 employment during any 30-day period for 25 or more employees,
16 other than part-time workers.

17 "Relocation." The removal of all or substantially all of the
18 industrial or commercial operations of an employer to a
19 different location 50 or more miles away.

20 "Representative." An exclusive representative of employees
21 for collective bargaining purposes.

22 "Secretary." The Secretary of Labor and Industry of the
23 Commonwealth.

24 Section 4. Notice required before business closing and mass
25 layoffs.

26 (a) Parties to be notified.--An employer may not order a
27 business closing, mass layoff or relocation until the end of a
28 90-day period after the employer serves written notice of the
29 closing or layoff order:

30 (1) To each representative of the affected employees as

1 of the time of the notice or, if there is no representative
2 at that time, to each affected employee.

3 (2) To the department and the chief elected official of
4 the municipality within which the closing or layoff is to
5 occur. If there is more than one municipality, the
6 municipality that the employer shall notify is the
7 municipality to which the employer pays the taxes for the
8 year preceding the year for which the determination is made.

9 (3) To the local workforce investment board established
10 pursuant to the Workforce Investment Act of 1998 (Public Law
11 105-220, 112 Stat. 936) for the locality in which the
12 business closing, relocation or mass layoffs will occur.

13 (b) Reduction of notification period.--The following shall
14 apply:

15 (1) An employer may order a business closing or mass
16 layoff before the conclusion of the 90-day period if the
17 closing or mass layoff is caused by business circumstances
18 that were not reasonably foreseeable as of the time that
19 notice would have been required.

20 (2) No notice under this act shall be required if the
21 business closing or mass layoff is due to any form of natural
22 disaster, including, but not limited to, a flood, earthquake
23 or drought.

24 (3) An employer relying on this subsection shall give as
25 much notice as is practicable and at that time shall give a
26 brief statement of the basis for reducing the notification
27 period.

28 (c) Extension of layoff period.--A layoff of more than six
29 months which, at its outset, was announced to be a layoff of six
30 months or less shall be treated as an employment loss under this

1 act unless:

2 (1) The extension beyond six months is caused by
3 business circumstances, including unforeseeable changes in
4 price or cost, not reasonably foreseeable at the time of the
5 initial layoff.

6 (2) Notice is given at the time it becomes reasonably
7 foreseeable that the extension beyond six months is required.

8 (d) Determinations regarding employment loss.--For purposes
9 of this section, in determining whether a business closing or
10 mass layoff has occurred or will occur, employment losses for
11 two or more groups at a single site of employment, each of which
12 is less than the minimum number of employees specified in the
13 definition of "business closing" or "mass layoff" under section
14 3, but which in the aggregate exceed that minimum number and
15 occur within any 90-day period, shall be considered to be a
16 business closing or mass layoff unless the employer demonstrates
17 that the employment losses are the result of separate and
18 distinct actions and causes and not an attempt by the employer
19 to evade the requirements of this act.

20 Section 5. Special circumstances.

21 (a) Sale or merger of business.--The following shall apply:

22 (1) In the case of a sale or merger of part or all of an
23 employer's business, the seller or original employer shall be
24 responsible for providing notice for any business closing or
25 mass layoff in accordance with section 4, up to and including
26 the effective date of the sale or merger.

27 (2) After the effective date of the sale or merger of
28 part or all of an employer's business, the purchaser or
29 resulting merged entity shall be responsible for providing
30 notice for any business closing or mass layoff in accordance

1 with section 4.

2 (3) Notwithstanding any other provision of this act, a
3 person who is an employee of the seller or original employer
4 other than a part-time employee as of the effective date of
5 the sale or merger shall be considered an employee of the
6 purchaser or resulting merged entity immediately after the
7 effective date of the sale or merger.

8 (b) Exception.--An employee may not be considered to have
9 experienced an employment loss if the closing or layoff is the
10 result of the relocation or consolidation of part or all of the
11 employer's business and, prior to the closing or layoff:

12 (1) the employer offers to transfer the employee to a
13 different site of employment within a reasonable commuting
14 distance with no more than a six-month break in employment;
15 or

16 (2) the employer offers to transfer the employee to any
17 other site of employment regardless of distance with no more
18 than a six-month break in employment and the employee accepts
19 within 30 days of the offer or of the closing or layoff,
20 whichever is later.

21 Section 6. Exemptions.

22 (a) General rule.--This act shall not apply to a business
23 closing or mass layoff if:

24 (1) The closing is of a temporary facility or the
25 closing or layoff is the result of the completion of a
26 particular project or undertaking and the affected employees
27 were hired with the understanding that their employment was
28 limited to the duration of the facility or the project or
29 undertaking.

30 (2) The closing or layoff constitutes a strike or

1 constitutes a lockout not intended to evade the requirements
2 of this act.

