

2018 Regular Session

SENATE BILL NO. 209

BY SENATOR BARROW

EMPLOYMENT. Requires advance notice of mass layoffs and closure of certain businesses. (8/1/18)

1 AN ACT

2 To enact Part XIV of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, to be

3 comprised of R.S. 23:1019.1 through 1019.9 and 1472(9), relative to employment;

4 requires certain businesses to notify certain employees in advance of mass layoffs

5 or business closures; provides for legislative intent; provides for exceptions; provides

6 for definitions; provides for notification of certain officials; provides for a reduction

7 in the notification period; provides for expedited unemployment benefits and worker

8 retraining; provides for liability; provides for damages; and to provide for related

9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part XIV of Chapter 9 of Title 23 of the Louisiana Revised Statutes of
12 1950, comprised of R.S. 23:1019.1 through 1019.9 and 1472(9) is hereby enacted to read as
13 follows:

14 **PART XIV. WORKER ADJUSTMENT AND**

15 **RETRAINING NOTIFICATION**

16 **§1019.1. Short title; citation**

17 **This Part shall be known and may be cited as the "Louisiana Worker**

1 Adjustment and Retraining Act" or the "Louisiana WARN Act".

2 §1019.2. Legislative findings and intent

3 A. The legislature finds that the earlier that employees of large
4 businesses are warned of impending massive layoffs, the more likely workers
5 are to be able to find alternative employment or retraining in order to provide
6 for themselves and their families in the future.

7 B.(1) It is not the intent of the legislature to supercede the federal
8 "Worker Adjustment and Retraining Notification (WARN) Act of 1988", as
9 provided for in Chapter 23 of Title 29 of the United States Code and which law
10 applies to employers who employ one hundred employees or more.

11 (2) It is the intent of the legislature to extend those same types of benefits
12 provided in the federal WARN statute to Louisiana employees who work for
13 companies that employ fifty or more full-time employees.

14 (3) It is further the intent of the legislature to provide more employees
15 with greater access and awareness of retraining resources and to expedite
16 unemployment claims for Louisiana workers who were laid off work through
17 no fault of their own.

18 §1019.3. Definitions

19 Unless the context clearly indicates otherwise, the following words and
20 terms, when used in this Part, shall have the following meanings:

21 (1) "Executive director" means the executive director of the Louisiana
22 Workforce Commission.

23 (2) "Employer" means any person, corporation, or other entity that
24 employs fifty or more full-time employees at a workplace located within
25 Louisiana and which is not excluded or exempt from the requirements of the
26 Employment Security Law, as provided in Chapter 11 of this Title.

27 (3) "Health benefits" means an employee benefit plan which covers the
28 costs of health insurance premiums or the costs of medical expenses which
29 would have been covered under an employee benefit plan if the employment loss

1 had not occurred.

2 (4) "Lost wages" means the rate of compensation in the amount of one
3 of the following, whichever is the higher:

4 (i) The average weekly rate received by such employee during the last
5 three years of the employee's employment.

6 (ii) The final average weekly rate received by such employee.

7 (5) "Mass layoffs" means any of the following:

8 (a) The closure of a workplace, or a portion of the operations therein,
9 whereby the number of employees working within such workplace is
10 permanently or indefinitely reduced by fifty or more employees during any
11 three-month period.

12 (b) The modernization of a workplace, or a portion of the operations
13 therein, whereby the number of employees working within such workplace is
14 permanently or indefinitely reduced by fifty or more during any three-month
15 period.

16 (c) The relocation of a workplace, or a portion of the operations therein,
17 to another site located more than fifty miles from the workplace, whereby the
18 number of employees working within such workplace is permanently or
19 indefinitely reduced by fifty or more during any three-month period.

20 (d) The implementation or application of any management policy within
21 a workplace, whereby the number of employees working within such workplace
22 is permanently or indefinitely reduced by fifty or more during any three-month
23 period.

24 (6) "Workplace" means a factory, plant, office, store, or other facility
25 where employees produce goods or provide services.

26 §1019.4. Notice required before mass layoffs

27 A. An employer shall not order a mass layoff until the end of a sixty-day
28 period after the employer serves written notice of such an order to each of the
29 following:

1 (1) To each affected employee as of the time of the notice.

