
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2179 Session of
2021

INTRODUCED BY ZABEL, CEPHAS, DELLOSO, N. NELSON, SANCHEZ,
KENYATTA, BURGOS, SIMS, HILL-EVANS, MADDEN, O'MARA AND
DRISCOLL, DECEMBER 22, 2021

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, DECEMBER 22, 2021

AN ACT

1 Relating to transfers of operations, terminations of
2 operations, mass layoffs and changes in control.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Mandatory
7 Severance for Mass Layoffs Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Business." An individual, partnership, association,
13 corporation or any person or group of persons that employs 50 or
14 more employees.

15 "Change of control." A material change in ownership of an
16 employer or a filing seeking bankruptcy protection.

17 "Covered employee." The following:

1 (1) An individual who has been employed by an employer
2 for at least 90 days immediately before a change of control
3 affecting that individual's principal place of employment. A
4 change of control affects a covered employee's principal
5 place of employment if the change of control results in the
6 predecessor employer transferring control of the place of
7 employment to the successor employer.

8 (2) The term does not include:

9 (i) a managerial, supervisory or confidential
10 employee;

11 (ii) a temporary employee; or

12 (iii) a part-time employee who has worked less than
13 20 hours per week for the predecessor employer for at
14 least 90 days immediately before the change of control.

15 "Department." The Department of Labor and Industry of the
16 Commonwealth.

17 "Employer." An individual, partnership, association,
18 corporation or a person or group of persons acting directly or
19 indirectly in the interest of an employer in relation to an
20 employee, including a person who, directly or indirectly, owns
21 and operates the nominal employer or owns a corporate subsidiary
22 that, directly or indirectly, owns and operates the nominal
23 employer or makes the decision responsible for the employment
24 action that gives rise to a mass layoff subject to notification.

25 "Establishment." A single place of employment that has been
26 operated by an employer for more than three years, including a
27 single location or a group of locations in this Commonwealth.
28 The term does not include a temporary construction site.

29 "Facility." A building.

30 "Mass layoff." A reduction in force that is not the result

1 of a transfer of operations or termination of operations and
2 that results in the termination of employment at an
3 establishment during any 30-day period for 50 or more
4 employees at or reporting to the establishment.

5 "Operating unit." An organizationally distinct product,
6 operation or specific work function within or across facilities
7 at a single establishment.

8 "Predecessor employer." The person who controls a business
9 before a change of control.

10 "Principal place of employment." An office or other facility
11 where an employee is principally assigned to work by a
12 predecessor employer.

13 "Successor employer." A person who controls a business after
14 a change of control.

15 "Termination of employment." The following:

16 (1) The layoff of an employee without a commitment to
17 reinstate the employee to the employee's previous employment
18 within six months of the layoff.

19 (2) The term does not mean:

20 (i) a voluntary departure;

21 (ii) retirement;

22 (iii) discharge;

23 (iv) suspension for misconduct connected with
24 employment;

25 (v) layoff of a seasonal employee; or

26 (vi) a situation in which an employer offers to an
27 employee, at a location inside this Commonwealth and not
28 more than 50 miles from the previous place of employment,
29 the same employment or a position with equivalent status,
30 benefits, pay and other terms and conditions of

1 employment.

2 (3) A layoff under paragraph (1) of more than six months
3 which, at its outset, was announced to be a layoff of six
4 months or less, shall not be treated as a termination of
5 employment if the extension beyond six months is caused by
6 business circumstances not reasonably foreseeable at the time
7 of the initial layoff and notice is given at the time it
8 becomes reasonably foreseeable that the extension beyond six
9 months will be required.

10 "Termination of operations." The following:

11 (1) The permanent or temporary shutdown of a single
12 establishment or of one or more facilities or operating units
13 within a single establishment.

14 (2) The term does not include a termination of
15 operations made necessary because of a fire, flood, natural
16 disaster, national emergency, act of war, civil disorder or
17 industrial sabotage, decertification from participation in
18 the Medicare and Medicaid programs as provided under Titles
19 XVIII and XIX of the Social Security Act (49 Stat. 620, 42
20 U.S.C. § 301 et seq.) or license revocation under the laws of
21 this Commonwealth.

22 "Total compensation." The following:

23 (1) The combined value of a covered employee's wages and
24 benefits immediately before a change of control. Total
25 compensation may be paid entirely as wages or in any
26 combination of wages and fringe benefits, to be determined by
27 the successor employer.

28 (2) The term includes, but is not limited to, a covered
29 employee's hourly wage rate or the per diem value of the
30 covered employee's monthly salary and the employer payments

1 toward the covered employee's health and welfare and pension
2 benefits.

3 "Transfer of operations." The permanent or temporary
4 transfer of a single establishment or one or more facilities or
5 operating units within a single establishment to another
6 location within or outside this Commonwealth.

7 "Transition period." A period of 180 days immediately
8 following the effective date of a change of control.

