

[First Reprint]

ASSEMBLY, No. 5145

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MARCH 5, 2019

Sponsored by:

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Assemblyman MATTHEW W. MILAM

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Assemblyman R. BRUCE LAND

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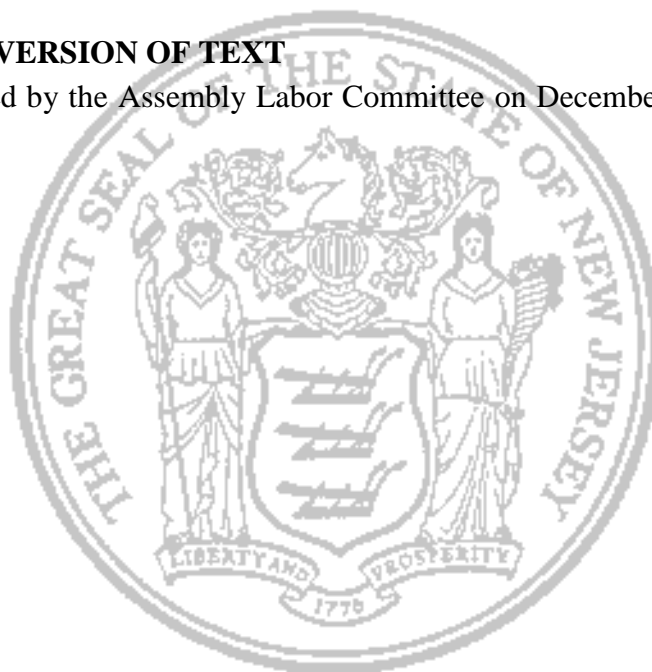
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SYNOPSIS

Increases prenotification time and requires severance pay in certain plant closings, transfers, and mass layoffs.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on December 9, 2019, with amendments.



(Sponsorship Updated As Of: 12/13/2019)

1 AN ACT concerning certain plant closings, transfers, ¹and¹ mass
2 layoffs ¹[, and changes in control]¹ and amending ¹[and
3 supplementing]¹ 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).

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted December 9, 2019.

1 "Termination of employment" means the layoff of an employee
2 without a commitment to reinstate the employee to his previous
3 employment within six months of the layoff, except that
4 "termination of employment" shall not mean a voluntary departure
5 or retirement or a discharge or suspension for misconduct of the
6 employee connected with the employment or any layoff of a
7 seasonal employee or refer to any situation in which an employer
8 offers to an employee, at a location inside the State and not more
9 than 50 miles from the previous place of employment, the same
10 employment or a position with equivalent status, benefits, pay and
11 other terms and conditions of employment, and, except that a layoff
12 of more than six months which, at its outset, was announced to be a
13 layoff of six months or less, shall not be treated as a termination of
14 employment under **[this act]** P.L.2007, c.212 (C.34:21-1 et seq.) if
15 the extension beyond six months is caused by business
16 circumstances not reasonably foreseeable at the time of the initial
17 layoff, and notice is given at the time it becomes reasonably
18 foreseeable that the extension beyond six months will be required.

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

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

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

34

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

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

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

1 operations, or mass layoff, notification of the termination or transfer of
2 operations or mass layoff to the Commissioner of Labor and
3 Workforce Development, the chief elected official of the municipality
4 where the establishment is located, each employee whose employment
5 is to be terminated and any collective bargaining units of employees at
6 the establishment;

7 b. Provide to each ¹~~full-time~~¹ employee whose employment is
8 terminated ~~and to whom the employer provides less than the number~~
9 ~~of days of notification required pursuant to subsection a. of this~~
10 ~~section,] severance pay equal to one week of pay for each full year of~~
11 ~~employment. If the employer provides any employee with less than~~
12 ~~the number of days of notification required pursuant to subsection a. of~~
13 ~~this section, the employer shall provide that employee with an~~
14 ~~additional four weeks of pay.~~ The rate of severance pay provided by
15 the employer pursuant to this subsection b. shall be the average regular
16 rate of compensation received during the employee's last three years of
17 employment with the employer or the final regular rate of
18 compensation paid to the employee, whichever rate is higher.
19 Severance under this subsection shall be regarded as compensation due
20 to an employee for back pay and losses associated with the termination
21 of the employment relationship, and earned in full upon the
22 termination of the employment relationship, notwithstanding the
23 calculation of the amount of the payment with reference to the
24 employee's length of service. ¹~~The] An employer shall provide an~~
25 ~~employee the¹~~ severance pay ¹~~provided by the employer] required¹~~
26 pursuant to this subsection b. ¹~~shall be in addition to] or¹~~ any
27 severance pay provided by the employer pursuant to a collective
28 bargaining agreement or for any other reason, ¹~~except that any]~~
29 whichever is greater. Any¹ back pay provided by the employer to the
30 employee pursuant to section 5 of the "Worker Adjustment and
31 Retraining Notification Act," Pub.L.100-379 (29 U.S.C. s.2104),
32 because of a violation of section 3 of that act (29 U.S.C. s. 2102) shall
33 be credited toward meeting the severance pay requirements of this
34 subsection b.; and

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

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

1 cause of the terminations for each group is separate and distinct from
2 the causes of the terminations for the other group or groups.

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

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

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

16

17 ¹[3. (New section) a. As used in this section:

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

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

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

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

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

32 (2) A temporary employee; or

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

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

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

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

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

1 of the covered employee's monthly salary, and the employer
2 payments toward the covered employee's health and welfare and
3 pension benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 i. A successor employer may terminate an employee with
13 cause consistent with any applicable collective bargaining
14 agreement during the period specified in subsection h. of this
15 section.]¹

16

17 ¹[4.] 3.¹ This act shall take effect immediately.