
HOUSE BILL No. 1132

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-6-5.

Synopsis: Notice of plant closing or mass layoff. Requires certain employers to give certain written notice before plant closings and mass layoffs.

Effective: July 1, 2007.

Tyler

January 8, 2007, read first time and referred to Committee on Labor and Employment.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1132



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-6-5 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2007]:
 4 **Chapter 5. Employer Notification Before Plant Closings and**
 5 **Mass Layoffs**
 6 **Sec. 1. As used in this chapter, "affected employees" means**
 7 **employees who may reasonably be expected to experience an**
 8 **employment loss as a result of a proposed plant closing or mass**
 9 **layoff.**
 10 **Sec. 2. (a) As used in this chapter, "employer" means an**
 11 **individual, a partnership, an association, a limited liability**
 12 **company, a corporation, a business trust, a state or local**
 13 **government or agency, or an agent or officer of any of those**
 14 **entities employing at least fifty (50) individuals in Indiana.**
 15 **(b) The term does not include:**
 16 **(1) the federal government;**
 17 **(2) a corporation wholly owned by the federal government; or**



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(3) an Indian tribe.

Sec. 3. (a) As used in this chapter, "employment loss" means:

(1) an employment termination, other than:

(A) a discharge for cause;

(B) voluntary departure; or

(C) retirement;

(2) a layoff exceeding six (6) months; or

(3) a reduction in hours of work of more than fifty percent (50%) during each month of a six (6) month period.

(b) The term does not include a closing or layoff that is the result of the relocation or consolidation of part or all of an employer's business if, before the closing or layoff:

(1) the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with a break in employment of not more than six (6) months; or

(2) the employer offers to transfer the employee to any other site of employment regardless of distance with a break in employment of not more than six (6) months, and the employee accepts the transfer within thirty (30) days after the later of:

(A) the offer; or

(B) the closing or layoff.

Sec. 4. As used in this chapter, "mass layoff" means a reduction of force that:

(1) is not the result of a plant closing; and

(2) results in an employment loss at a single site of employment during any thirty (30) day period of at least thirty-three percent (33%) of the employees.

Sec. 5. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.

Sec. 6. As used in this chapter, "plant closing" means the permanent or temporary shutdown of:

(1) a single site of employment; or

(2) one (1) or more facilities or operating units within a single site of employment;

if the shutdown results in an employment loss at the single site of employment during any thirty (30) day period of at least twenty (20) employees.

Sec. 7. As used in this chapter, "regular rate" has the meaning set forth in IC 22-2-2-4(k)(3).

Sec. 8. As used in this chapter, "representative" means an

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exclusive representative of employees within the meaning of:

- (1) Section 152(4) or 159(a) of the National Labor Relations Act (29 U.S.C. 151 et seq.); or**
- (2) Section 152 of the Railway Labor Act (45 U.S.C. 151 et seq.).**

Sec. 9. (a) This chapter does not apply to a plant closing or mass layoff in the following cases:

- (1) The plant closing is:**
 - (A) of a temporary facility; or**
 - (B) 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, project, or undertaking.**
- (2) The plant closing or mass layoff constitutes a strike or lockout not intended to evade the requirements of this chapter.**

(b) An employer is not required to provide the written notice required by section 10 of this chapter when permanently replacing a person who is considered to be an economic striker under the National Labor Relations Act (29 U.S.C. 151 et seq.).

Sec. 10. (a) An employer shall serve written notice of a plant closing or mass layoff not later than sixty (60) days before the date of the plant closing or mass layoff to:

- (1) each representative of the affected employees or, if there is no representative at the time of the notice, each affected employee;**
- (2) the department of workforce development; and**
- (3) the executive of:**
 - (A) each municipality; or**
 - (B) in an unincorporated area, the county;**

in which the plant closing or mass layoff is to occur.

(b) The:

- (1) mailing of notice to an affected employee's last known address; or**
- (2) inclusion of the notice with the affected employee's paycheck;**

is an acceptable method for fulfilling the employer's obligation to give notice to each affected employee.

Sec. 11. (a) An employer is not required to provide the written notice required by section 10 of this chapter if:

- (1) at the time that the notice would have been required:**

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- 1 (A) the employer was actively seeking capital or business
- 2 that, if obtained, would enable the employer to avoid or
- 3 postpone the plant closing or mass layoff; and
- 4 (B) the employer reasonably and in good faith believed
- 5 that giving the notice would have precluded the employer
- 6 from obtaining the needed capital or business;
- 7 (2) the plant closing or mass layoff is caused by business
- 8 circumstances that were not reasonably foreseeable as of the
- 9 time that the notice would have been required; or
- 10 (3) the plant closing or mass layoff is the result of a natural
- 11 disaster.

12 (b) An employer shall give as much notice as is practicable
 13 under circumstances described in subsection (a), including a brief
 14 statement of the basis for reducing the notice period.

