

ASSEMBLY, No. 5145

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 5, 2019

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SYNOPSIS

Increases prenotification time and requires severance pay in certain plant closings, transfers, and mass layoffs; requires businesses that have change of control to notify and retain employees for certain period.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/19/2019)

1 AN ACT concerning certain plant closings, transfers, mass layoffs,
2 and changes in control and amending and supplementing
3 P.L.2007, c.212.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2007, c.212 (C.34:21-1) is amended to read
9 as follows:

10 1. As used in **[this act]** P.L.2007, c.212 (C.34:21-1 et seq.):

11 "Commissioner" means the Commissioner of Labor and
12 Workforce Development.

13 "Department" means the Department of Labor and Workforce
14 Development.

15 "Employer" means an individual or private business entity which
16 employs the workforce at an establishment.

17 "Establishment" means a **[single]** place of employment which
18 has been operated by an employer for a period longer than three
19 years, but shall not include a temporary construction site.
20 "Establishment" may be a single location or a group of
21 **[contiguous]** locations, including **[groups of]** any facilities **[which**
22 form an office or industrial park or separate facilities just across the
23 street from each other] located in this State.

24 "Facility" means a building.

25 **["Full-time employee" means an employee who is not a part-**
26 **time employee.]**

27 "Mass layoff" means a reduction in force which is not the result
28 of a transfer or termination of operations and which results in the
29 termination of employment at an establishment during any 30-day
30 period **[for 500 or more full-time employees or]** for 50 or more of
31 the **[full-time]** employees **[representing one third or more of the**
32 **full-time employees]** at or reporting to the establishment.

33 "Operating unit" means an organizationally distinct product,
34 operation, or specific work function within or across facilities at a
35 single establishment.

36 **["Part-time employee" means an employee who is employed for**
37 **an average of fewer than 20 hours per week or who has been**
38 **employed for fewer than six of the 12 months preceding the date on**
39 **which notice is required pursuant to this act.]**

40 "Response team" means the plant closing response team
41 established pursuant to section 5 of **[this act]** P.L.2007, c.212
42 (C.34:21-5).

43 "Termination of employment" means the layoff of an employee
44 without a commitment to reinstate the employee to his previous

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 employment within six months of the layoff, except that
2 "termination of employment" shall not mean a voluntary departure
3 or retirement or a discharge or suspension for misconduct of the
4 employee connected with the employment or any layoff of a
5 seasonal employee or refer to any situation in which an employer
6 offers to an employee, at a location inside the State and not more
7 than 50 miles from the previous place of employment, the same
8 employment or a position with equivalent status, benefits, pay and
9 other terms and conditions of employment, and, except that a layoff
10 of more than six months which, at its outset, was announced to be a
11 layoff of six months or less, shall not be treated as a termination of
12 employment under **[this act]** P.L.2007, c.212 (C.34:21-1 et seq.) if
13 the extension beyond six months is caused by business
14 circumstances not reasonably foreseeable at the time of the initial
15 layoff, and notice is given at the time it becomes reasonably
16 foreseeable that the extension beyond six months will be required.

17 "Termination of operations" means the permanent or temporary
18 shutdown of a single establishment, or of one or more facilities or
19 operating units within a single establishment, except that
20 "termination of operations" shall not include a termination of
21 operations made necessary because of a fire, flood, natural disaster,
22 national emergency, act of war, civil disorder or industrial sabotage,
23 decertification from participation in the Medicare and Medicaid
24 programs as provided under Titles XVIII and XIX of the federal
25 "Social Security Act," Pub.L. 74-271 (42 U.S.C. s.1395 et seq.) or
26 license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et al.).

27 "Transfer of operations" means the permanent or temporary
28 transfer of a single establishment, or one or more facilities or
29 operating units within a single establishment, to another location,
30 inside or outside of this State.

31 (cf: P.L.2007, c.212, s.1)

32

33 2. Section 2 of P.L.2007, c.212 (C.34:21-2) is amended to read
34 as follows:

35 2. If an establishment is subject to a transfer of operations or a
36 termination of operations which results, during any continuous
37 period of not more than 30 days, in the termination of employment
38 of 50 or more **[full-time]** employees, or if an employer conducts a
39 mass layoff, the employer who operates the establishment or
40 conducts the mass layoff shall:

41 a. Provide, in the case of an employer who employs 100 or
42 more **[full-time]** employees, not less than **[60]** 90 days, or the
43 period of time required pursuant to the federal "Worker Adjustment
44 and Retraining Notification Act," 29 U.S.C. s.2101 et seq., or any
45 amendments thereto, whichever is longer, before the first
46 termination of employment occurs in connection with the
47 termination or transfer of operations, or mass layoff, notification of
48 the termination or transfer of operations or mass layoff to the

1 Commissioner of Labor and Workforce Development, the chief
2 elected official of the municipality where the establishment is
3 located, each employee whose employment is to be terminated and
4 any collective bargaining units of employees at the establishment;

