

HOUSE BILL NO. 5140

June 24, 2021, Introduced by Reps. Hammoud, Hope, Aiyash, Scott, Clemente, Breen, Stone, Young, Hood, Steckloff, Haadsma, Tyrone Carter, Rogers, Sowerby, Pohutsky, Brenda Carter, Cherry, Ellison, Cavanagh, Kuppa, Cynthia Johnson, Brixie, Coleman and Yancey and referred to the Committee on Workforce, Trades, and Talent.

A bill to require certain employers that close or relocate an establishment or engage in a mass layoff to pay severance pay to certain employees; to provide for the powers and duties of certain state governmental officers and entities; to authorize the promulgation of rules; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "relocation, closing, and mass layoff severance pay act".

3 Sec. 3. As used in this act:

1 (a) "Closing" or "closes" means the permanent shutdown of
2 commercial operations at a covered establishment. A closing may
3 occur because of a relocation or a termination or consolidation of
4 the employer's business.

5 (b) "Covered establishment" means a commercial facility or a
6 part of a commercial facility that employs, or has employed at any
7 time in the 12-month period immediately preceding a closing, mass
8 layoff, or relocation, 100 or more employees.

9 (c) "Department" means the department of licensing and
10 regulatory affairs.

11 (d) "Director" means the director of the department, or his or
12 her designee.

13 (e) "Eligible employee" means an employee who meets all of the
14 following conditions:

15 (i) At the time of the closing or mass layoff, has been
16 continuously employed at the covered establishment for at least 3
17 years, including any period when the employee was on a leave of
18 absence. The requirement that the employee be employed at the time
19 of the closing or mass layoff does not apply to an employee who
20 voluntarily quit employment at the covered establishment to take a
21 new job 30 days or less before the date set by the employer for a
22 closing or mass layoff in an initial notice provided by the
23 employer that is required under state or federal law.

24 (ii) Has not been discharged for cause.

25 (iii) Has not accepted employment at another or relocated
26 establishment operated by the employer.

27 (f) "Employer" means a person who directly or indirectly owns
28 and operates a covered establishment. A parent corporation is
29 considered an indirect owner and operator of any covered

1 establishment that is directly owned and operated by its corporate
2 subsidiary.

3 (g) "Gross earnings" includes all pay for regular hours, shift
4 differentials, premiums, overtime, floating holidays, holidays,
5 funeral leave, jury duty pay, sick pay, and vacation pay earned
6 within the 12-month period immediately preceding the closing or
7 mass layoff. Gross earnings does not include payments made under a
8 third-party benefit program, such as disability payments.

9 (h) "Mass layoff" means a reduction in workforce, not the
10 result of a closing, that, for at least 6 months, results in an
11 employment loss at a covered establishment of either of the
12 following:

13 (i) 33% of the employees and at least 50 employees.

14 (ii) 500 employees.

15 (i) "Physical calamity" means a calamity such as fire, flood,
16 or other natural disaster.

17 (j) "Relocation" means the removal of all or substantially all
18 commercial operations in a covered establishment to a new location,
19 within or outside this state, 100 or more miles distant from its
20 original location.

21 (k) "Week's pay" means an amount equal to an employee's gross
22 earnings during the 12-month period immediately preceding the month
23 of the closing or mass layoff, as determined by the department,
24 divided by the number of weeks in which the employee received gross
25 earnings during that 12-month period.

26 Sec. 5. (1) Subject to subsection (2), an employer that closes
27 or engages in a mass layoff at a covered establishment shall pay to
28 an eligible employee of the covered establishment severance pay at
29 the rate of 1 week's pay for each year that the employee was

1 employed at the covered establishment and partial pay for any
2 partial year. The severance pay to eligible employees under this
3 section is in addition to any final wage payment to the employee
4 and must be paid within 1 regular pay period after the employee's
5 last full day of work.

6 (2) Subsection (1) does not apply if either of the following
7 circumstances exist:

8 (a) The closing of or a mass layoff at a covered establishment
9 is necessitated by a physical calamity or the final order of a
10 federal, state, or local government agency.

11 (b) The employee is covered by, and has been paid under the
12 terms of, a written contract providing for severance pay that is in
13 an amount that is greater than the severance pay required by this
14 act. An employer must demonstrate, to the satisfaction of the
15 department, that the severance pay provided under the terms of the
16 contract is in an amount that is greater than the severance pay
17 required by this act.