15 Sec. 12. A layoff of more than six (6) months that at its outset
 16 was announced as a layoff of six (6) months or less shall be treated
 17 as an employment loss under this chapter, unless:

- 18 (1) the extension of the layoff beyond six (6) months is the
- 19 result of business circumstances, including unforeseeable
- 20 changes in price or cost, not reasonably foreseeable at the
- 21 time of the initial layoff; and
- 22 (2) notice is given at the time that an extension of the layoff
- 23 beyond six (6) months becomes reasonably foreseeable to the
- 24 employer.

25 Sec. 13. Employment losses of more than one (1) group of
 26 employees at a single site of employment, each of which is less than
 27 the minimum number of employees specified in section 4 or 6 of
 28 this chapter for a plant closing or a mass layoff but that together
 29 exceed that minimum number and occur within any ninety (90) day
 30 period, are considered to be a plant closing or a mass layoff for
 31 purposes of this chapter, unless the employer demonstrates that the
 32 employment losses are:

- 33 (1) the result of separate and distinct actions and causes; and
- 34 (2) not an attempt by the employer to evade the requirements
- 35 of this chapter.

36 Sec. 14. (a) In the case of a sale of part or all of an employer's
 37 business:

- 38 (1) up to and including the effective date of the sale, the seller;
- 39 or
- 40 (2) after the effective date of the sale, the purchaser;
- 41 is responsible for providing the written notice required by section
- 42 10 of this chapter.

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1 **(b) Notwithstanding any other provision of this chapter, an**
 2 **individual who is an employee of the seller as of the effective date**
 3 **of the sale shall be considered an employee of the purchaser**
 4 **immediately after the effective date of the sale for the purpose of**
 5 **receiving the written notice required by section 10 of this chapter.**

6 **Sec. 15. (a) As used in this section, "aggrieved employee" means**
 7 **an employee who:**

8 **(1) experienced employment loss as a result of a plant closing**
 9 **or mass layoff conducted by the employee's employer; and**

10 **(2) as a result of the employer's failure to give the written**
 11 **notice required by section 10 of this chapter, did not receive**
 12 **the required notice, either directly or through the employee's**
 13 **representative.**

14 **(b) If an employer violates this chapter, an aggrieved employee**
 15 **may commence an action for the aggrieved employee or on behalf**
 16 **of other employees similarly situated, or both, in a court of the**
 17 **county in which the violation is alleged to have occurred or in**
 18 **which the employer transacts business.**

19 **(c) The court shall award the following to each aggrieved**
 20 **employee who suffers an employment loss as a result of the**
 21 **employer's violation of this chapter:**

22 **(1) Back pay for each day of the violation at a rate of**
 23 **compensation not less than the greater of:**

24 **(A) the average regular rate received by the employee**
 25 **during the three (3) years before the date of the plant**
 26 **closing or mass layoff; or**

27 **(B) the final regular rate received by the employee.**

28 **(2) Benefits under an employee welfare benefit plan described**
 29 **in 29 U.S.C. 1002, including the cost of medical expenses**
 30 **incurred during the employment loss that would have been**
 31 **covered under the employee benefit plan if the employment**
 32 **loss had not occurred.**

33 **(3) Costs and reasonable attorney's fees.**

34 **(d) An employer's liability under subsection (c) is calculated for**
 35 **the period of the violation, up to a maximum of sixty (60) days, but**
 36 **not more than fifty percent (50%) of the number of days that the**
 37 **employee was employed by the employer.**

38 **(e) The amount for which an employer is liable under this**
 39 **section to an aggrieved employee is reduced by the following:**

40 **(1) Wages paid by the employer to the employee for the period**
 41 **of the violation.**

42 **(2) A voluntary and unconditional payment by the employer**

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to the employee that is not required by a legal obligation.

(3) A payment by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan, on behalf of and attributable to the employee for the period of the violation.

(4) A monetary amount equal to the amount of service credited to the employee for all purposes under a defined benefit pension plan for the period of violation.

(f) An employer that violates this chapter with respect to the notice required to be given to:

- (1) a municipality; or
- (2) in an unincorporated area, a county;

under section 10(a)(3) of this chapter commits a Class C infraction for each day that the violation occurs, up to a maximum of sixty (60) days.

(g) It is a defense to a violation of this chapter that:

- (1) the act or omission that constituted a violation of this chapter was in good faith; and
- (2) the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter.

(h) A court does not have authority to enjoin a plant closing or mass layoff for a violation of this chapter.

(i) Except as provided in section 16 of this chapter, the remedies provided for in this section are the exclusive remedies for any violation of this chapter.

Sec. 16. (a) The rights and remedies provided to employees by this chapter are:

- (1) in addition to, and not instead of, any other contractual or statutory rights and remedies of the employees; and
- (2) not intended to alter or affect those other rights and remedies;

except that the period of notification required by this chapter runs concurrently with any period of notification required by contract or any other statute.

(b) A notice given by an employer that meets the requirements of the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) meets the requirements of this chapter.

Sec. 17. The commissioner of the department of workforce development may adopt rules under IC 4-22-2 to implement this chapter, including uniform standards by which employers may provide for appropriate service of notice required by this chapter.

SECTION 2. [EFFECTIVE JULY 1, 2007] IC 22-6-5, as added by

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1 **this act, applies to plant closings and mass layoffs that are**
2 **scheduled to occur after August 31, 2007.**

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