

HOUSE No. 1843

By Mr. Rush of Boston, petition of Michael F. Rush and others for legislation further regulate notifications to employees of job layoffs and plant closings. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

Michael F. Rush
Thomas M. Menino

Willie Mae Allen
Elizabeth A. Malia

In the Year Two Thousand and Seven.

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,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 striking the word “voluntary” from the definition of “Advance noti-
4 fication.”

1 SECTION 2. Section 71A of chapter 151A, as so appearing, is
2 hereby further amended by replacing the definition of “Date of certi-
3 fication” with the following definition:—
4 “Date of certification,” the actual or anticipated date of plant
5 closing, covered partial closing, or mass layoff as determined by the
6 commissioner.

1 SECTION 3. Section 71A of Chapter 151A, as so appearing, is
2 hereby further amended by replacing the definition of “Date of noti-
3 fication” with the following definition:—
4 “Date of notification,” the date of announcement by the employer
5 or the commissioner, whichever is earlier, of a plant closing, covered
6 partial closing, or mass layoff as determined by the commissioner.

1 SECTION 4. Section 71A of Chapter 151A, as so appearing, is
2 hereby further amended by inserting after the definition of “Indus-
3 trial advisory board”, the following definition:—

4 ““Mass Layoff,” the reduction, during any 30 days, of an employ-
5 er’s workforce, within a single municipality or employment site, that
6 is not the result of a plant closing or partial closing that affects either
7 at least 25 workers and 25 percent of the workforce, or at least 200
8 workers.

1 SECTION 5. Section 71A of Chapter 151A, as so appearing, is
2 hereby further amended by replacing the definition of “partial
3 closing”, with the following definition:—

4 ““Partial closing”, a permanent cessation of a major discrete por-
5 tion of the business conducted at a facility which results in the termi-
6 nation of at least 25 workers and 25 percent of the workforce, or at
7 least 200 workers and which affects workers and communities in a
8 manner similar to that of plant closings.

1 SECTION 6. Section 71A of Chapter 151A, as so appearing, is
2 hereby further amended by replacing the definition of “Wages” with
3 the following definition:—

4 “Wages”, as defined in section one of this chapter and remunera-
5 tion paid to an employee for employment by an employer during the
6 previous four quarterly periods; provided, however, that for the pur-
7 pose of determining eligibility for reemployment assistance benefits,
8 remuneration shall include unemployment insurance benefits paid
9 for weeks of unemployment occurring during said previous four
10 quarterly periods; and provided further, that all or part of such bene-
11 fits are attributable to service in the employ of the plant closing, par-
12 tial plant closing employer, or employer performing a mass layoff.

1 SECTION 7. Chapter 151A, as so appearing, is hereby amended
2 by striking section 71B, in its entirety, and replacing it with the
3 following section:—

4 Section 71B. Closing of facility; report; certification; notice;
5 hearing; appeal.

6 (a) An employer may not order a plant closing, partial closing, or
7 mass layoff unless 60 days prior to such plant closing, partial
8 closing, or mass layoff, the employer gives written notice of the

9 order to the commissioner, in such form and manner as the commis-
10 sioner prescribes, such information as may be necessary to deter-
11 mine an employee's reemployment assistance benefits rights under
12 section 71A to 71G, inclusive. An employer giving such notice shall
13 include in its notice the elements required by the Worker Adjustment
14 and Notification Act (29 U.S.C. Sec. 2101 et. Seq.). The commis-
15 sioner, after making such inquiries and investigations as deemed
16 necessary, shall certify whether a plant closing, partial closing, or
17 mass layoff has occurred or will occur.

18 (1) The commissioner shall certify that a plant closing has or will
19 occur if the commissioner determines that at least ninety per cent of
20 the employees of a facility have been or will be permanently sepa-
21 rated within the six month period prior to the date of certification or
22 within such other period as the commissioner shall prescribe; pro-
23 vided that, such period shall fall within six month period prior to the
24 date of certification. The commissioner shall give notice of the
25 determination regarding certification to the employer and if the
26 employees are represented by a labor union to such union and to any
27 other person or organization that the commissioner determines is an
28 interested party.

