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HOUSE BILL 180

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO LABOR; ENACTING THE WORKER ADJUSTMENT AND
RETRAINING NOTIFICATION ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Worker Adjustment and Retraining Notification Act".

Section 2. DEFINITIONS.--As used in the Worker Adjustment
and Retraining Notification Act:

A. "employee" means a person who reasonably expects
to experience employment loss as a consequence of a proposed
mass layoff, worksite closing or transfer of operations
undertaken by the employee's employer or who experiences
employment loss as a foreseeable result of downsizing, a
proposed mass layoff, a worksite closing or a transfer of
operations. "Employee" includes a home-based employee who may

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1 not work at the worksite but reports to the worksite or who
2 supervises one or more employees who do not work at the
3 worksite;

4 B. "employer" means a business enterprise that
5 employs seventy-five or more employees, including part-time
6 employees, and including the parent corporation of a corporate
7 subsidiary that directly owns and operates a business. An
8 employer may include a corporation that succeeds the employer
9 when circumstances indicate that the corporation is a
10 continuation of the operations of the employer. Factors to
11 consider in determining whether a successor corporation is a
12 continuation of the employer's operations include its proximity
13 to the closing of the employer's operations and whether it has
14 common ownership, business purposes, products or services,
15 workforce, facilities, plant, equipment or management
16 structure;

17 C. "employment loss" means:

18 (1) an employment termination other than a
19 discharge for cause or voluntary departure; or

20 (2) a layoff exceeding four months;

21 D. "mass layoff" means a reduction in force that:

22 (1) is not the result of a worksite closing or
23 transfer of operations; and

24 (2) results in an employment loss of twenty-
25 five or more employees, including part-time employees, at a

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1 worksite during any thirty-day period;

2 E. "representative" means an exclusive
3 representative of employees as defined in Section 9(a) of the
4 federal National Labor Relations Act, 29 U.S.C. Section 151 et
5 seq., and the federal Railway Labor Act, 45 U.S.C. Section 151
6 et seq.;

7 F. "transfer of operations" means the removal of
8 all or substantially all of the operations of a worksite to a
9 different location at least fifty miles away that results in
10 employment loss to twenty-five or more persons, including part-
11 time workers; and

12 G. "worksite closing" means the permanent or
13 temporary shutdown of a worksite, or one or more facilities or
14 operating units, that will result in an employment loss for
15 twenty-five or more persons, including part-time employees.

16 Section 3. NOTIFICATION TO EMPLOYEES REQUIRED.--

17 A. An employer shall give notification of at least
18 ninety days before the date of an order for a mass layoff,
19 worksite closing or transfer of operation. Notification shall
20 be given to:

- 21 (1) each employee;
22 (2) each representative of an employee;
23 (3) local work force investment boards
24 established pursuant to the federal Workforce Investment Act of
25 1998 for the locality within which the mass layoff, worksite

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1 closing or transfer of operations is to occur; and

2 (4) the chief elected official of the unit of
3 local government within which the mass layoff, worksite closing
4 or transfer of operations will occur.

5 B. Individual employment losses shall be aggregated
6 to determine whether the following conditions necessary to
7 require notification pursuant to the Worker Adjustment and
8 Retraining Notification Act have been met:

9 (1) within a one-hundred-eighty-day period,
10 individual employment losses occur at a single worksite for two
11 or more groups of employees and one group has less than the
12 minimum number of employees; and

13 (2) the employer fails to demonstrate that the
14 employment losses arise from separate and distinct causes.

15 C. Pursuant to the Worker Adjustment and Retraining
16 Notification Act, the seller of a business is responsible for
17 the notification required pursuant to this section up to and
18 including the effective date of sale, and the purchaser of a
19 part of or the entirety of the business is responsible
20 thereafter. Notwithstanding any other provision of the Worker
21 Adjustment and Retraining Notification Act, a person considered
22 an employee of the seller shall also be considered an employee
23 of the purchaser on the effective date of sale.

24 D. Mailing to an employee's last known address by
25 first class or certified mail or inclusion of notification in

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1 an employee's paycheck shall be considered as fulfillment of
2 the employer's obligations to give notification to an employee
3 pursuant to the Worker Adjustment and Retraining Notification
4 Act.

