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An Act Concerning the Duties of Employers in the Case of Mass Employee Termination

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA c. 37 is enacted to read:

CHAPTER 37

MASS TERMINATION NOTIFICATION AND ASSISTANCE

§ 3201. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Affected establishment. "Affected establishment" means a single manufacturing, mechanical or mercantile establishment, factory, workshop or other place of employment that has been in existence for more than 2 years of an employer that intends on conducting a mass separation that subjects the employer to the provisions of this chapter. "Affected establishment" does not include a temporary construction site.

2. Affected municipality. "Affected municipality" means a municipality in which an affected establishment is located or a municipality that faces substantial loss of tax receipts from a mass separation.

3. Average weekly wage. "Average weekly wage" means the amount obtained by dividing an employee's total remuneration received for working at an establishment of an employer during the 52-week period preceding the employee's becoming an eligible employee by the number of weeks during that period that the employee was employed by that employer.

4. Eligible employee. "Eligible employee" means an employee who has been employed at an establishment of an employer for at least a year and whose employment is terminated as part of a mass separation or who, after receiving a notice under section 3202, voluntarily leaves the establishment for other employment at less than 60% of the average weekly wage that the employee received at the establishment.

5. Employee organization. "Employee organization" means a labor union, association or other employee organization that represents an employee of an affected establishment for purposes of collective bargaining or other labor management relations.

6. Employer. "Employer" means a person, corporation, business or other entity that has operated in the State for at least the 2 preceding years before giving notice under section 3202 either directly or through another corporation that either owns more than 50% of the corporation, is more than 50% owned

by the corporation or is more than 50% owned by another corporation that also owns more than 50% of the corporation and employs at least 100 persons at one time for 3 months or longer during the 2 preceding years before giving notice under section 3202. A person that has acquired the business of an employer is deemed to have operated the business for the time that the employer operated the business. "Employer" does not include the State, a political subdivision or an organization exempt from taxation under the United States Internal Revenue Code, Section 501.

7. Mass separation. "Mass separation" means:

A. The termination of operations by an employer at an affected establishment that results or may reasonably be expected to result in a majority of the employees at the establishment becoming eligible employees, except at an establishment that closes because of seasonal factors by custom of the industry of the establishment;

B. The transfer of a part of an employer's establishment's operation from one location to another location 25 or more miles from the first location as measured along ordinary commuter routes that results in at least a 20% reduction in the number of employees at the first location; or

C. An action taken by an employer that reduces the number of employees at the employer's establishment or the total number of employees at all establishments of the employer within the State by 15% or more for a period to exceed 3 months, except for a reduction at an establishment because of seasonal factors that is customary in the industry of the establishment.

§ 3202. Notice

1. Procedure. An employer shall notify in writing the director, all eligible employees, each affected municipality and each employee organization at least 12 months prior to the commencement of a mass separation of employees. The director may approve a shorter period of notification upon request of the employer if it is shown by clear and convincing evidence that the mass separation of employees could not have been foreseen by the employer. Approval of a shorter period of time may not be granted until after a public hearing is held in each affected municipality.

2. Minimum information required. Notification under subsection 1 must include:

A. The reason for the mass separation;

B. The number of eligible employees affected, including the amount of wages and other compensation paid to the employees during the preceding 2 months;

C. The names and addresses of all employees who will or are likely to suffer an employment or wage loss;

D. The amount of state and local taxes paid by the employer during the preceding year and the anticipated impact of the mass separation on those tax payments for the subsequent 2 tax years;

E. The economic circumstances of the employer, including the level or profitability of operations and any plans for future investment, employment and production either in an affected municipality or at another location; and

F. Other information as required by rule by the director.

3. Collective bargaining agreement; precedence. A provision of a collective bargaining agreement that requires greater advance notice than required by this section takes precedence over the requirements of this section.

§ 3203. Severance pay

1. Payments to eligible employees. An employer shall pay to each eligible employee, at the time the employee becomes eligible, an amount equal to twice the employee's average weekly wage multiplied by the number of years and any fractional part of a year that the employee worked at the affected establishment, with a minimum amount of 5 times the employee's average weekly wage.

2. Continuation of health coverage. An employer shall maintain previously existing health benefit coverage for an eligible employee for the earlier of a one-year period from the date the employee becomes eligible and the period until the employee is employed in a position that provides substantially equivalent coverage.

3. Collective bargaining agreement; precedence. A provision of a collective bargaining agreement that requires the payment of severance benefits to an eligible employee that are greater than the benefits required by this section takes precedence over the requirements of this section.

4. Exceptions. A payment for vacation leave or accrued wages or for a reason other than as compensation for a discharge or a layoff is not a severance benefit for the purposes of this section.

