

HOUSE No. 3148

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel J. Hunt

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the notification of large job layoffs.

PETITION OF:

NAME:

Daniel J. Hunt

DISTRICT/ADDRESS:

13th Suffolk

HOUSE No. 3148

By Mr. Hunt of Boston, a petition (accompanied by bill, House, No. 3148) of Daniel J. Hunt for legislation to require certain notices prior to plant closings or layoffs. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1720 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the notification of large job layoffs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 71A of chapter 151A of the General Laws, as appearing in the
2 2012 Official Edition, is hereby amended by striking out, in line 4, the word "voluntary."

3 SECTION 2. Section 71A of chapter 151A, as so appearing, is hereby further amended
4 by inserting before the word "as," in line 13, the following words:- " , or mass layoff"

5 SECTION 3. Section 71A of chapter 151A, as so appearing, is hereby further amended
6 by inserting before the word "as," in line 16, the following words: - " , or mass layoff"

7 SECTION 4. Section 71A of chapter 151A, as so appearing, is hereby further amended
8 by

9 inserting after the thirteenth paragraph the following paragraph:- "Mass
10 Layoff,' the reduction, during any 30 days, of an employer's workforce, within a single
11 municipality or employment site, that is not the result of a plant closing or partial closing
12 that
13 affects either at least 25 workers and 25 percent of the workforce, or at least 200
14 workers."

15 SECTION 5. Section 71A of chapter 151A, as so appearing, is hereby further amended
16 by

17 striking out, in lines 48-49, the words "a significant number of employees of said facility"
18 and inserting in place thereof the following words:- "at least 25 workers and 25 percent of the
19 workforce, or at least 200 workers."

20 SECTION 6. Section 71A of chapter 151A, as so appearing, is hereby further amended
21 by inserting after the word "employer," in line 81, the following words:- ", or employer
22 performing a mass layoff."

23 SECTION 7. Subsection (a) of section 71B of chapter 151A, as so appearing, is hereby
24 amended by striking out subsection (a) and inserting in place the following subsection:--

25 (a) An employer may not order a plant closing, partial closing, or mass layoff unless 60
26 days

27 prior to such plant closing, partial closing, or mass layoff, the employer gives written
28 notice of

29 the order to the commissioner, in such form and manner as the commissioner prescribes,
30 such

31 information as may be necessary to determine an employee's reemployment assistance
32 benefits rights under section 71A to 71G, inclusive. An employer giving such notice shall
33 include in its notice the elements required by the Worker Adjustment and Notification Act (29
34 U.S.C. Sec. 2101 et. Seq.). The commissioner, after making such inquiries and investigations as
35 deemed necessary, shall certify whether a plant closing, partial closing, or mass layoff has
36 occurred or will occur.

37 (1) The commissioner shall certify that a plant closing has or will occur if the
38 commissioner determines that at least ninety per cent of the employees of a facility have been or
39 will be

40 permanently separated within the six month period prior to the date of certification or
41 within

42 such other period as the commissioner shall prescribe; provided that, such period shall
43 fall within six month period prior to the date of certification. The commissioner shall give notice
44 of the determination regarding certification to the employer and if the employees are represented
45 by a labor union to such union and to any other person or organization that the commissioner
46 determines is an interested party.

47 (2) The commissioner shall certify that a partial closing has or will occur if the
48 commissioner

49 determines that at least 25 workers and 25 percent of the workforce; or at least 200
50 workers have been or will be permanently separated within the six month period prior to the date
51 of

52 certification or within such other period as the commissioner shall prescribe; provided
53 that, such period shall fall within six month period prior to the date of certification. The
54 commissioner shall give notice of the determination regarding certification to the employer and
55 if the employees are represented by a labor union to such union and to any other person or
56 organization that the commissioner determines is an interested party.