5 E. An employee who voluntarily leaves the company
6 during the notice period in anticipation of a mass layoff,
7 worksite closing or transfer of operations shall be counted
8 toward all minimum numerical thresholds.

9 Section 4. REQUIRED CONTENT OF NOTIFICATION.--A
10 notification distributed pursuant to the Worker Adjustment and
11 Retraining Notification Act shall include a statement of:

12 A. the number of employees whose employment is to
13 be terminated in connection with the mass layoff, worksite
14 closing or transfer of operations and the date or dates on
15 which the mass layoff, worksite closing or transfer of
16 operations shall begin;

17 B. the reasons for the mass layoff, worksite
18 closing or transfer of operations;

19 C. the job description, address, pay, benefits,
20 terms and conditions of employment for work available at any
21 other operation of the employer; and

22 D. employee rights with respect to wages, severance
23 pay, benefits, pension or other terms of employment related to
24 the termination, including rights based on a collective
25 bargaining agreement or other existing employer policy.

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1 Section 5. EXEMPTIONS TO NOTIFICATION REQUIREMENTS AND
2 REDUCED NOTIFICATION.--

3 A. The notification provisions of the Worker
4 Adjustment and Retraining Notification Act do not apply if:

5 (1) a mass layoff, worksite closing or
6 transfer of operations involves a temporary facility or is the
7 result of a completion of a facility, project or undertaking in
8 which employees were advised that employment was limited to the
9 duration of the facility, project or undertaking;

10 (2) a mass layoff, worksite closing or
11 transfer of operations is caused by business circumstances that
12 were not reasonably foreseeable at the time the notification
13 would have been required;

14 (3) a mass layoff, worksite closing or
15 transfer of operations is caused by any form of physical
16 calamity, natural disaster or act of war; and

17 (4) the employer was actively seeking capital
18 or business that would have enabled the employer to avoid or
19 postpone a mass layoff, worksite closing or transfer of
20 operations and the employer reasonably and in good faith
21 believed that giving the required notification would have
22 precluded the employer from obtaining the needed capital or
23 business.

24 B. An employee who, prior to the layoff, closing or
25 a transfer, has been offered a reassignment to a different

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1 worksite within a reasonable commuting distance, with no more
2 than a one-month break in employment or an employee who, prior
3 to the layoff, closing or transfer, has been offered a
4 reassignment to a different worksite, regardless of commuting
5 distance, with no more than a two-month break in employment is
6 not entitled to notification pursuant to this section if the
7 employee accepts the reassignment within thirty days of the
8 offer or of the layoff, closing or transfer, whichever is
9 later.

10 C. An employer relying on this section shall give
11 as much notification as is practicable and, at that time, shall
12 give a brief statement of the basis for reducing the
13 notification period.

14 Section 6. COMPLAINTS--ADMINISTRATIVE PROCEDURES.--

15 A. An employee may file a complaint with the
16 attorney general within one hundred eighty days of an alleged
17 violation of the Worker Adjustment and Retraining Notification
18 Act. The employee shall not proceed with another civil action
19 unless one hundred eighty days have passed since the filing of
20 a complaint pursuant to the Worker Adjustment and Retraining
21 Notification Act and the employee has filed a request to
22 withdraw the complaint with the attorney general before filing
23 a civil suit in district court.

24 B. The attorney general shall develop rules and
25 procedures for complaint investigation, the issuance of

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1 subpoenas and the determination of liabilities and civil
2 penalties established under the Worker Adjustment and
3 Retraining Notification Act. The rules and procedures may
4 authorize:

5 (1) an examination of the books and records of
6 an employer; and

7 (2) holding in trust any proceeds from a lien
8 pending adjudication of claims to proceeds by the employer.

9 Section 7. PENALTIES--LIABILITY.--

10 A. An employer who violates the provisions of the
11 Worker Adjustment and Retraining Notification Act shall be
12 liable to each employee for:

13 (1) double back pay for each calendar day of
14 the violation at the employee's rate of compensation, which is
15 the average regular rate received by the employee during the
16 last three years of employment or the final regular rate
17 received by the employee, whichever is higher;

18 (2) the value of benefits from the employer's
19 employee benefit plan during the notification period, including
20 the cost of medical expenses incurred during the employment
21 loss that would have been covered under an employee benefit
22 plan if the employment loss had not occurred;

23 (3) other economic and exemplary damages
24 suffered by an employee and proved by a preponderance of the
25 evidence to have been caused by the employer's violation of the

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1 provisions of the Worker Adjustment and Retraining Act; and

2 (4) reasonable attorney fees and costs for the
3 employee who prevails in court.