18 (3) An employer is not exempt from liability for severance pay
19 under this act solely because it files a voluntary petition for
20 bankruptcy protection under chapter 7 or chapter 11 of title 11 of
21 the federal bankruptcy code, 11 USC 701 to 784 and 11 USC 1101 to
22 1174, or because an involuntary petition is commenced against it
23 pursuant to section 303 of the federal bankruptcy code, 11 USC 303.

24 (4) An employer that violates this section may be ordered to
25 pay a civil fine of not more than \$1,000.00 for each separate
26 violation. A violation of this section may be prosecuted by the
27 prosecutor of the county in which the violation occurred or by the
28 attorney general. A civil fine must not be imposed under this
29 subsection if doing so would prevent the violator from making all

1 payments required under subsection (1).

2 Sec. 7. An employer that violates this act is liable to an
3 affected employee in the amount of the severance pay required to be
4 paid to the employee under this act that remains unpaid. One or
5 more employees may bring an action, for and on behalf of that
6 employee or those employees and any other employees similarly
7 situated, in any court of competent jurisdiction to recover the
8 unpaid severance pay. A labor organization may bring an action on
9 behalf of its members. A court, in an action brought under this
10 section, in addition to any judgment awarded to the plaintiff,
11 shall allow for a reasonable attorney fee and costs of the action
12 to be recovered by the plaintiff.

13 Sec. 9. The department may bring an action in any court of
14 competent jurisdiction to recover unpaid severance pay under this
15 act. The right of an employee to commence an action and of an
16 employee to become a party plaintiff to any pending action brought
17 under section 7 terminates upon the filing of a complaint by the
18 department in an action under this section, unless the action is
19 dismissed without prejudice by the department. Money from an award
20 recovered by the department on behalf of an employee under this
21 section must be held in a special deposit account and must be paid,
22 on order of the director, to the employee. Money from an award in
23 the special deposit account remaining 3 or more years after the
24 final disposition of the action, if the money has remained in the
25 special deposit account because of the inability to pay the
26 employee, must be deposited into the general fund.

27 Sec. 11. (1) An employer shall notify the department in
28 writing not less than 60 days before relocating or closing a
29 covered establishment. An employer shall notify the department as

1 far in advance as practicable, but no later than within 7 days
2 before a mass layoff at a covered establishment, and shall report
3 to the department in writing the expected duration of the mass
4 layoff and whether it is of indefinite or definite duration. The
5 department shall periodically, but no less frequently than every 30
6 days, require the employer to report facts that the department
7 considers relevant to determine whether the mass layoff constitutes
8 a closing or whether there is a substantial reason to believe the
9 affected employees will be recalled. A notification or report
10 provided to the department under this section must contain all
11 relevant information in the possession of the employer regarding a
12 potential recall, if applicable.

13 (2) To monitor compliance with the requirements of this act,
14 an employer shall allow the department access to its employees'
15 wage records, with appropriate notice and at a mutually agreeable
16 time.

17 Sec. 13. (1) An employer shall notify the employees of a
18 covered establishment and the officers of the municipality where
19 the covered establishment is located in writing not less than 60
20 days before closing the covered establishment, unless this notice
21 requirement is waived by the department. An employer that violates
22 this section is responsible for a state civil infraction and may be
23 ordered to pay a civil fine of not more than \$500.00 unless either
24 of the following apply:

25 (a) The closing is necessitated by a physical calamity or the
26 final order of a federal, state, or local government agency.

27 (b) The failure to give notice is due to unforeseen
28 circumstances.

29 (2) A civil fine imposed under this section must not be

1 collected if collecting the civil fine would prevent the violator
2 from making all payments required under section 5(1).

3 Sec. 15. Benefits paid or payable to an eligible employee
4 under the Michigan employment security act, 1936 (Ex Sess) PA 1,
5 MCL 421.1 to 421.75, do not reduce the amount of severance pay the
6 eligible employee is entitled to receive under this act.

7 Sec. 17. The department may promulgate rules to implement this
8 act pursuant to the administrative procedures act of 1969, 1969 PA
9 306, MCL 24.201 to 24.328.

10 Sec. 19. This act applies to an employment agreement or
11 collective bargaining agreement that is executed, extended, or
12 renewed on or after the effective date of this act.

13 Enacting section 1. This act takes effect 90 days after the
14 date it is enacted into law.