

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1455

H.P. 1025

House of Representatives, March 16, 2007

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

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PATRICK of Rumford.  
Cosponsored by Senator BRYANT of Oxford and  
Representatives: BRYANT of Windham, BURNS of Berwick, CARTER of Bethel, CLARK of  
Millinocket, DRISCOLL of Westbrook, GIFFORD of Lincoln, JACKSON of Allagash,  
PINEAU of Jay.

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

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

3 **CHAPTER 37**

4 **MASS TERMINATION NOTIFICATION AND ASSISTANCE**

5 **§3201. Definitions**

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

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

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

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

21 **4. Eligible employee.** "Eligible employee" means an employee who has been  
22 employed at an establishment of an employer for at least a year and whose employment is  
23 terminated as part of a mass separation or who, after receiving a notice under section  
24 3202, voluntarily leaves the establishment for other employment at less than 60% of the  
25 average weekly wage that the employee received at the establishment.

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

29 **6. Employer.** "Employer" means a person, corporation, business or other entity that  
30 has operated in the State for at least the 2 preceding years before giving notice under  
31 section 3202 either directly or through another corporation that either owns more than  
32 50% of the corporation, is more than 50% owned by the corporation or is more than 50%  
33 owned by another corporation that also owns more than 50% of the corporation and  
34 employs at least 100 persons at one time for 3 months or longer during the 2 preceding  
35 years before giving notice under section 3202. A person that has acquired the business of  
36 an employer is deemed to have operated the business for the time that the employer  
37 operated the business. "Employer" does not include the State, a political subdivision or

1 an organization exempt from taxation under the United States Internal Revenue Code,  
2 Section 501.

3 **7. Mass separation.** "Mass separation" means:

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

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

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

17 **§3202. Notice**

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

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

26 A. The reason for the mass separation;

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

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

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

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

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

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

4 **§3203. Severance pay**

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

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

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

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

21 **§3204. Plant closing assistance fund**

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

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

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

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

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

37 C. Preserve employment within the State.

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

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

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

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

15 C. The administration of the fund.

16 **§3205. Mitigation of liability**

17 An employer is not liable for payments under section 3203, subsection 1 or section  
18 3204, subsection 2 for a mass separation at an employer's affected establishment that is  
19 necessitated by a physical calamity, such as a fire, flood or other natural disaster.

20 **§3206. Other obligations of affected establishments**

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

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

28 **§3207. Powers of director**

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

32 **§3208. Suits by employees; municipal residents; employee organizations**

33 **1. Suits by an employee, municipal resident or employee organization.** An  
34 employee, resident of an affected municipality or employee organization affected by an  
35 employer's violation of this chapter or a rule or order of the director may bring a civil  
36 action in the court of competent jurisdiction of the county in which the affected  
37 municipality is located to enforce the provisions of this chapter. Administrative  
38 procedures need not be exhausted before a cause of action may be brought under this

1 section. If a court finds that an employer has failed to provide proper notice pursuant to  
2 section 3202, the court may enjoin the employer from carrying out the mass separation  
3 until the employer complies with the provisions of this chapter. In addition to a judgment  
4 awarded to a plaintiff in an action brought under this section, a court may order that the  
5 plaintiff's reasonable costs and attorney's fees be paid by the defendant.

6 **2. Suits by the director.** The director may supervise a payment and bring a civil  
7 action in any court of competent jurisdiction to recover an amount owed under section  
8 3203, subsection 1 and section 3204, subsection 2. A civil action brought under  
9 subsection 1 terminates upon filing of a civil action under this subsection, unless the  
10 director dismisses with prejudice the action brought under this subsection. The director  
11 shall hold a sum recovered on behalf of an employee pursuant to this subsection in a  
12 special deposit account until the sum is paid over directly to the employee upon order of  
13 the director. A sum recovered on behalf of an employee under this subsection that the  
14 director is unable to pay directly to the employee for 3 years after recovery must be paid  
15 to the fund.

16 **§3209. Violation**

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

20 **SUMMARY**

21 This bill:

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