

H.758

An act relating to notice of potential layoffs

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds:

(1) The 21st century workplace is fundamentally different from the 20th century workplace. Along with a changing workplace comes a different workforce. Policies and resources must be updated to reflect the changing workplace and workforce.

(2) Businesses retain sensitive information for proprietary and competitive reasons.

(3) When the State requires this information, the sensitivity of this information must be respected.

(4) The Department, as well as other agencies, are able to access federal and State resources to mitigate adverse employment impacts affecting employers, employees, communities, and the Unemployment Insurance Trust Fund.

(5) The Department and the Agency of Commerce and Community Development, as well as other agencies, must be able to respond to and assist with economic and workforce training and retention initiatives in a timely fashion.

(6) Municipalities, school districts, and local for-profit and nonprofit businesses are all affected by plant closings and mass layoffs. In order to mitigate adverse impacts, communities and stakeholders need timely information pertaining to plant closings and mass layoffs. Private and public sectors need to work together to reduce the volatility and disruptions that come with layoffs.

Sec. 2. 21 V.S.A. chapter 5, subchapter 3A is added to read:

Subchapter 3A. Notice of Potential Layoffs Act

§ 411. DEFINITIONS

As used in this subchapter:

(1) “Affected employees” means employees who may be expected to experience an employment loss as a consequence of a proposed or actual business closing or mass layoff by their employer.

(2) “Business closing” means the permanent shutdown of a facility or operations, or the cessation of work or operations not scheduled to resume within 90 days. A temporary shutdown of a seasonal employer that does not extend beyond 20 weeks is not a business closing.

(3) “Commissioner” means the Commissioner of Labor.

(4) “Department” means the Department of Labor.

(5) "Employer" means any business enterprise that employs 50 or more full-time employees or 50 or more part-time employees that work at least 1,040 hours per employee per year.

(6) "Employment loss" means the result of a business closing or mass layoff. An employee will not be considered to have suffered an employment loss if the employee is offered a transfer to a different site of employment within 35 miles.

(7) "Mass layoff" means the permanent employment reduction at a single site of at least 50 employees over a 90-day period.

(8) "Representative" means an exclusive bargaining agent as legally recognized under State or federal labor laws.

§ 412. EDUCATION AND OUTREACH

The Department and the Agency of Commerce and Community Development shall prepare information and materials for the purpose of informing and educating Vermont employers with regard to programs and resources that are available to assist with economic and workforce retention initiatives in order to avoid business closings and mass layoffs. The Department and the Agency of Commerce and Community Development shall also inform Vermont employers of the employers' obligations that will be required for proper notice under the provisions of this Act.

§ 413. NOTICE AND WAGE PAYMENT OBLIGATIONS

(a) An employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner as soon as practical to enable the State to present information on potential support and alternatives to the proposed closing or mass layoff.

(b) Notwithstanding subsection (a) of this section, an employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner 60 days prior to the effective date of the closing or layoffs, and shall provide 45-days' notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any. If the employer is actively attempting to secure capital or investments in order to avoid closing or mass layoffs, the notice to the Secretary of Commerce and Community Development the Commissioner may be delayed to 45 days prior to the effective date of closing or layoff and 30-days' notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any.

(c) The employer shall send to the Commissioner such information as the Commissioner deems necessary for the purposes of unemployment insurance benefit processing and for accessing federal and State resources to mitigate adverse employment impacts affecting employers, employees, and

communities within the time allotted for notice to the Commissioner under subsection 413(b) or 414(b) of this subchapter.

(d) In the case of a sale of part or all of an employer's business where mass layoffs will occur, the seller and the purchaser are still required to comply with the notice requirements under subsection (b) of this section.

(e) Nothing in this subchapter shall abridge, abrogate, or restrict the right of the State to require an employer that is receiving State economic development funds or incentives from being required to provide additional or earlier notice as a condition for the receipt of such funds or incentives.

(f) An employer is required to pay all unpaid wage and compensation owed to any laid-off worker, as required under this title.