29 (2) The commissioner shall certify that a partial closing has or
30 will occur if the commissioner determines that at least 25 workers
31 and 25 percent of the workforce; or at least 200 workers have been
32 or will be permanently separated within the six month period prior to
33 the date of certification or within such other period as the commis-
34 sioner shall prescribe; provided that, such period shall fall within six
35 month period prior to the date of certification. The commissioner
36 shall give notice of the determination regarding certification to the
37 employer and if the employees are represented by a labor union to
38 such union and to any other person or organization that the commis-
39 sioner determines is an interested party.

40 (3) The commissioner shall certify that a mass layoff has or will
41 occur if the commissioner determines that at least 25 workers and 25
42 percent of the workforce; or at least 200 workers have been or will
43 be permanently separated within the six month period prior to the
44 date of certification or within such other period as the commissioner
45 shall prescribe; provided that, such period shall fall within six month
46 period prior to the date of certification. The commissioner shall give
47 notice of the determination regarding certification to the employer

48 and if the employees are represented by a labor union to such union
49 and to any other person or organization that the commissioner deter-
50 mines is an interested party.

51 (b) Any interested party notified of a determination under this
52 section may request a hearing within ten days after mailing of the
53 notice of the determination. If a hearing is requested, the commis-
54 sioner or the commissioner's authorized representative shall afford
55 all interested parties a reasonable opportunity for a fair hearing,
56 except that the commissioner may refer the case to the board of
57 review of hearing and decision in accordance with subsection (d) of
58 section 41. The conduct of such hearings before the commissioner or
59 the board of review, as the case may be, shall be in accordance with
60 the procedures prescribed by and pursuant to subsection (b) of
61 section 39. Any interested party aggrieved by any decision on certi-
62 fication may appeal such decision. Such appeal shall be in accor-
63 dance with the procedures prescribed in sections 40 through 42
64 inclusive.

65 (c) The commissioner shall report, from time to time, to the secre-
66 tary of economic affairs and the industrial advisory board any deter-
67 mination or decision made pursuant to this section and may provide
68 such information to any other interested individual or organization.

69 (d) An employer who fails to give notice as required by this
70 section before ordering a plant closing, partial closing, or mass
71 layoff, is liable to each employee entitled to notice who lost his or
72 her employment for:—

73 (1) Back pay at the average regular rate of compensation received
74 by the employee during the last three years of his or her employ-
75 ment, or the employee's final rate of compensation, whichever is
76 higher.

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

81 (3) Liability under this section is calculated for the period of the
82 employer's violation, up to a maximum of 60 days, or one-half the
83 number of days that the employee was employed by the employer,
84 whichever period is smaller.

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

87 (1) Any wages, except vacation moneys accrued prior to the
88 period of the employer's violation, paid by the employer to the
89 employee during the period of the employer's violation.

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

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

97 (f) Notwithstanding the requirements of subdivision (a), an
98 employer is not required to provide notice if a plant closing, partial
99 closing, or mass layoff, is necessitated by a physical calamity or act
100 of war.

101 (g) An employer is not required to comply with the notice
102 requirement contained in this section if the commissioner determines
103 that all of the following conditions exist:—

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

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

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

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

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

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

120 (i) The affidavit provided to the commissioner pursuant to para-
121 graph (h)(2) of this section shall contain a declaration signed under
122 penalty of perjury stating that the affidavit and the contents of the
123 documents contained in the record submitted pursuant to paragraph
124 (h)(1) of this section are true and correct.

1 SECTION 8. Chapter 151A, as so appearing, is hereby amended
2 by striking section 71C, in its entirety, and replacing it with the
3 following section:—
4 “Any proposed regulations to be issued pursuant to section 71B
5 shall be filed with the clerk of the house and the clerk of the senate
6 thirty days before publishing a notice of a public hearing, pursuant
7 to section 2 of chapter 30A.”

1 SECTION 9 Section 71D of Chapter 151A, as so appearing, is
2 hereby amended by striking the words “covered partial closing”, and
3 inserting in place thereof the following words:— “,partial closing or
4 mass layoff”.

1 SECTION 10. Section 71F (a)(1) of Chapter 151A, as so
2 appearing, is hereby amended by inserting after the words “partial
3 closing”, the following words: — “, or mass layoff”.

1 SECTION 11. This act shall take effect upon its passage.