5 b. Provide to each employee whose employment is terminated
6 **[and to whom the employer provides less than the number of days**
7 **of notification required pursuant to subsection a. of this section,]**
8 severance pay equal to one week of pay for each full year of
9 employment. If the employer provides any employee with less than
10 the number of days of notification required pursuant to subsection
11 a. of this section, the employer shall provide that employee with an
12 additional four weeks of pay. The rate of severance pay provided
13 by the employer pursuant to this subsection b. shall be the average
14 regular rate of compensation received during the employee's last
15 three years of employment with the employer or the final regular
16 rate of compensation paid to the employee, whichever rate is
17 higher. Severance under this subsection shall be regarded as
18 compensation due to an employee for back pay and losses
19 associated with the termination of the employment relationship, and
20 earned in full upon the termination of the employment relationship,
21 notwithstanding the calculation of the amount of the payment with
22 reference to the employee's length of service. The severance pay
23 provided by the employer pursuant to this subsection b. shall be in
24 addition to any severance pay provided by the employer pursuant to
25 a collective bargaining agreement or for any other reason, except
26 that any back pay provided by the employer to the employee
27 pursuant to section 5 of the "Worker Adjustment and Retraining
28 Notification Act," Pub.L.100-379 (29 U.S.C. s.2104), because of a
29 violation of section 3 of that act (29 U.S.C. s. 2102) shall be
30 credited toward meeting the severance pay requirements of this
31 subsection b.; and

32 c. Provide the response team with the amount of on-site work-
33 time access to the employees of the establishment that the response
34 team determines is necessary for the response team to carry out its
35 responsibilities pursuant to section 5 of P.L.2007, c.212 (C.34:21-
36 5).

37 In determining whether a termination or transfer of operations or
38 a mass layoff is subject to the notification requirements of this
39 section, any terminations of employment for two or more groups at
40 a single establishment occurring within any 90-day period, when
41 each group has less than the number of terminations which would
42 trigger the notification requirements of this section but the
43 aggregate for all of the groups exceeds that number, shall be
44 regarded as subject to the notification requirements unless the
45 employer demonstrates that the cause of the terminations for each
46 group is separate and distinct from the causes of the terminations
47 for the other group or groups.

1 d. For purposes of this section, “employer” includes any
2 individual, partnership, association, corporation, or any person or
3 group of persons acting directly or indirectly in the interest of an
4 employer in relation to an employee, and includes any person who,
5 directly or indirectly, owns and operates the nominal employer, or
6 owns a corporate subsidiary that, directly or indirectly, owns and
7 operates the nominal employer or makes the decision responsible
8 for the employment action that gives rise to a mass layoff subject to
9 notification.

10 e. No waiver of the right to severance provided pursuant to this
11 section shall be effective without approval of the waiver by the
12 commissioner or a court of competent jurisdiction.

13 (cf: P.L.2007, c.212, s.2)

14
15 3. (New section) a. As used in this section:

16 “Business” means any individual, partnership, association,
17 corporation, or any person or group of persons that employ 50 or
18 more employees.

19 “Change of control” means any material change in ownership of
20 an employer or any filing seeking bankruptcy protection.

21 “Covered employee” means an individual who has been
22 employed by an employer for at least 90 days immediately before a
23 change of control affecting that individual’s principal place of
24 employment. A change of control affects a covered employee’s
25 principal place of employment if the change of control results in the
26 predecessor employer transferring control of the place of
27 employment to the successor employer.

28 “Covered employee” does not include any of the following:

29 (1) A managerial, supervisory, or confidential employee;

30 (2) A temporary employee; or

31 (3) A part-time employee who has worked less than 20 hours
32 per week for the predecessor employer for at least 90 days
33 immediately before the change of control.

34 “Predecessor employer” means the person who controls a
35 business before the change of control.

36 “Principal place of employment” of an employee means the
37 office or other facility where the employee is principally assigned to
38 work by the predecessor employer.

39 “Successor employer” means the person who controls a business
40 after the change of control.

41 “Total compensation” means the combined value of the covered
42 employee’s wages and benefits immediately before the change of
43 control. Total compensation may be paid entirely as wages or in any
44 combination of wages and fringe benefits, to be determined by the
45 successor employer. Total compensation includes, but is not limited
46 to, the covered employee’s hourly wage rate or the per diem value
47 of the covered employee’s monthly salary, and the employer

1 payments toward the covered employee's health and welfare and
2 pension benefits.

3 "Transition period" means a period of 180 days immediately
4 following the effective date of a change of control.

5 b. (1) Except as otherwise provided in this section, a successor
6 employer shall retain all covered employees for at least the
7 transition period following a change of control, unless the
8 commissioner approves a reduction in the workforce pursuant to
9 subsection h. of this section. During the transition period, the
10 successor employer shall not reduce the total compensation of a
11 covered employee.

12 (2) During the transition period, a successor employer shall not
13 terminate a covered employee without cause.

