

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1134

Introduced by Vargas, 7; Crawford, 45.

Read first time January 18, 2018

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to labor; to adopt the Nebraska Worker
- 2 Adjustment and Retraining Notification Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Nebraska Worker Adjustment and Retraining Notification Act.

3 Sec. 2. For purposes of the Nebraska Worker Adjustment and
4 Retraining Notification Act:

5 (1) Affected employee means a worker who may reasonably expect to
6 experience an employment loss as a consequence of a proposed business
7 closing or mass layoff by an employer;

8 (2) Aggrieved employee means an employee who has worked for an
9 employer ordering a business closing or mass layoff and who, as a result
10 of the failure by the employer to comply with section 3 of this act, did
11 not receive timely notice either directly or through the employee's
12 representative;

13 (3) Business closing means the permanent or temporary shutdown of a
14 single site of employment of one or more facilities or operating units
15 that will result in an employment loss for twenty-five or more employees,
16 not including part-time employees;

17 (4) Department means the Department of Labor;

18 (5) Employer means a person who employs twenty-five or more
19 individuals, excluding part-time employees;

20 (6)(a) Employment loss means:

21 (i) An employment termination, other than a discharge for cause,
22 voluntary separation, or retirement;

23 (ii) A layoff exceeding six months; or

24 (iii) A reduction in hours of work of more than fifty percent during
25 each month of any six-month period.

26 (b) Employment loss does not include instances when a business
27 closing or mass layoff is the result of the relocation or consolidation
28 of part or all of the employer's business and, before the business
29 closing or mass layoff, the employer offers to transfer the employee to a
30 different site of employment within a reasonable commuting distance with
31 no more than a six-month break in employment;

1 (7) Mass layoff means a reduction in employment force that results
2 in an employment loss at a single site of employment during any sixty-day
3 period of twenty-five or more employees, other than part-time employees;

4 (8) Part-time employee means an employee who is employed for an
5 average of fewer than twenty hours per week or an employee, including a
6 full-time employee, who has been employed for fewer than six of the
7 twelve months preceding the date on which notice is required by the act;

8 (9) Representative means an exclusive representative of employees
9 within the meaning of section 8(f) or 9(a) of the federal National Labor
10 Relations Act, 29 U.S.C. 158(f) or 159(a), or section 2 of the federal
11 Railway Labor Act, 45 U.S.C. 152, as such acts and sections existed on
12 January 1, 2018; and

13 (10) Single site of employment refers to a single location or a
14 group of contiguous locations, such as a group of structures that form a
15 campus or business park or separate facilities across the street from
16 each other.

17 Sec. 3. (1) Except as provided in section 4 of this act:

18 (a) An employer who plans a business closing or a mass layoff shall
19 not order such action until the end of a sixty-day period which begins
20 after the employer serves written notice of such action on the affected
21 employees or their representatives and the department. However, if an
22 applicable collective bargaining agreement designates a different notice
23 period, the notice period in the collective bargaining agreement shall
24 govern;

25 (b) An employer who has previously announced and carried out a
26 short-term mass layoff of six months or less which is extended beyond six
27 months due to business circumstances not reasonably foreseeable at the
28 time of the initial mass layoff is required to give notice when it
29 becomes reasonably foreseeable that the extension is required. A mass
30 layoff extending beyond six months from the date the mass layoff
31 commenced for any other reason shall be treated as an employment loss

1 from the date of commencement of the mass layoff; and

2 (c) In the case of the sale of part or all of a business, the seller
3 is responsible for providing notice of any business closing or mass
4 layoff which will take place up to and on the effective date of the sale.
5 The buyer is responsible for providing notice of any business closing or
6 mass layoff that will take place thereafter.

7 (2)(a) A notice required by this section shall be in writing and
8 shall contain the following:

9 (i) The name and address of the employment site where the business
10 closing or mass layoff will occur and the name and telephone number of a
11 company official to contact for further information;

12 (ii) A statement as to whether the planned action is expected to be
13 permanent or temporary and, if the entire business is to be closed, a
14 statement to that effect;

15 (iii) The expected date of the first employment loss and the
16 anticipated schedule for employment losses; and

17 (iv) The job titles of positions to be affected and the names of the
18 employees currently holding the affected jobs. The notice to the
19 department shall also include the addresses of the affected employees and
20 information about whether the employment loss is due to the business
21 moving out of this state or the country or due to replacement by
22 technology. The department shall maintain the confidentiality of the
23 names and addresses of employees received by the department.