57 (3) The commissioner shall certify that a mass layoff has or will occur if the
58 commissioner

59 determines that at least 25 workers and 25 percent of the workforce; or at least 200
60 workers have been or will be permanently separated within the six month period prior to the date
61 of

62 certification or within such other period as the commissioner shall prescribe; provided
63 that, such period shall fall within six month period prior to the date of certification. The
64 commissioner shall give notice of the determination regarding certification to the employer and
65 if the employees are represented by a labor union to such union and to any other person or
66 organization that the commissioner determines is an interested party.

67 SECTION 8. Section 71B of chapter 151A, as so appearing, is hereby amended by
68 inserting after subsection (c) the following subsections:--

69 (d) An employer who fails to give notice as required by this section before ordering a
70 plant

71 closing, partial closing, or mass layoff, is liable to each employee entitled to notice who
72 lost his

73 or her employment for:

74 (1) Back pay at the average regular rate of compensation received by the employee
75 during the

76 last three years of his or her employment, or the employee's final rate of compensation,
77 whichever is higher.

78 (2) The value of the cost of any benefits to which the employee would have been entitled
79 had his or her employment not been lost, including the cost of any medical expenses incurred by
80 the employee that would have been covered under an employee benefit plan.

81 (3) Liability under this section is calculated for the period of the employer's violation, up
82 to a

83 maximum of 60 days, or one-half the number of days that the employee was employed by
84 the

85 employer, whichever period is smaller.

86 (e) The amount of an employer's liability under subdivision (d) is reduced by the
87 following:

88 (1) Any wages, except vacation moneys accrued prior to the period of the employer's
89 violation,

90 paid by the employer to the employee during the period of the employer's violation.

91 (2) Any voluntary and unconditional payments made by the employer to the employee
92 that were not required to satisfy any legal obligation.

93 (3) Any payments by the employer to a third party or trustee, such as premiums for health
94 benefits or payments to a defined contribution pension plan, on behalf of and attributable
95 to the employee for the period of the violation.

96 (f) Notwithstanding the requirements of subdivision (a), an employer is not required to
97 provide

98 notice if a plant closing, partial closing, or mass layoff, is necessitated by a physical
99 calamity or

100 act of war.

101 (g) An employer is not required to comply with the notice requirement contained in this
102 section

103 if the commissioner determines that all of the following conditions exist:

104 (1) As of the time that notice would have been required, the employer was actively
105 seeking

106 capital or business.

107 (2) The capital or business sought, if obtained, would have enabled the employer to avoid
108 or
109 postpone the plant closing, partial closing, or mass layoff.

110 (3) The employer reasonably and in good faith believed that giving the notice required by
111 this
112 section would have precluded the employer from obtaining the needed capital or
113 business.

114 (h) The commissioner may not determine that the employer was actively seeking capital
115 or
116 business under paragraph (g) unless the employer provides the department with both of
117 the
118 following:

119 (1) A written record consisting of all documents relevant to the determination of whether
120 the
121 employer was actively seeking capital or business, as specified by the commissioner.

122 (2) An affidavit verifying the contents of the documents contained in the record.

123 (i) The affidavit provided to the commissioner pursuant to paragraph (h)(2) of this section
124 shall

125 contain a declaration signed under penalty of perjury stating that the affidavit and the
126 contents of the documents contained in the record submitted pursuant to paragraph (h)(1) of this
127 section are true and correct.

128 SECTION 9. Chapter 151A, as so appearing, is hereby amended by striking out section
129 71C, and inserting in place thereof the following section: --

130 "Any proposed regulations to be issued pursuant to section 71B shall be filed with the
131 clerk of

132 the house and the clerk of the senate thirty days before publishing a notice of a public
133 hearing,

134 pursuant to section 2 of chapter 30A.

135 SECTION 10. Section 71D of chapter 151A, as so appearing, is hereby amended by
136 inserting after the words "partial closings," in line 5, the following words:-- "or mass layoff"

137 SECTION 11. Section 71F of chapter 151A, as so appearing, is hereby amended by
138 inserting after the words "partial closing," in line 6, the following words:-- ", or mass
139 layoff"

140 SECTION 12. This act shall take effect upon its passage.

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