§ 3204. Plant closing assistance fund

1. Fund established. The plant closing assistance fund, referred to in this chapter as "the fund," is established. The fund is administered by the director for the purposes provided in this section. Balances in the fund may not lapse and must be carried forward and used for the purposes of this section. The Treasurer of State shall invest unexpended money in the fund, and all proceeds of these investments accrue to the fund.

2. Employer payments. An employer who conducts a mass separation shall pay into the fund an amount equal to 15% of the total wages for the previous 12 months of all eligible employees.

3. Waiver. The director may waive a payment required by subsection 2 in whole or in part upon request from the employer if the employer shows through clear and convincing evidence that the granting of the waiver will:

A. Prevent the depletion of assets necessary for the employer to make severance payments to eligible employees as required by section 3203, subsection 1;

B. Prevent the depletion of assets necessary for the employer to continue health benefit coverage as required by section 3203, subsection 2; or

C. Preserve employment within the State.

A waiver under this subsection may not be granted until after a public hearing has been held in each affected municipality. A waiver must be made in writing stating the reasons for granting the waiver and be made available to an eligible employee, employee organization and affected municipality.

4. Authorized payments. The director may authorize payments from the fund for the following purposes:

A. To provide emergency tax relief for the purposes of continuing public employment where an affected municipality or other political subdivision faces substantial loss of tax receipts from a mass separation;

B. To provide technical assistance in conjunction with the Department of Economic and Community Development or any other appropriate public or private agency, including assistance in securing grants and loans to organizations for planning, starting organizations and arranging long-term financing for the purchase and continued operation of an affected establishment; and

C. The administration of the fund.

§ 3205. Mitigation of liability

An employer is not liable for payments under section 3203, subsection 1 or section 3204, subsection 2 for a mass separation at an employer's affected establishment that is necessitated by a physical calamity, such as a fire, flood or other natural disaster.

§ 3206. Other obligations of affected establishments

1. Offers for sale. In the event of an intended plant closure related to a mass separation, the owner of the affected establishment shall make a good faith offer of sale at fair market value for a plant, equipment and inventory to an interested employee organization, private business concern or government-owned or jointly owned business.

2. No discrimination. An employer may not discriminate against an employee in the terms and conditions of employment as a result of the employee's having reported information concerning possible or actual violations of this chapter to the director.

§ 3207. Powers of director

In administering the responsibilities under this chapter, the director may adopt major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A and compel the attendance of witnesses and the production of any book, paper, file or document.

§ 3208. Suits by employees; municipal residents; employee organizations

1. Suits by an employee, municipal resident or employee organization. An employee, resident of an affected municipality or employee organization affected by an employer's violation of this chapter or a rule or order of the director may bring a civil action in the court of competent jurisdiction of the county in which the affected municipality is located to enforce the provisions of this chapter. Administrative procedures need not be exhausted before a cause of action may be brought under this section. If a court finds that an employer has failed to provide proper notice pursuant to section 3202, the court may enjoin the employer from carrying out the mass separation until the employer complies with the provisions of this chapter. In addition to a judgment awarded to a plaintiff in an action brought under this section, a court may order that the plaintiff's reasonable costs and attorney's fees be paid by the defendant.

2. Suits by the director. The director may supervise a payment and bring a civil action in any court of competent jurisdiction to recover an amount owed under section 3203, subsection 1 and section 3204, subsection 2. A civil action brought under subsection 1 terminates upon filing of a civil action under this subsection, unless the director dismisses with prejudice the action brought under this subsection. The director shall hold a sum recovered on behalf of an employee pursuant to this subsection in a special deposit account until the sum is paid over directly to the employee upon order of the director. A sum recovered on behalf of an employee under this subsection that the director is unable to pay directly to the employee for 3 years after recovery must be paid to the fund.

§ 3209. Violation

A person who knowingly makes a false statement of a material fact or knowingly fails to disclose a material fact in an attempt to influence any action or proceeding under this chapter commits a Class D crime.

SUMMARY

This bill:

1. Requires employers of at least 100 employees to give a one-year notice of an intended mass reduction of employees to the Director of Labor Standards, the employees, the affected municipalities and the relevant employee organizations, to give severance pay to the employees and to continue the employees' health benefits for up to one year after the reduction;
2. Creates a plant closing assistance fund for technical assistance to keep the plant open and reimburse communities for property tax loss, funded by payments from the employer;
3. Requires employers to offer the plant that is closing and its equipment and inventory for sale at fair market prices to interested employee organizations, private business concerns or government-owned or jointly owned businesses; and
4. Allows an employee, affected municipality, employee organization or the Director of Labor Standards to bring an action against an employer who violates the proposed law.