

[Second Reprint]
SENATE, No. 3170

STATE OF NEW JERSEY
218th LEGISLATURE

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Sponsored by:

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District 20 (Union)

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Senators Turner, Andrzejczak, Diegnan, Greenstein and Gopal

SYNOPSIS

Increases prenotification time and requires severance pay in certain plant closings, transfers, and mass layoffs.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 5, 2019, with amendments.



(Sponsorship Updated As Of: 12/17/2019)

1 AN ACT concerning certain plant closings, transfers, ¹~~and~~¹ ²and²
 2 mass layoffs ²~~and changes in control~~¹ ² and amending ²~~and~~¹ supplementing¹ ² P.L.2007, c.212.

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

8 ¹1. Section 1 of P.L.2007, c.212 (C.34:21-1) is amended to read
 9 as follows:

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

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

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

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

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

24 "Facility" means a building.

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

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

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

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

40 "Response team" means the plant closing response team
 41 established pursuant to section 5 of **this act** P.L.2007, c.212
 42 (C.34:21-5).

43 "Termination of employment" means the layoff of an employee
 44 without a commitment to reinstate the employee to his previous

EXPLANATION – Matter enclosed in bold-faced brackets **this** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined this is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted February 7, 2019.

²Senate SBA committee amendments adopted December 5, 2019.

1 employment within six months of the layoff, except that
2 "termination of employment" shall not mean a voluntary departure
3 or retirement or a discharge or suspension for misconduct of the
4 employee connected with the employment or any layoff of a
5 seasonal employee or refer to any situation in which an employer
6 offers to an employee, at a location inside the State and not more
7 than 50 miles from the previous place of employment, the same
8 employment or a position with equivalent status, benefits, pay and
9 other terms and conditions of employment, and, except that a layoff
10 of more than six months which, at its outset, was announced to be a
11 layoff of six months or less, shall not be treated as a termination of
12 employment under **[this act]** P.L.2007, c.212 (C.34:21-1 et seq.) if
13 the extension beyond six months is caused by business
14 circumstances not reasonably foreseeable at the time of the initial
15 layoff, and notice is given at the time it becomes reasonably
16 foreseeable that the extension beyond six months will be required.

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

27 "Transfer of operations" means the permanent or temporary
28 transfer of a single establishment, or one or more facilities or
29 operating units within a single establishment, to another location,
30 inside or outside of this State.¹

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

32

33 ¹**[1.] 2.**¹ Section 2 of P.L.2007, c.212 (C.34:21-2) is amended
34 to read as follows:

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

41 a. Provide, in the case of an employer who employs 100 or
42 more ¹**[full-time]**¹ employees, not less than **[60]** 90 days, or the
43 period of time required pursuant to the federal "Worker Adjustment
44 and Retraining Notification Act," 29 U.S.C. s.2101 et seq., or any
45 amendments thereto, whichever is longer, before the first
46 termination of employment occurs in connection with the
47 termination or transfer of operations, or mass layoff, notification of
48 the termination or transfer of operations or mass layoff to the

1 Commissioner of Labor and Workforce Development, the chief
2 elected official of the municipality where the establishment is
3 located, each employee whose employment is to be terminated and
4 any collective bargaining units of employees at the establishment;