24 (b) The notice may include additional information useful to the
25 employees, such as information about available dislocated worker
26 assistance, and, if the planned action is expected to be temporary, the
27 estimated duration, if known.

28 (3) A notice required by this section may be delivered by any
29 reasonable method of delivery which is designed to ensure receipt of
30 notice at least sixty days before the planned action.

31 Sec. 4. (1)(a) An employer is not required to give notice under

1 section 3 of this act if a business closing or mass layoff constitutes a
2 strike or constitutes a lockout, if such lockout is not intended to evade
3 the requirements of the Nebraska Worker Adjustment and Retraining
4 Notification Act.

5 (b) Notice under section 3 of this act is not required when an
6 employer permanently replaces an employee who is deemed to be an economic
7 striker under the National Labor Relations Act.

8 (c) The Nebraska Worker Adjustment and Retraining Notification Act
9 shall not be deemed to validate or invalidate any judicial or
10 administrative ruling relating to the hiring of permanent replacements
11 for economic strikers under the federal National Labor Relations Act.

12 (d) If an employer hires temporary workers to replace employees
13 during the course of a strike or lockout and later terminates such
14 temporary workers at the conclusion of the strike or lockout, section 3
15 of this act does not require an employer to serve written notice on the
16 terminated temporary workers.

17 (2)(a) When affected employees will not be terminated on the same
18 date, the date of the first individual employment loss within the sixty-
19 day notice period under section 3 of this act triggers the notice
20 requirement. An employee's last day of employment is considered the date
21 of that employee's layoff. The first and subsequent groups of terminated
22 employees are entitled to a full sixty days' notice.

23 (b) An employer shall give notice if the number of employment losses
24 of two or more actions in any ninety-day period triggers the notice
25 requirements in section 3 of this act for a business closing or mass
26 layoff. An employer is not required to give notice if the number of
27 employment losses from one action in a sixty-day period does not meet the
28 requirements of section 3 of this act. All employment losses in any
29 ninety-day period shall be aggregated to trigger the notice requirement
30 unless the employer demonstrates to the department that the employment
31 losses during the ninety-day period are the result of separate and

1 distinct actions and causes.

2 (3)(a) Additional notice is required if the date or schedule of
3 dates of a planned business closing or mass layoff is extended beyond the
4 date or the ending date of any period announced in the original notice.

5 (b) If the postponement is for less than sixty days, the additional
6 notice shall be given as soon as possible to the affected employees or
7 their representatives and the department and shall include reference to
8 the earlier notice, the date to which the planned action is postponed,
9 and the reasons for the postponement. The notice shall be given in a
10 manner which will provide the information to all affected employees.

11 (c) If the postponement is for more than sixty days, the additional
12 notice shall be treated as new notice subject to the requirements of
13 section 3 of this act.

14 (4) An exception to the sixty-day notice applies to business
15 closings but not to mass layoffs if the requirements of this subsection
16 are met. This exception shall be narrowly construed. For the exception to
17 apply, all of the following requirements must be met:

18 (a) An employer must have been actively seeking capital or business
19 at the time that the sixty-day notice would have been required by seeking
20 financing or refinancing through the arrangement of loans or the issuance
21 of stocks, bonds, or other methods of internally generated financing or
22 by seeking additional money, credit, or business through any other
23 commercially reasonable method. The employer must identify specific
24 actions taken to obtain capital or business;

25 (b) In addition to the other notice requirements of section 3 of
26 this act, the employer must, at the time notice is actually given,
27 provide a statement of explanation for reducing the notice period;

28 (c) There must have been a realistic opportunity to obtain the
29 financing or business sought;

30 (d) The financing or business sought must have been sufficient, if
31 obtained, to have enabled the employer to avoid or postpone the business

1 closing. The employer must be able to objectively demonstrate that the
2 amount of capital or the volume of new business sought would have enabled
3 the company to keep the facility, operating unit, or site open for a
4 reasonable period of time; and

5 (e) The employer reasonably and in good faith must have believed
6 that giving the required notice would have precluded the employer from
7 obtaining the needed capital or business. The employer must objectively
8 demonstrate that the employer reasonably thought that a potential
9 customer or source of financing would have been unwilling to provide the
10 new business or capital if notice had been given. This condition may be
11 satisfied if the employer can show that the financing or business source
12 would not choose to do business with a troubled company or with a company
13 whose workforce would be looking for other jobs.