2 (2) To the executive director of the Louisiana Workforce Commission.

3 (3) The members of the Louisiana Senate who represent the parish in
4 which the workplace is located.

5 (4) The members of the Louisiana House of Representatives who
6 represent the parish in which the workplace is located.

7 (5) The president of the parish governing authority.

8 §1019.5. Reduction of notification period

9 A. An employer may order the shutdown of a single site of employment
10 before the conclusion of the sixty-day period if, as of the time that notice would
11 have been required, the employer was actively seeking capital or business
12 which, if obtained, would have enabled the employer to avoid or postpone the
13 shutdown and the employer reasonably and in good faith believed that giving
14 the notice required would have precluded the employer from obtaining the
15 needed capital or business.

16 B. An employer may order a mass layoff before the conclusion of the
17 sixty-day period if the closure or mass layoff is caused by business
18 circumstances that were not reasonably foreseeable as of the time that notice
19 would have been required.

20 C. No notice under this Part shall be required if the mass layoff is due
21 to any form of natural disaster, such as a flood.

22 D. An employer relying on this subsection shall give as much notice as
23 is practicable and the notice shall contain a brief statement of the basis for
24 reducing the notification period.

25 E. For purposes of this Section, a mass layoff will be deemed to have
26 occurred if employment losses occur for two or more groups at a single site of
27 employment, each of which is less than the minimum number required under
28 this Part but which in the aggregate exceed fifty or more employees, and which
29 occur within any ninety-day period, unless the employer demonstrates that the

1 employment losses are the result of separate and distinct actions and causes and
2 are not an attempt by the employer to evade the requirements of this Part.

3 §1019.6. Expedited worker retraining and unemployment benefits

4 A. Upon receiving initial notification of a reduction in operations from
5 the employer, as provided for in R.S. 23:1019.4, and in order to expedite
6 retraining opportunities or unemployment benefits, the executive director shall
7 immediately advise all of the following persons:

8 (1) The director of the office of the unemployment insurance
9 administration.

10 (2) The president of the Louisiana Community and Technical College
11 System.

12 (3) The president of the Louisiana State University System.

13 (4) The president of the Southern University System.

14 (5) The president of the University of Louisiana System.

15 §1019.7. Exceptions

16 The provisions of this Part shall not apply to any of reduction in
17 operations in any of the following circumstances:

18 A. Disputes between labor unions and employers.

19 B. Layoffs that are at a construction site or other temporary workplace.

20 C. Layoffs that are the results of seasonal factors, as determined by the
21 rules of the executive director.

22 D. Employees who are exempted from the Louisiana Employment
23 Security Law, as provided in Chapter 11 of this Title.

24 E. The closing is of a temporary facility or the closing or layoff is the
25 result of the completion of a particular project or undertaking and the affected
26 employees were hired with the understanding that their employment was
27 limited to the duration of the facility, the project, or undertaking.

28 §1019.8. Liability and civil remedies

29 A. An employee who is aggrieved by the mass layoff when the employer

1 had an obligation to notify employees under this Part, may file a civil action in
2 a court of competent jurisdiction against the employer to recover damages as
3 set forth in Subsections B and C of this Section.

4 B. Any employer who orders a mass layoff in violation of this Part shall
5 be liable to the aggrieved employee, who suffers an employment loss as a result
6 of such layoff, for lost wages and health benefits for each day of violation as well
7 as reasonable attorney fees and costs.

8 C.(1) Such liability shall be calculated for the period of the violation, up
9 to a maximum of sixty days, but in no event for more than one-half the number
10 of days the employee was employed by the employer.

11 (2) The amount for which an employer is liable under Paragraph (1) of
12 this Subsection shall be reduced by any of the following:

13 (i) Any wages paid by the employer to the employee for the period of the
14 violation.

15 (ii) Any voluntary and unconditional payment by the employer to the
16 employee that is not required by any legal obligation.

17 (iii) Any payment by the employer for health insurance premiums or
18 health benefits on behalf of and attributable to the employee for the period of
19 the violation.