9 Section 3. Transfer of operations, termination of operations or
10 mass layoff.

11 (a) Notification.--If an establishment is subject to a
12 transfer of operations or termination of operations which
13 results, during any continuous period of not more than 30 days,
14 in the termination of employment of 50 or more employees, or if
15 an employer conducts a mass layoff, the employer who operates
16 the establishment or conducts the mass layoff shall provide not
17 less than 90 days, or the period of time required under the
18 Worker Adjustment and Retraining Notification Act (Public Law
19 100-379, 29 U.S.C. § 2101 et seq.), whichever is longer, before
20 the first termination of employment occurs in connection with
21 the transfer of operations, termination of operations or mass
22 layoff, notification of the transfer of operations, termination
23 of operations or mass layoff to:

24 (1) the department;

25 (2) the chief elected official of the municipality where
26 the establishment is located;

27 (3) each employee whose employment is to be terminated;
28 and

29 (4) any collective bargaining units of employees at the
30 establishment.

1 (b) Severance.--An employer subject to subsection (a) shall
2 provide severance pay as follows:

3 (1) The employer shall provide to each employee whose
4 employment is terminated severance pay equal to one week of
5 pay for each full year of employment.

6 (2) If the employer provides an employee with less than
7 the number of days of notification required under subsection
8 (a), the employer shall provide that employee with an
9 additional four weeks of severance pay.

10 (3) The rate of severance pay provided by the employer
11 under this subsection shall be the average regular rate of
12 compensation received during the employee's last three years
13 of employment with the employer or the final regular rate of
14 compensation paid to the employee, whichever rate is higher.

15 (4) Severance pay under this subsection shall be
16 regarded as compensation due to an employee for back pay and
17 losses associated with the termination of the employment
18 relationship, and earned in full upon the termination of the
19 employment relationship, notwithstanding the calculation of
20 the amount of the payment with reference to the employee's
21 length of service.

22 (5) Severance pay provided by the employer under this
23 subsection shall be in addition to any severance pay provided
24 by the employer under a collective bargaining agreement or
25 for any other reason, except that any back pay provided by
26 the employer to the employee under section 5 of the Worker
27 Adjustment and Retraining Notification Act because of a
28 violation of section 3 of that act shall be credited toward
29 meeting the severance pay requirements of this subsection.

30 (6) Severance pay under this subsection shall not be

1 subject to the provisions of section 404(d) of the act of
2 December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known
3 as the Unemployment Compensation Law.

4 (c) Qualification for notification.--In determining whether
5 a transfer of operations, termination of operations or a mass
6 layoff is subject to the notification requirements of this
7 section, any terminations of employment for two or more groups
8 at a single establishment occurring within any 90-day period
9 when each group has less than the number of terminations that
10 would trigger the notification requirements of this section but
11 the aggregate for all of the groups exceeds that number shall be
12 regarded as subject to the notification requirements, unless the
13 employer demonstrates that the cause of the terminations for
14 each group is separate and distinct from the causes of the
15 terminations for the other group or groups.

16 (d) Approval of waiver.--A waiver of the right to severance
17 provided under subsection (b) shall not be effective without
18 approval of the waiver by the department or a court of competent
19 jurisdiction.

20 Section 4. Change of control.

21 (a) Retention of employees.--

22 (1) Except as otherwise provided in this section, a
23 successor employer shall retain all covered employees for at
24 least the transition period following a change of control,
25 unless the department approves a reduction in the workforce
26 under subsection (e). During the transition period, the
27 successor employer may not terminate a covered employee
28 without cause and may not reduce the total compensation of a
29 covered employee.

30 (2) A successor employer and a labor organization

1 representing covered employees may, in a collective
2 bargaining agreement, provide that the agreement supersedes
3 the requirements of this section.

4 (b) Public notice.--

5 (1) No later than 15 days before the effective date of a
6 change of control, the predecessor employer shall:

7 (i) Post public notice of the change of control at
8 each principal place of employment.

9 (ii) Send notice of the change of control to any
10 labor organization that represents covered employees.

11 (2) The notice shall include the name and contact
12 information of the predecessor employer, the name and contact
13 information of the successor employer and the effective date
14 of the change of control.

15 (3) The notice shall be posted at each principal place
16 of business of the predecessor employer in a conspicuous
17 place and in a manner that is readily viewable by covered
18 employees.

19 (c) Employee information.--No later than 15 days before the
20 effective date of a change of control, a predecessor employer
21 shall provide to the successor employer the name, address, date
22 of hire, total compensation and classification of each covered
23 employee.

24 (d) Retention of records.--A successor employer shall retain
25 the following written or electronic records for at least three
26 years:

27 (1) The information provided to the successor employer
28 under subsection (c).

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

30 (3) Any termination of a covered employee during a

1 transition period, including the reasons for the termination.

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

3 (e) Reduction of employees.--

4 (1) For two years after the transition period, a
5 successor employer may reduce the total number of employees
6 who would have qualified as covered employees during the 90-
7 day period immediately before a change of control only if
8 approved by the department.

9 (2) The department may not authorize a successor
10 employer to reduce the number of employees under paragraph
11 (1) except upon a showing by a preponderance of the evidence
12 that the employer has conducted a study of the nature and
13 scope of the work performed by those employees proposed to be
14 eliminated, and the study shows that the elimination of the
15 employees is necessary for the continued solvency of the
16 business.

17 (3) A successor employer may terminate an employee with
18 cause consistent with any applicable collective bargaining
19 agreement during the period specified in paragraph (1).

20 (f) Construction.--This section may not be construed to
21 limit the right of covered employees to bring legal action for
22 wrongful termination.

23 (g) Rights and remedies.--The rights and remedies provided
24 under this section are in addition to, and are not intended to
25 supplant, any existing rights or remedies.

26 Section 5. Effective date.

27 This act shall take effect immediately.