

HOUSE BILL No. 4562

April 10, 1989, Introduced by Reps. Watkins, Perry Bullard, Gubow, Hunter, Berman, DeMars, Stupak, Joe Young, Sr., Harrison, Stallworth, Wallace, Leland, Joe Young, Jr., Profit, Terrell, Clack, Varga and Ciaramitaro and referred to the Committee on Labor.

A bill to require notice prior to certain plant closings and mass layoffs; to prescribe duties for certain departments; and to provide for certain remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "plant closing notification act".

3 Sec. 2. As used in this act:

4 (a) "Affected employees" means employees who may reasonably
5 be expected to experience an employment loss as a consequence of
6 a proposed plant closing or mass layoff by their employer.

7 (b) "Employer" means any business enterprise that employs
8 either of the following:

9 (i) One hundred or more employees, excluding part-time
10 employees.

1 (ii) One hundred or more employees who work, in the
2 aggregate, at least 4,000 hours per week, exclusive of hours of
3 overtime.

4 (c) "Employment loss", subject to section 4, means an
5 employment termination of a layoff exceeding 6 months, or a
6 reduction in hours of work of more than 50% during each month of
7 any 6-month period. Employment loss does not mean a discharge
8 for cause, voluntary departure, or retirement.

9 (d) "Mass layoff" means a reduction in force not the result
10 of a plant closing but does result in an employment loss at the
11 single site of employment during any 30-day period for any of the
12 following:

13 (i) At least 33% of the employees, excluding part-time
14 employees, if not less than 50 employees, excluding part-time
15 employees.

16 (ii) At least 500 employees, excluding part-time employees.

17 (e) "Part-time employee" means an employee who is employed
18 for an average of fewer than 20 hours per week or who has been
19 employed for fewer than 6 of the 12 months preceding the date on
20 which notice is required.

21 (f) "Plant closing" means the permanent or temporary shut-
22 down of a single site of employment, or 1 or more facilities or
23 operating units within a single site of employment, if the shut-
24 down results in an employment loss at the single site of employ-
25 ment during any 30-day period for 50 or more employees excluding
26 part-time employees.

1 (g) "Representative" means an exclusive representative of
2 employees within the meaning of section 9(a) or 8(f) of the
3 national labor relations act, chapter 372, 49 Stat. 449, 29
4 U.S.C. 159, 158 or section 2 of the railway labor act, chapter
5 347, 44 Stat. 577, 45 U.S.C. 152.

6 Sec. 3. (1) An employer shall not order a plant closing or
7 mass layoff until 60 days after the employer serves written
8 notice of the order to both of the following:

9 (a) To each representative of the affected employees as of
10 the time of the notice or, if there is no such representative at
11 that time, to each affected employee.

12 (b) To the state dislocated worker unit designated or cre-
13 ated under title III of the job training partnership act, Public
14 Law 97-300, 96 Stat. 1364, 29 U.S.C. 1651 to 1658 and 1661 to
15 1662c and the chief elected official of the unit of local govern-
16 ment within which the closing or layoff is to occur. If there is
17 more than 1 unit, the unit of local government which the employer
18 shall notify is the unit of local government to which the
19 employer pays the highest taxes for the year preceding the year
20 in which the notice is required.

21 (2) An employer may order the shutdown of a single site of
22 employment before the conclusion of the 60-day period if as of
23 the time that notice would have been required the employer was
24 actively seeking capital or business which, if obtained, would
25 have enabled the employer to avoid or postpone the shutdown and
26 the employer reasonably and in good faith believed that giving

1 the notice required would have precluded the employer from
2 obtaining the needed capital or business.

3 (3) An employer may order a plant closing or mass layoff
4 before the conclusion of the 60-day period if the closing or mass
5 layoff is caused by business circumstances that were not reason-
6 ably foreseeable as of the time that notice would have been
7 required.

8 (4) Notice under this act shall not be required if the plant
9 closing or mass layoff is due to any form of natural disaster,
10 such as a flood, earthquake, or the drought currently ravaging
11 the farmlands of the United States.

12 (5) An employer relying on subsections (2) to (4) shall give
13 as much notice as is practicable and at that time shall give a
14 brief statement of the basis for reducing the notification
15 period.

16 (6) A layoff of more than 6 months which at its outset was
17 announced to be a layoff of 6 months or less, shall be treated as
18 an employment loss under this act except if either of the follow-
19 ing applies:

20 (a) The extension beyond 6 months is caused by business cir-
21 cumstances, including unforeseeable changes in price or cost, not
22 reasonably foreseeable at the time of the initial layoff.

23 (b) Notice is given at the time it becomes reasonably fore-
24 seeable that the extension beyond 6 months will be required.

25 (7) For purposes of this section, in determining whether a
26 plant closing or mass layoff has occurred or will occur,
27 employment losses for 2 or more groups at a single site of

1 employment, each of which is less than the minimum number of
2 employees specified in section 2(a) but which in the aggregate
3 exceed that minimum number, and which occur within any 90-day
4 period shall be considered to be a plant closing or mass layoff
5 unless the employer demonstrates that the employment losses are
6 the result of separate and distinct actions and causes and are
7 not an attempt by the employer to evade the requirements of this
8 act.

9 (8) The mailing of notice to an employee's last known
10 address or inclusion of notice in the employee's paycheck will be
11 considered acceptable methods for fulfillment of the employer's
12 obligation to give notice to each affected employee under this
13 act.