14 (5)(a) There shall be an exception to the sixty-day notice
15 requirement of section 3 of this act for business closings or mass
16 layoffs that were due to business circumstances that were not reasonably
17 foreseeable at the time that the sixty-day notice would have been
18 required.

19 (b) In determining whether business circumstances were not
20 reasonably foreseeable, an important indicator is whether the
21 circumstances were caused by some sudden, dramatic, and unexpected action
22 or condition outside of the employer's control.

23 (c) The employer shall exercise commercially reasonable business
24 judgment as would a similarly situated employer in predicting the demands
25 of the employer's particular market. The employer is not required to
26 accurately predict general economic conditions that may also affect
27 demand for products or services.

28 (d) In addition to the other notice requirements of section 3 of
29 this act, the employer shall, at the time notice is actually given,
30 provide a statement of explanation for reducing the notice period.

31 (6)(a) There shall be an exception to the sixty-day notice

1 requirement of section 3 of this act for business closings or mass
2 layoffs that were the direct result of a natural disaster.

3 (b) Floods, earthquakes, droughts, storms, tornadoes, and similar
4 effects of nature are natural disasters under this subsection.

5 (c) An employer must demonstrate that the business closing or mass
6 layoff is a direct result of the natural disaster.

7 (d) If a business closing or mass layoff occurs as an indirect
8 result of a natural disaster, this exception shall not apply, but
9 exception in subsection (5) of this section may be available.

10 (e) In addition to the other notice requirements of section 3 of
11 this act, the employer shall, at the time notice is actually given,
12 provide a statement of explanation for reducing the notice period.

13 Sec. 5. (1) An employer who orders a business closing or mass
14 layoff in violation of section 3 shall be liable to each aggrieved
15 employee who suffers an employment loss as a result of such closing or
16 layoff for:

17 (a) Back pay for each day of violation at a rate of compensation not
18 less than the higher of:

19 (i) The average regular rate received by such employee during the
20 last three years of the employee's employment; or

21 (ii) The final regular rate received by such employee; and

22 (b) Benefits under an employee benefit plan, including the cost of
23 medical expenses incurred during the employment loss which would have
24 been covered under an employee benefit plan if the employment loss had
25 not occurred.

26 (2) The damages in subsection (1) of this section shall be
27 calculated for the period of the violation, up to a maximum of thirty
28 days, but in no event for more than one-half the number of days the
29 employee was employed by the employer.

30 (3) The amount for which an employer is liable under subsection (1)
31 of this section shall be reduced by:

1 (a) Any wages paid by the employer to the employee for the period of
2 the violation;

3 (b) Any voluntary and unconditional payment by the employer to the
4 employee that is not required by any legal obligation; and

5 (c) Any payment by the employer to a third party or trustee, such as
6 premiums for health benefits or payments to a defined contribution
7 pension plan, on behalf of and attributable to the employee for the
8 period of the violation. In addition, any liability incurred under
9 subsection (1) of this section with respect to a defined benefit pension
10 plan may be reduced by crediting the employee with service for all
11 purposes under such a plan for the period of the violation.

12 (4) An employer who violates section 3 of this act by failing to
13 provide the required notice to the department shall be subject to a civil
14 penalty of not more than two hundred fifty dollars for each day of the
15 violation. This penalty shall not apply if, within three weeks from the
16 date the employer orders the shutdown or layoff, the employer pays to
17 each aggrieved employee the amount provided in subsection (1) of this
18 section.

19 (5) If an employer which has violated the Nebraska Worker Adjustment
20 and Retraining Notification Act proves to the satisfaction of the court
21 that the act or omission that violated the act was in good faith and that
22 the employer had reasonable grounds for believing that the act or
23 omission was not a violation of the act the court may, in its discretion,
24 reduce the amount of the liability or penalty provided for in this
25 section.

26 (6) A person bringing an action under this section, including an
27 aggrieved employee, a representative of employees, or the department, may
28 sue either for such person or for other persons similarly situated, or
29 both.

30 (7) In any action under this section, the court may, in its
31 discretion, award the prevailing plaintiff reasonable attorney's fees and

1 court costs.

2 (8) The penalties provided for in this section shall be the
3 exclusive remedies for any violation of the Nebraska Worker Adjustment
4 and Retraining Notification Act. A court shall not have authority, under
5 the act, to enjoin a business closing or mass layoff.

6 Sec. 6. The department shall adopt and promulgate rules and
7 regulations to carry out the Nebraska Worker Adjustment and Retraining
8 Notification Act, including procedures for investigations to determine
9 whether an employee has violated the act.