20 §1019.9. Administrative Rules

21 The executive director shall promulgate, in accordance with the
22 provisions of the Administrative Procedures Act, such rules as may be necessary
23 in order to implement the provisions of this Part in an orderly and efficient
24 manner.

25 * * *

26 §1472. Definitions

27 As used in this Chapter, the following terms shall have the meanings ascribed
28 to them in this Section, unless the context clearly indicates otherwise:

29 * * *

- (5) "Mass layoffs" means any of the following:
- (a) The closure of a workplace, or a portion of the operations therein, whereby the number of employees working within such workplace is permanently or indefinitely reduced by 50 or more during any three-month period.
 - (b) The modernization of a workplace, or a portion of the operations therein, whereby the number of employees working within such workplace is permanently or indefinitely reduced by 50 or more during any three-month period.
 - (c) The relocation of a workplace, or a portion of the operations therein, to another site located more than 50 miles from the workplace, whereby the number of employees working within such workplace is permanently or indefinitely reduced by 50 or more during any three-month period.
 - (d) The implementation or application of any management policy within a workplace, whereby the number of employees working within such workplace is permanently or indefinitely reduced by 50 or more during any three-month period.
- (6) "Workplace" means a factory, plant, office, store, or other facility where employees produce goods or provide services.
- (7) "Director" means the director of the office of the unemployment insurance administration who is appointed to perform the day-to-day duties of the office, under the direction of the executive director of the La. Workforce Commission.

Proposed law provides an employer shall not order a mass layoff until the end of a 60-day period after the employer serves written notice of such an order to each of the following:

- (1) To each affected employees as of the time of the notice.
- (2) To the executive director of the La. Workforce Commission.
- (3) The members of the La. Senate who represent the parish in which the workplace is located.
- (4) The members of the La. House of Representatives who represent the parish in which the workplace is located.
- (5) The president of the parish governing authority.

Proposed law provides an employer may order the shutdown of a single site of employment before the conclusion of the 60-day period, if as of the time that notice would have been required, the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

Proposed law provides that an employer may order a mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

Proposed law provides no notice under proposed law will be required if the mass layoff is due to any form of natural disaster, such as a flood.

Proposed law provides that an employer relying on proposed law will give as much notice

as is practicable and at that time must give a brief statement of the basis for reducing the notification period.

Proposed law provides that a mass layoff will be deemed to have occurred if employment losses occur for two or more groups at a single site of employment, each of which is less than the minimum number of employees required under proposed law but which in the aggregate are 50 or more employees, and which occur within any 90-day period unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of proposed law.

Proposed law provides that, upon receiving initial notification of a reduction in operations, and in order to expedite retraining opportunities or unemployment benefits, the executive director will immediately advise all of the following persons:

- (1) The director of the office of the unemployment insurance administration.
- (2) The president of the La. Community and Technical College System.
- (3) The president of the La. State University System.
- (4) The president of the Southern University System.
- (5) The president of the University of La. System.

Proposed law provides that the provisions of proposed law will not apply to any of reduction in operations in any of the following circumstances:

- (1) Disputes between labor unions and employers.
- (2) Layoffs that are at a construction site or other temporary workplace.
- (3) Layoffs are the results of seasonal factors, as determined by the rules of the executive.
- (4) Employees who are exempted from the La. Employment Security Law as provided in present law.
- (5) The closing is of a temporary facility or the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

Proposed law provides that any employer who orders a mass layoff in violation of proposed law will be liable to the aggrieved employee who suffers an employment loss as a result of such closing or layoff for the lost wages and health benefits for that employee for each day of violation as well as reasonable attorney fees and costs.

Proposed law limits the damages to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer.

Proposed law provides that damages will be reduced by any of the following:

- (1) Any wages paid by the employer to the employee for the period of the violation
- (2) Any voluntary and unconditional payment by the employer to the employee that is not required by any legal obligation.

- (3) Any payment by the employer for health insurance premiums or health benefits on behalf of and attributable to the employee for the period of the violation.

Proposed law provides that executive director will promulgate, in accordance with the provisions of the A.P.A., such rules as may be necessary in order to implement the provisions of proposed law.

Effective August 1, 2018.

(Adds R.S. 23:1019.1-1019.9 and 1472(9))