3 (b) Plant closings.--In the case of a plant closing, an
4 employer is not required to comply with the notice requirement
5 in section 4 if:

6 (1) at the time the notice would have been required, the
7 employer was actively seeking capital or business;

8 (2) the capital or business sought, if obtained, would
9 have enabled the employer to avoid or postpone the relocation
10 or termination; and

11 (3) the employer reasonably and in good faith believed
12 that giving the notice required by section 4 of this act
13 would have precluded the employer from obtaining the needed
14 capital or business.

15 (c) Economic strikers.--Nothing in this act shall require an
16 employer to serve written notice pursuant to section 4 when
17 permanently replacing a person who is deemed to be an economic
18 striker under the National Labor Relations Act (49 Stat. 449, 29
19 U.S.C. § 151 et seq.). Nothing in this act shall be deemed to
20 validate or invalidate any judicial or administrative ruling
21 relating to the hiring of permanent replacements for economic
22 strikers under the National Labor Relations Act.

23 Section 7. Administration and enforcement requirements.

24 The following shall apply:

25 (1) The secretary shall prescribe such rules and
26 regulations as may be necessary to carry out this act. The
27 rules and regulations shall, at a minimum, include provisions
28 that allow the parties access to administrative hearings for
29 any actions of the department under this section.

30 (2) In any investigation or proceeding under this act,

1 the secretary has, in addition to all other powers granted by
2 law, the authority to examine any information of an employer
3 necessary to determine whether a violation of this act has
4 occurred, including to determine the validity of any defense.

5 (3) Except as provided in this section, information
6 obtained through administration of this act from an employer
7 subject to this act and that is not otherwise obtainable by
8 the secretary under this section shall be confidential and
9 shall not be published or open to public inspection. Prior to
10 public disclosure of any such information in connection with
11 any court action or proceeding, the employer shall be given a
12 reasonable opportunity to make application to protect the
13 information's confidentiality.

14 (4) No decision or order issued pursuant to this act
15 shall be admissible or used in evidence in any subsequent
16 court proceeding except in an action by the secretary or the
17 employer to implement, enforce or challenge a determination
18 made by the secretary pursuant to this act.

19 (5) Any officer or employer of the State, any officer or
20 employee of any entity authorized to obtain information
21 pursuant to this section and any agent to this State or of
22 such entity who, except with authority of the secretary under
23 this section, discloses information commits a misdemeanor.

24 (6) If, after an administrative hearing, the secretary
25 determines that an employer has violated a requirement of
26 this act or rules or regulations promulgated under this act,
27 the secretary shall issue an order that shall include any
28 penalties assessed by the secretary under this act. Upon the
29 entry of the order, a party aggrieved thereby may commence a
30 proceeding for review pursuant to the civil practice law and

1 rules within 30 days from the notice of the filing of the
2 order in the office of the secretary. The proceeding shall be
3 commenced in the Commonwealth Court. If the order is not
4 reviewed or if it is reviewed and the final decision is in
5 favor of the secretary, the secretary may file with the clerk
6 of the county where the employer resides or has a place of
7 business the order of the secretary containing the amount
8 found to be due. The filing of the order shall have the full
9 force and effect of a judgment duly docketed in the office of
10 the clerk. The order may be enforced by and in the name of
11 the secretary in the same manner, and with like effect, as
12 that prescribed by the civil practice law and rules for the
13 enforcement of a money judgment.

14 (7) The secretary shall promptly distribute any back pay
15 and the value of benefits recovered to employees subject to
16 the violation.

17 Section 8. Civil actions and remedies.

18 (a) Liability of employer.--An employer who orders a
19 business closing or mass layoff in violation of section 4 is
20 liable to each aggrieved employee who suffers an employment loss
21 as a result of the closing or layoff for:

22 (1) back pay for each day of violation at a rate of
23 compensation not less than the higher of:

24 (i) the average regular rate received by the
25 employee during the last three years of the employee's
26 employment; or

27 (ii) the final regular rate received by the
28 employee; and

29 (2) benefits under an employee benefit plan, including
30 the cost of medical expenses incurred during the employment

1 loss that would have been covered under an employee benefit
2 plan if the employment loss had not occurred.

3 (b) Calculation of liability.--Liability shall be calculated
4 for the period of the violation up to a maximum of 60 days but
5 in no event for more than one-half the number of days the
6 employee was employed by the employer.

7 (c) Not considered remuneration.--Payments to an employee
8 under this section by an employer who has failed to provide the
9 advance notice of a facility closure required by this act or the
10 Federal Worker Adjustment and Retraining Notification Act
11 (Public Law 100-379, 29 U.S.C. Sec. 2101 et seq.) shall not be
12 construed as remuneration under this act. Unemployment insurance
13 benefits may not be denied or reduced because of the receipt of
14 payments related to an employer's violation of this act or the
15 Federal Worker Adjustment and Retraining Notification Act.