14 (3) A successor employer and a labor organization representing
15 covered employees may, in a collective bargaining agreement,
16 provide that the agreement supersedes the requirements of this
17 section.

18 c. No later than 15 days before the effective date of a change of
19 control, the predecessor employer shall post public notice of the
20 change of control at each principal place of employment of any
21 covered employee. The notice shall include the name of the
22 predecessor employer and its contact information, the name of the
23 successor employer and its contact information, and the effective
24 date of the change of control. The notice shall be posted in a
25 conspicuous place in a manner that is readily viewed by covered
26 employees. No later than 15 days before the effective date of a
27 change of control, the predecessor employer shall also cause the
28 notice to be sent to any labor organization that represents covered
29 employees.

30 d. This section shall not be construed to limit the right of
31 covered employees to bring legal action for wrongful termination.

32 e. The rights and remedies provided pursuant to this section are
33 in addition to, and are not intended to supplant, any existing rights
34 or remedies.

35 f. No later than 15 days before the effective date of a change of
36 control, a predecessor employer shall provide to the successor
37 employer the name, address, date of hire, total compensation, and
38 classification of each covered employee.

39 g. A successor employer shall retain the following written or
40 electronic records for at least three years:

41 (1) The list provided to the successor employer pursuant to
42 subsection e. of this section;

43 (2) Any offer of employment made to a covered employee;

44 (3) Any termination of a covered employee during a transition
45 period, including the reasons for the termination; and

46 (4) Any written evaluation of a covered employee.

47 h. For two years after the transition period, a successor
48 employer may reduce the total number of employees who would

1 have qualified as covered employees during the 90-day period
2 immediately before a change of control only if approved by the
3 commissioner. The commissioner shall not authorize a successor
4 employer to reduce the number of those employees except on a
5 showing by a preponderance of the evidence that the employer has
6 conducted a study of the nature and scope of the work performed by
7 those employees proposed to be eliminated and the study shows that
8 the elimination of the employees is necessary for the continued
9 solvency of the business.

10 i. A successor employer may terminate an employee with
11 cause consistent with any applicable collective bargaining
12 agreement during the period specified in subsection h. of this
13 section.

14

15 4. This act shall take effect immediately.

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17

18

STATEMENT

19

20 This bill amends the "Millville Dallas Airmotive Plant Job Loss
21 Notification Act", P.L.2007, c.212, to increase, from 60 days to 90
22 days, the minimum number of days that covered employers must
23 give to employees of a covered plant closing, transfer, or mass
24 layoff, and makes the act's requirement to provide severance pay
25 apply whether or not the employer provides the required notice.
26 The bill provides that the severance is regarded as compensation
27 due to an employee for back pay, and earned in full upon the
28 termination of the employment relationship.

29 The bill revises the act's definitions of "establishment" and
30 "mass layoff" to include a greater number of employers across the
31 State. The bill provides that the act applies to any reduction in
32 workforce which is not the result of a transfer or termination of
33 operations and which results in the termination of employment at an
34 establishment during any 30-day period for 50 or more of the full or
35 part-time employees at or reporting to the establishment.
36 Previously, the act applied to lay-offs only of 500 or more full-time
37 employees or to 50 or more full-time employees representing at
38 least one-third of employees in a worksite.

39 The bill provides that if an employer provides an employee with
40 less than 90 days of notification before termination of employment,
41 the employer must provide that employee with an additional four
42 weeks of pay.

43 The bill expands the definition of employers that are subject to
44 the act to include a person or entity that makes a decision
45 responsible for the employment action that gives rise to a mass
46 layoff subject to notification.

1 The bill provides that no waiver of the right to severance
2 provided pursuant to the bill may be effective without approval by
3 the commissioner or a court of competent jurisdiction.

4 The bill provides additional employment protections for
5 employees of an employer that employs 50 or more employees if
6 the employer undergoes a “change in control,” that is, a change in
7 ownership or filing of bankruptcy in which control of the
8 employees’ workplace changes hands to a successor employer.

9 The bill requires the successor employer to retain, without
10 reduction of pay, all employees, other than managerial, supervisory,
11 confidential, temporary, and certain part-time employees, for a
12 transition period of not less than 180 days following the date of the
13 change of control, unless the commissioner approves a reduction in
14 the workforce.

15 The bill requires, no later than 15 days before the date of the
16 change of control, the predecessor employer to post public notice of
17 the change of control at the work sites of all affected employees,
18 and provide specified information about employees to the successor
19 employer, who is required to retain that list and other records
20 regarding offers of employment, termination, or written evaluations
21 of the employees.

22 The bill permits, for two years after the transition period, the
23 successor employer to reduce the total number of employees only if
24 approved by the commissioner, who may not authorize a reduction
25 except upon a showing by a preponderance of the evidence that the
26 employer has conducted a study of the nature and scope of the work
27 performed by the employees proposed to be eliminated, and that the
28 study shows that the reduction is necessary for the continued
29 solvency of the business.