

2/5/2019 twm

G:\Cmucom\I205\SCM18-19\2-7-19\S3170amends.docx

Suggested allocation: s.3: C.34:21-8 to 2019/6

---

BPU#  
CL 260  
SR 279  
TR xxx

SENATE COMMERCE COMMITTEE

AMENDMENTS

to

**SENATE, No. 3170**  
(Sponsored by Senators CRYAN and POU)

P

R

O

P

O

S

E

D

REPLACE TITLE TO READ:

AN ACT concerning certain plant closings, transfers, <sup>1</sup>[and]<sup>1</sup> mass layoffs<sup>1</sup>, and changes in control<sup>1</sup> and amending <sup>1</sup>and supplementing<sup>1</sup> P.L.2007, c.212.

INSERT NEW SECTION 1 TO READ:

<sup>1</sup>1. Section 1 of P.L.2007, c.212 (C.34:21-1) is amended to read as follows:

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

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

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

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

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

"Facility" means a building.

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

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

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

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

"Response team" means the plant closing response team established pursuant to section 5 of this act.

"Termination of employment" means the layoff of an employee without a commitment to reinstate the employee to his previous employment within six months of the layoff, except that "termination of employment" shall not mean a voluntary departure or retirement or a discharge or suspension for misconduct of the employee connected with the employment or any layoff of a seasonal employee or refer to any situation in which an employer offers to an employee, at a location

P

R

O

P

O

S

E

D

inside the State and not more than 50 miles from the previous place of employment, the same employment or a position with equivalent status, benefits, pay and other terms and conditions of employment, and, except that a layoff of more than six months which, at its outset, was announced to be a layoff of six months or less, shall not be treated as a termination of employment under this act if the extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and notice is given at the time it becomes reasonably foreseeable that the extension beyond six months will be required.

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

"Transfer of operations" means the permanent or temporary transfer of a single establishment, or one or more facilities or operating units within a single establishment, to another location, inside or outside of this State.<sup>1</sup>

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

REPLACE SECTION 1 TO READ:

<sup>1</sup>**[1.]** <sup>1</sup>**2.** Section 2 of P.L.2007, c.212 (C.34:21-2) is amended to read as follows:

2. If an establishment is subject to a transfer of operations or a termination of operations which results, during any continuous period of not more than 30 days, in the termination of employment of 50 or more <sup>1</sup>**[full-time]**<sup>1</sup> employees, or if an employer conducts a mass layoff, the employer who operates the establishment or conducts the mass layoff shall:

a. Provide, in the case of an employer who employs 100 or more <sup>1</sup>**[full-time]**<sup>1</sup> employees, not less than **[60]** 90 days, or the period of time required pursuant to the federal "Worker Adjustment and Retraining Notification Act," 29 U.S.C. s.2101 et seq., or any amendments thereto, whichever is longer, before the first termination of employment occurs in connection with the termination or transfer of operations, or mass layoff, notification of the termination or transfer of operations or mass layoff to the Commissioner of Labor and Workforce Development, the chief elected official of the municipality where the establishment is located, each employee whose employment is to be terminated and any collective bargaining units of employees at the establishment;

P  
R  
O  
P  
O  
S  
E  
D

b. Provide to each <sup>1</sup>~~full-time~~<sup>1</sup> employee whose employment is terminated [and to whom the employer provides less than the number of days of notification required pursuant to subsection a. of this section,] severance pay equal to one week of pay for each full year of employment. <sup>1</sup>If the employer provides any employee with less than the number of days of notification required pursuant to subsection a. of this section, the employer shall provide that employee with an additional four weeks of pay.<sup>1</sup> The rate of severance pay provided by the employer pursuant to this subsection b. shall be the average regular rate of compensation received during the employee's last three years of employment with the employer or the final regular rate of compensation paid to the employee, whichever rate is higher. Severance under this subsection shall be regarded as compensation due to an employee for back pay and losses associated with the termination of the employment relationship, and earned in full upon the termination of the employment relationship, notwithstanding the calculation of the amount of the payment with reference to the employee's length of service. The severance pay provided by the employer pursuant to this subsection b. shall be in addition to any severance pay provided by the employer pursuant to a collective bargaining agreement or for any other reason, except that any back pay provided by the employer to the employee pursuant to section 5 of the "Worker Adjustment and Retraining Notification Act," Pub.L.100-379 (29 U.S.C. s.2104), because of a violation of section 3 of that act (29 U.S.C. s. 2102) shall be credited toward meeting the severance pay requirements of this subsection b.; and

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

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

d. For purposes of this section, "employer" includes any individual, partnership, association, corporation, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and includes any person who, directly or indirectly, owns and operates the nominal employer, or owns a corporate subsidiary that, directly or indirectly, owns and

P  
R  
O  
P  
O  
S  
E  
D

operates the nominal employer<sup>1</sup> or makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification.

e. No waiver of the right to severance provided pursuant to this section shall be effective without approval of the waiver by the commissioner or a court of competent jurisdiction<sup>1</sup>.

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

INSERT NEW SECTION 3 TO READ:

<sup>1</sup>3. (New section) a. As used in this section:

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

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

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

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

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

(2) A temporary employee; or

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

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

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

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

“Total compensation” means the combined value of the covered employee’s wages and benefits immediately before the change of control. Total compensation may be paid entirely as wages or in any combination of wages and fringe benefits, to be determined by the successor employer. Total compensation includes, but is not necessarily limited to, the covered employee’s hourly wage rate or the per diem value of the covered employee’s monthly salary, and the employer payments toward the covered employee’s health and welfare and pension benefits.

“Transition period” means a period of 180 days immediately following the effective date of a change of control.

b. (1) Except as otherwise provided in this section, a successor employer shall retain all covered employees for at least the transition

P  
R  
O  
P  
O  
S  
E  
D

period following a change of control, unless the commissioner approves a reduction in the workforce pursuant to subsection h. of this section. During the transition period, the successor employer shall not reduce the total compensation of a covered employee.

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

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

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

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

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

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

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

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

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

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

(4) Any written evaluation of a covered employee.

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

P

R

O

P

O

S

E

D

i. A successor employer may terminate an employee with cause consistent with any applicable collective bargaining agreement during the period specified in subsection h. of this section.<sup>1</sup>

REPLACE SYNOPSIS TO READ:

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.

P

R

O

P

O

S

E

D