16 (d) Reduction of liability.--The amount for which an
17 employer is liable under subsection (a) shall be reduced by any:

18 (1) wages paid by the employer to the employee for the
19 period of the violation;

20 (2) voluntary and unconditional payment by the employer
21 to the employee that is not required by any legal obligation;

22 (3) payment by the employer to a third party or trustee,
23 such as premiums for health benefits or payments to a defined
24 contribution pension plan on behalf of and attributable to
25 the employee for the period of the violation;

26 (4) liability paid by the employer under any applicable
27 Federal law governing notification of mass layoffs, plant
28 closings or relocations;

29 (5) in an administrative proceeding by the secretary,
30 liability paid by the employer prior to the secretary's

determination as the result of a private action brought under this article; and

(6) in a private action brought under this act, liability paid by the employer in an administrative proceeding by the commissioner prior to the adjudication of such private action.

(e) Credit.--In addition, any liability incurred under subsection (d) (1) with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under the plan for the period of the violation.

(f) Payment to aggrieved employees.--An employer who violates the provisions of section 4 with respect to a municipality shall be subject to a civil penalty of not more than \$500 for each day of the violation, except that this penalty shall not apply if the employer pays to each aggrieved employee the amount for which the employer is liable to that employee within three weeks from the date the employer orders the closing or layoff.

Section 9. Civil penalty.

(a) Failure of notice.--An employer who fails to give notice as required by section 4 shall be subject to a civil penalty of not more than \$500 for each day of the violation. The employer shall not be subject to a civil penalty under this section if the employer pays to all applicable employees the amounts for which the employer is liable under section 4 within 21 days from the date the employer orders the mass layoff, relocation or employment loss.

(b) Maximum penalty.--The total amount of penalties for which an employer may be liable under this section shall not exceed the maximum amount of penalties for which the employer

1 may be liable under Federal law for the same violation.

2 (c) Penalty payments.--Any penalty amount paid by the
3 employer under Federal law shall be considered a payment made
4 under this article.

5 (d) Reduction of liability or penalty.--If an employer that
6 has violated this act proves to the satisfaction of the
7 secretary or the court that the act or omission that violated
8 this act was in good faith and that the employer had reasonable
9 grounds for believing that the act or omission was not a
10 violation of this act, the secretary and the court may, in its
11 discretion, reduce the amount of the liability or penalty
12 provided for in this section. In determining the amount of the
13 reduction, the commissioner shall consider:

14 (1) the size of the employer;

15 (2) hardships imposed on employees by the violation;

16 (3) efforts by the employer to mitigate the violation;

17 and

18 (4) the grounds for the employer's belief.

19 (e) Jurisdiction.--A person seeking to enforce liability,
20 including a representative of employees or a municipality
21 aggrieved under subsection(d)(1) or (4), may sue on his or her
22 own behalf or for other persons similarly situated, or both, in
23 any court of common pleas in which the violation is alleged to
24 have occurred, or in which the employer transacts business.

25 (f) No injunction.--The secretary shall not have the
26 authority to enjoin a plant closing, relocation or mass layoff
27 under this act.

28 (g) Attorney fees.--In an action under this subsection, the
29 court, in its discretion, may allow the prevailing party
30 reasonable attorney fees as part of the costs.

1 (h) Definition.--As used in this section, an "aggrieved
2 employee" shall mean an employee who:

3 (1) worked for an employer that ordered a business
4 closing or mass layoff; and

5 (2) as a result of the employer's failure to comply with
6 section 4, did not receive timely notice directly or through
7 the employee's representative as required by this act.

8 Section 10. Procedures and other rights.

9 The following shall apply:

10 (1) The rights and remedies provided to employees by
11 this act are in addition to and not in lieu of any other
12 contractual or statutory rights and remedies of the employees
13 and are not intended to alter or affect those rights and
14 remedies, except that the period of notification required by
15 this act shall run concurrently with any period of
16 notification required by contract or by any other statute.

17 (2) Nothing in this act shall be read to abridge,
18 abrogate or restrict the right of any State or local entity
19 to require an employer that is receiving State or local
20 economic development incentives for doing or continuing to do
21 business in this State from being required to provide
22 additional or earlier notice as a condition for the receipt
23 of such incentives.

24 (3) Nothing in this act shall be read to prevent an
25 employer who is not required to comply with the notice
26 requirements of this section, to the extent possible, to
27 provide notice to its employees about a proposal to close a
28 plant or permanently reduce its work force.

29 Section 11. Promulgation of regulations.

30 The department shall promulgate such regulations as may be

1 necessary to carry out the provisions of this act.

2 Section 12. Form of notice.

3 The mailing of notice to an employee's last known address or
4 inclusion of notice in the employee's paycheck shall be deemed
5 acceptable methods for fulfillment of the employer's obligation
6 to give notice to each affected employee under this act.

7 Section 13. Effective date.

8 This act shall take effect in 60 days.