5 b. Provide to each ¹~~["full-time"]~~¹ employee whose employment
6 is terminated ~~["and to whom the employer provides less than the~~
7 ~~number of days of notification required pursuant to subsection a. of~~
8 ~~this section,"]~~ severance pay equal to one week of pay for each full
9 year of employment. ¹If the employer provides any employee with
10 less than the number of days of notification required pursuant to
11 subsection a. of this section, the employer shall provide that
12 employee with an additional four weeks of pay.¹ The rate of
13 severance pay provided by the employer pursuant to this subsection
14 b. shall be the average regular rate of compensation received during
15 the employee's last three years of employment with the employer or
16 the final regular rate of compensation paid to the employee,
17 whichever rate is higher. Severance under this subsection shall be
18 regarded as compensation due to an employee for back pay and
19 losses associated with the termination of the employment
20 relationship, and earned in full upon the termination of the
21 employment relationship, notwithstanding the calculation of the
22 amount of the payment with reference to the employee's length of
23 service. ²~~["The"]~~ An employer shall provide an employee the²
24 severance pay ²~~["provided by the employer"]~~ required² pursuant to
25 this subsection b. ²~~["shall be in addition to"]~~ or² any severance pay
26 provided by the employer pursuant to a collective bargaining
27 agreement or for any other reason, ²~~["except that any"]~~ whichever is
28 greater. Any² back pay provided by the employer to the employee
29 pursuant to section 5 of the "Worker Adjustment and Retraining
30 Notification Act," Pub.L.100-379 (29 U.S.C. s.2104), because of a
31 violation of section 3 of that act (29 U.S.C. s. 2102) shall be
32 credited toward meeting the severance pay requirements of this
33 subsection b.; and

34 c. Provide the response team with the amount of on-site work-
35 time access to the employees of the establishment that the response
36 team determines is necessary for the response team to carry out its
37 responsibilities pursuant to section 5 of P.L.2007, c.212 (C.34:21-
38 5).

39 In determining whether a termination or transfer of operations or
40 a mass layoff is subject to the notification requirements of this
41 section, any terminations of employment for two or more groups at
42 a single establishment occurring within any 90-day period, when
43 each group has less than the number of terminations which would
44 trigger the notification requirements of this section but the
45 aggregate for all of the groups exceeds that number, shall be
46 regarded as subject to the notification requirements unless the
47 employer demonstrates that the cause of the terminations for each

1 group is separate and distinct from the causes of the terminations
2 for the other group or groups.

3 d. For purposes of this section, “employer” includes any
4 individual, partnership, association, corporation, or any person or
5 group of persons acting directly or indirectly in the interest of an
6 employer in relation to an employee, and includes any person who,
7 directly or indirectly, owns and operates the nominal employer, or
8 owns a corporate subsidiary that, directly or indirectly, owns and
9 operates the nominal employer ¹or makes the decision responsible
10 for the employment action that gives rise to a mass layoff subject to
11 notification.

12 e. No waiver of the right to severance provided pursuant to this
13 section shall be effective without approval of the waiver by the
14 commissioner or a court of competent jurisdiction ¹.

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

16
17 ²[¹3. (New section) a. As used in this section:

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

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

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

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

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

32 (2) A temporary employee; or

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

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

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

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

43 “Total compensation” means the combined value of the covered
44 employee’s wages and benefits immediately before the change of
45 control. Total compensation may be paid entirely as wages or in any
46 combination of wages and fringe benefits, to be determined by the
47 successor employer. Total compensation includes, but is not
48 limited to, the covered employee’s hourly wage rate or the per diem

1 value of the covered employee's monthly salary, and the employer
2 payments toward the covered employee's health and welfare and
3 pension benefits.

4 "Transition period" means a period of 180 days immediately
5 following the effective date of a change of control.

6 b. (1) Except as otherwise provided in this section, a successor
7 employer shall retain all covered employees for at least the
8 transition period following a change of control, unless the
9 commissioner approves a reduction in the workforce pursuant to
10 subsection h. of this section. During the transition period, the
11 successor employer shall not reduce the total compensation of a
12 covered employee.

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

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

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

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

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

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

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

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

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

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

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

48 h. For two years after the transition period, a successor
49 employer may reduce the total number of employees who would

1 have qualified as covered employees during the 90-day period
2 immediately before a change of control only if approved by the
3 commissioner. The commissioner shall not authorize a successor
4 employer to reduce the number of those employees except on a
5 showing by a preponderance of the evidence that the employer has
6 conducted a study of the nature and scope of the work performed by
7 those employees proposed to be eliminated and the study shows that
8 the elimination of the employees is necessary for the continued
9 solvency of the business.

10 i. A successor employer may terminate an employee with
11 cause consistent with any applicable collective bargaining
12 agreement during the period specified in subsection h. of this
13 section.¹²

14

15 ¹[2.] ²[4.¹] 3.² This act shall take effect immediately.