§ 414. EXCEPTIONS

(a) In the case of a business closing or mass layoff, an employer is not required to comply with the notice requirement in subsection 413(a) of this subchapter and may delay notification to the Department if:

(1) the business closing or the mass 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 project or undertaking;

(2) the business closing or mass layoff is due to a disaster beyond the control of the employer;

(3) the business closing or mass layoff results from a strike or a lockout;

or

(4) the business closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time the 60-day notice would have been required.

(b) An employer that is unable to provide the notice otherwise required by this subchapter as a result of circumstances described in subsection (a) of this section shall provide as much notice as is practicable and at that time shall provide a brief statement to the Commissioner regarding the basis for failure to meet the notification period. In such situations, the mailing of the notice by certified mail or other method approved by the Commissioner shall be considered acceptable in the fulfillment of the employer's obligation to give notice to each affected employee under this subchapter. At the time of notice to the Commissioner, the employer shall provide the required information under subdivisions 413(c) of this subchapter.

§ 415. VIOLATIONS

(a) An employer who violates subsection 413(b) or 414(b) of this subchapter is liable to each employee who lost his or her employment for:

(1) ten days severance pay; and

(2) the health care premium costs or the cost of any medical or dental expenses that would have been covered under an employee benefit plan for one month after the employment loss.

(b) The amount of an employer's liability under subsection (a) of this section shall be reduced by the following:

(1) any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation;

(2) any payments 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; and

(3) any liability paid by the employer under any applicable federal law governing notification of mass layoffs, business closings, or relocations.

(c) If an employer proves to the satisfaction of the Commissioner that the act or omission that violated this subchapter was in good faith, the Commissioner may reduce the amount of liability provided for in this section. In determining the amount of such a reduction, the Commissioner shall consider any efforts by the employer to mitigate the violation.

(d) If, after an administrative hearing, the Commissioner determines that an employer has violated any of the requirements of this subchapter, the Commissioner shall issue an order including any penalties assessed by the

Commissioner under sections 415 and 417 of this subchapter. The employer may appeal a decision of the Commissioner to the Superior Court within 30 days of the date of the Commissioner's order.

§ 416. POWERS OF THE COMMISSIONER

(a) The Commissioner may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to carry out this subchapter. The rules shall include provisions that allow the parties access to administrative hearings for any actions of the Department under this subchapter.

(b) In any investigation or proceeding under this subchapter, the Commissioner has, in addition to all other powers granted by law, the authority to subpoena and examine any information of an employer necessary to determine whether a violation of this subchapter has occurred, including to determine the validity of any defense.

(c) Information obtained through administration of this subchapter by the Commissioner shall be confidential, except for the number of layoffs, job titles, and workstation locations affected. The Department may provide the information collected pursuant to subsection 413(c) of this title to the U.S. Department of Labor and any other governmental entities for the purposes of securing benefits for the affected employees.

(d) Neither the Commissioner nor any court shall have the authority to enjoin a business closing, relocation, or mass layoff under this subchapter.

§ 417. ADMINISTRATIVE PENALTY

An employer who fails to give notice as required by subsection 413(b) or 414(b) of this subchapter shall be subject to an administrative penalty of \$500.00 for each day that the employer was deficient in the notice to the Department. The Commissioner may waive the administrative penalty if the employer:

- (1) demonstrates good cause under subsection 414(b) of this subchapter;
- (2) pays to all affected employees the amounts for which the employer is liable under section 415 of this title within 30 days from the date the employer enacts the business closing or mass layoff; and
- (3) pays to all affected employees any unpaid wage and compensation owed to any laid-off worker, as required under this title.

§ 418. OTHER RIGHTS

The rights and remedies provided to employees by this subchapter do not infringe upon or alter any other contractual or statutory rights and remedies of the employees.

Sec. 3. EFFECTIVE DATES

(a) This section and in Sec. 2, 21 V.S.A. §§ 412 (education and outreach) and 416(a) shall take effect on passage.

(b) Secs. 1 and 2, except for 21 V.S.A. §§ 412 and 416(a), shall take effect on January 15, 2015.