4 B. The attorney general and an affected local
5 government may bring a civil action in district court; the
6 attorney general may bring suit on behalf of the state, the
7 local government and an employee; and a local government may
8 bring suit on its own behalf or on behalf of an employee.

9 C. An employer that violates the provisions of the
10 Worker Adjustment and Retraining Notification Act is liable to
11 the state or affected local government for:

12 (1) five hundred dollars (\$500) per day for
13 each calendar day of the violation multiplied by the number of
14 employees who suffered an employment loss as a result of the
15 employer's failure to provide timely notification to a state
16 official or agents of state government and a designated local
17 government official; and

18 (2) one thousand dollars (\$1,000) per day for
19 each calendar day of the violation multiplied by the number of
20 employees who suffered an employment loss if the employer acted
21 in bad faith through intentional, willful or reckless conduct
22 in violation of the provisions of the Worker Adjustment and
23 Retraining Notification Act or to avoid application of that
24 act.

25 D. The attorney general has a valid lien upon

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1 business revenues and all real and personal property of the
2 employer for a violation of the Worker Adjustment and
3 Retraining Notification Act; provided that the attorney general
4 records a notice of lien in each county in New Mexico in which
5 the employer holds an interest in real property. In order to
6 perfect the lien against business revenues and personal
7 property of the employer, the attorney general shall record a
8 notice of lien in the office designated in Article 9 of the
9 Uniform Commercial Code. The notice of lien shall constitute a
10 lien of the attorney general that is effective as of the date
11 and time of the recording or filing. The attorney general
12 shall send a copy of the notice of lien to the employer by
13 certified mail, return receipt requested, postage prepaid, in
14 the following form:

15 NOTICE OF LIEN PURSUANT TO THE WORKER ADJUSTMENT AND
16 RETRAINING NOTIFICATION ACT

17 NOTICE is hereby given that the attorney general of the
18 state of New Mexico claims a lien against (name and
19 address of employer) pursuant to the Worker Adjustment and
20 Retraining Notification Act for liabilities arising under
21 that act in the aggregate amount of \$_____.

22 In accordance with the Worker Adjustment and Retraining
23 Notification Act, this notice shall be recorded with the
24 county clerk in the county in which the employer holds
25 property and shall constitute a lien against property of

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1 the employer identified above.

2 Dated this ___ day of _____, 20__.

3 STATE OF NEW MEXICO

4 ATTORNEY GENERAL

5 By: _____.

6 E. Upon reasonable belief that an employer is about
7 to violate the provisions of the Worker Adjustment and
8 Retraining Notification Act, the office of the attorney general
9 may petition the court for an order of restitution of money or
10 property to any person or persons the attorney general believes
11 will be injured. The action may be brought in district court.
12 However, the court shall not have authority to enjoin a
13 worksite closing or mass layoff.

14 Section 8. WAIVERS AND RELEASES.--

15 A. An agreement to waive the rights of an employee
16 pursuant to the Worker Adjustment and Retraining Notification
17 Act is voidable before, during and within thirty days after the
18 advance notification period unless payment is received by the
19 employee in an amount that meets or exceeds the wages and value
20 of benefits to which the employee would have been entitled
21 throughout the advance notification period. If an employee
22 renders void such an agreement, the employee shall return the
23 lesser amounts paid by the employer within fourteen days of
24 such election.

25 B. An employee's acceptance of severance payments

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1 shall not be used to offset an award of damages when such
2 payments are:

3 (1) voluntarily and unconditionally paid in an
4 amount less than the value of wages and benefits to which the
5 employee is entitled during the advance notification period; or

6 (2) paid pursuant to contractual obligations
7 of the employer owed to the employee.

8 C. An employee's waiver of claims or acceptance of
9 a severance payment does not absolve or mitigate an employer's
10 obligation to provide notification to other persons or entities
11 entitled to notification pursuant to the Worker Adjustment and
12 Retraining Notification Act.

13 Section 9. STATUTE OF LIMITATIONS.--A uniform statute of
14 limitations of three years is established for claims under the
15 Worker Adjustment and Retraining Notification Act.