

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1333

H. P. 1060

House of Representatives, March 19, 1979

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Baker of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Provide for Industrial Notification on Plant Closing and Mass Layoffs.

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

26 MRSA c. 7, sub-c. X is enacted to read:

SUBCHAPTER X

NOTIFICATION OF MASS SEPARATION

§ 875. Definitions

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

1. **Affected employee.** "Affected employee" means any employee whose employment is terminated as part of a mass separation.
2. **Affected employee organization.** "Affected employee organization" means any labor union, association or other employee organization which represents any of the employees of an affected establishment for purposes of collective bargaining or other labor-management relations.
3. **Affected establishment.** "Affected establishment" means any establishment of an employer at which any of the employees whose employment will be terminated as part of a mass separation are employed.

4. **Affected municipality.** "Affected municipality" means the city or town in which any affected establishment is located.

5. **Base level of employment.** "Base level of employment" means the lowest number of employees which has been employed by an employer at one establishment during each of at least 48 of the preceding 52 weeks.

6. **Employees.** "Employees" means persons employed within the State on a full-time or part-time basis.

7. **Employer.** "Employer" means any person, corporation, business or other entity which has operated in this State for at least the 5 preceding years either directly or through any related corporation, and which has employed at least 50 persons at one time during at least 6 of the preceding 12 months; provided that "employer" shall not include the State or any of its political subdivisions or any other organization which is exempt from taxation under the United States Internal Revenue Code, Section 501, and further provided that a corporation which acquires the business of an employer shall be deemed to have operated within the State during such period as the acquired employer operated within the State.

8. **Establishment.** "Establishment" means any single manufacturing, mechanical or mercantile establishment, factory, workshop or other place of employment of an employer, which has been in existence for more than 3 years; provided that "establishment" shall not include a temporary construction site.

9. **Mass separation.** "Mass separation" means the termination of employment by an employer within any single 12-month period of either:

A. More than 250 employees of that employer; or

B. A number of employees which reduces the total number of employees at any establishment to less than 50% of the base level of employment at that establishment, or 25 employees, whichever number is greater.

"Mass separation" shall not include any temporary or seasonal discharge or layoff for a specified period of not more than 4 months. Termination of employment of individuals employed at a construction site or other temporary work site not constituting an establishment shall not constitute a mass separation.

10. **Operated loss.** "Operated loss" means the condition of an employer in which the employer experiences a net loss in the employer's aggregate operations over a period of at least 12 months; provided that no net operating loss may be recognized if it results from the extraordinary allocation of costs or revenues between an employer and any related corporation.

11. **Related corporation.** "Related corporation" means a corporation which either owns more than 50% of a subject corporation, is more than 50% owned by a subject corporation or is more than 50% owned by a corporation which also owns more than 50% of a subject corporation.

§ 876. Notice of mass separation

Every employer shall notify in writing the Director of the Bureau of Labor, all employees of each affected establishment, each affected municipality and each affected employee organization at least 12 months prior to the commencement of any mass separation of employees. In any case in which the employer establishes that the mass separation of employees was not foreseen by the employer and that requiring the employer to remain open for the full period of notice would result in an operating loss to the employer attributable to the affected establishments, the Director of the Bureau of Labor may approve a shorter period of notification, and in those cases that may approve a shorter period of notification, and in those cases that notification shall be deemed to constitute compliance with this section. Approval of a shorter notice period shall not be granted unless a public hearing is held in each affected municipality.

1. Inclusion in notice. Notification shall include the number of employees affected by the mass separation, the wages and other compensation paid during the preceding 12 months to those employees, 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, and such other information as the Director of the Bureau of Labor may by rule require.

2. Investigation and action. Upon receipt of a notice, the Director of the Bureau of Labor shall make such investigation and take such action as may assist in maintaining or restoring the level of employment affected by the mass separation, and shall conduct a public hearing in an affected municipality upon request by the affected municipality, and affected employee organization or any 10 affected employees.

3. Waiver of notice. Provisions of any collective bargaining agreement which require greater advance notification than provided by this section shall take precedence over the requirements of this section. Any portion of the required notice may be waived by agreement with not less than 90% of the affected employees and with each affected employee organization.

§ 877. Violations

The Director of the Bureau of Labor and any employee or affected employee organization which is aggrieved by the failure of an employer to comply with this chapter, or by a shortened period of notification by an employer of a mass separation pursuant to an improper approval by the Director of the Bureau of Labor, may bring a civil action in the Superior Court against that employer. If the employer has failed to provide notice as required by this chapter, or provided a shortened period of notice pursuant to an improper approval by the Director of the Bureau of Labor, the court shall enjoin the employer from carrying out any unlawful mass separation until the employer has complied with the requirements of this chapter. Any employee entitled to back pay under this provision shall have an independent right of action against that employer for such compensation.

Any person who knowingly makes any 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 is guilty of a Class D crime.

STATEMENT OF FACT

The purpose of this bill is to require that employers who decide to discharge large numbers of employees in a single year would have to provide one full year's advance notice of that decision. This requirement would at least give time to find alternatives to the closing: State assistance to the employer, a new buyer for the business or purchase of the business by the employees. It would also give the individual employees time to adjust and find new jobs.