14 Sec. 4. An employee shall not be considered to have
15 experienced an employment loss if the closing or layoff is the
16 result of the relocation or consolidation of part or all of the
17 employer's business and, prior to the closing or layoff, the
18 employer offers to transfer the employee to a different site of
19 employment within a reasonable commuting distance with no more
20 than a 6-month break in employment, or the employer offers to
21 transfer the employee to any other site of employment regardless
22 of distance with no more than a 6-month break in employment, and
23 the employee accepts within 30 days of the offer or of the clos-
24 ing or layoff, whichever is later.

25 Sec. 5. In the case of a sale of part or all of an
26 employer's business, the seller shall be responsible for
27 providing notice for any plant closing or mass layoff in

1 accordance with section 3, up to and including the effective date
2 of the sale. After the effective date of the sale of part or all
3 of an employer's business, the purchaser shall be responsible for
4 providing notice for any plant closing or mass layoff in accord-
5 ance with section 3. Notwithstanding any other provision of this
6 act, any person who is an employee of the seller, other than a
7 part-time employee, as of the effective date of the sale shall be
8 considered an employee of the purchaser immediately after the
9 effective date of the sale.

10 Sec. 6. This act shall not apply to the following plant
11 closings or mass layoffs:

12 (a) The closing is of a temporary facility or the closing or
13 layoff is the result of the completion of a particular project or
14 undertaking, and the affected employees were hired with the
15 understanding that their employment was limited to the duration
16 of the facility or the project or undertaking.

17 (b) The closing or layoff constitutes a strike or consti-
18 tutes a lockout not intended to evade the requirements of this
19 act. Nothing in this act shall require an employer to serve
20 written notice pursuant to section 3 if permanently replacing a
21 person who is deemed to be an economic striker under the national
22 labor relations act, chapter 372, 49 Stat. 449, 29 U.S.C. 151 to
23 158 and 159 to 169. Nothing in this act shall be considered to
24 validate or invalidate any judicial or administrative ruling
25 relating to the hiring of permanent replacements for economic
26 strikers under the national labor relations act, chapter 372, 49
27 Stat. 449, 29 U.S.C. 151 to 158 and 159 to 169.

1 Sec. 7. (1) An employer who orders a plant closing or mass
2 layoff in violation of section 3 shall be liable to each
3 aggrieved employee who suffers an employment loss as a result of
4 the closing or layoff for both of the following:

5 (a) Back pay for each day of violation at a rate of compen-
6 sation not less than the higher of the following:

7 (i) The average regular rate received by the employee during
8 the last 3 years of the employee's employment.

9 (ii) The final regular rate received by the employee.

10 (b) Benefits under an employee benefit plan described in
11 section 3(3) of subtitle A of title I of the employee retirement
12 income security act of 1974, Public Law 93-406, 29 U.S.C. 1002,
13 including the cost of medical expenses incurred during the
14 employment loss which would have been covered under an employee
15 benefit plan if the employment loss had not occurred.

16 (2) Liability shall be calculated for the period of the vio-
17 lation, up to a maximum of 60 days, but in no event for more than
18 1/2 the number of days the employee was employed by the
19 employer.

20 (3) The amount for which an employer is liable under subsec-
21 tion (1) shall be reduced by the following:

22 (a) Wages paid by the employer to the employee for the
23 period of the violation.

24 (b) Voluntary and unconditional payment by the employer to
25 the employee that is not required by a legal obligation.

26 (c) Payment by the employer to a third party or trustee,
27 such as premiums for health benefits or payments to a defined

1 contribution pension plan, on behalf of and attributable to the
2 employee for the period of the violation.

3 (4) Any liability incurred under subsection (1) with respect
4 to a defined benefit pension plan may be reduced by crediting the
5 employee with service for all purposes under a plan for the
6 period of the violation.

7 (5) An employer who violates section 3(1)(b) with respect to
8 notifying a unit of local government shall be subject to a civil
9 penalty of not more than \$500.00 for each day of violation,
10 except that the penalty shall not apply if the employer pays to
11 each aggrieved employee the amount for which the employer is
12 liable to that employee within 3 weeks from the date the employer
13 orders the shutdown or layoff.

14 (6) A person seeking to enforce liability under this sec-
15 tion, including a representative of employees or a unit of local
16 government aggrieved under subsection (1) or (5), may sue either
17 on their behalf or for other persons similarly situated, or both,
18 in the circuit court having jurisdiction for the area in which
19 the violation is alleged to have occurred, or in which the
20 employer transacts business.

21 (8) The court may allow the prevailing party reasonable
22 attorney fees as part of the costs.

23 (9) For purposes of this section, the term "aggrieved
24 employee" means an employee who has worked for the employer
25 ordering the plant closing or mass layoff and who, as a result of
26 the failure by the employer to comply with section 3, did not
27 receive timely notice.

1 Sec. 8. (1) The rights and remedies provided to employees
2 by this act are in addition to, and not in lieu of, any other
3 contractual or statutory rights and remedies of the employees,
4 and are not intended to alter or affect those rights and
5 remedies. The period of notification required by this act shall
6 run concurrently with any period of notification required by con-
7 tract or by any other statute.

8 (2) The remedies provided for in this section shall be the
9 exclusive remedies for a violation of this act. Under this act,
10 a court does not have authority to enjoin a plant closing or mass
11 layoff.

12 Sec. 9. An employer who is not required to comply with the
13 notice requirements of section 3 may provide notice to its
14 employees about a proposal to close a plant or permanently reduce
15 its work force.

16 Sec. 10. The department of labor shall promulgate rules to
17 implement this act pursuant to the administrative procedures act
18 of 1969, Act No. 306 of the Public Acts of 1969, being sections
19 24.201 to 24.328 of the Michigan Compiled Laws.