

CHAPTER 423

AN ACT concerning certain plant closings, transfers, and mass layoffs and amending P.L.2007, c.212.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2007, c.212 (C.34:21-1) is amended to read as follows:

C.34:21-1 Definitions relative to prenotification of certain plant closings, transfers, and mass layoffs.

1. As used in P.L.2007, c.212 (C.34:21-1 et seq.):

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Department" means the Department of Labor and Workforce Development.

"Employer" means an individual or private business entity which employs the workforce at an establishment.

"Establishment" means a place of employment which has been operated by an employer for a period longer than three years, but shall not include a temporary construction site. "Establishment" may be a single location or a group of locations, including any facilities located in this State.

"Facility" means a building.

"Mass layoff" means a reduction in force which is not the result of a transfer or termination of operations and which results in the termination of employment at an establishment during any 30-day period for 50 or more of the employees at or reporting to the establishment.

"Operating unit" means an organizationally distinct product, operation, or specific work function within or across facilities at a single establishment.

"Response team" means the plant closing response team established pursuant to section 5 of P.L.2007, c.212 (C.34:21-5).

"Termination of employment" means the layoff of an employee without a commitment to reinstate the employee to his previous employment within six months of the layoff, except that "termination of employment" shall not mean a voluntary departure or retirement or a discharge or suspension for misconduct of the employee connected with the employment or any layoff of a seasonal employee or refer to any situation in which an employer offers to an employee, at a location inside the State and not more than 50 miles from the previous place of employment, the same employment or a position with equivalent status, benefits, pay and other terms and conditions of employment, and, except that a layoff of more than six months which, at its outset, was announced to be a layoff of six months or less, shall not be treated as a termination of employment under P.L.2007, c.212 (C.34:21-1 et seq.) if the extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and notice is given at the time it becomes reasonably foreseeable that the extension beyond six months will be required.

"Termination of operations" means the permanent or temporary shutdown of a single establishment, or of one or more facilities or operating units within a single establishment, except that "termination of operations" shall not include a termination of operations made necessary because of a fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial sabotage, decertification from participation in the Medicare and Medicaid programs as provided under Titles XVIII and XIX of the federal "Social Security Act," Pub.L. 74-271 (42 U.S.C. s.1395 et seq.) or license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et al.).

"Transfer of operations" means the permanent or temporary transfer of a single establishment, or one or more facilities or operating units within a single establishment, to another location, inside or outside of this State.

2. Section 2 of P.L.2007, c.212 (C.34:21-2) is amended to read as follows:

C.34:21-2 Requirements for establishments subject to transfer, termination of operations, mass layoffs.

2. If an establishment is subject to a transfer of operations or a termination of operations which results, during any continuous period of not more than 30 days, in the termination of employment of 50 or more employees, or if an employer conducts a mass layoff, the employer who operates the establishment or conducts the mass layoff shall:

a. Provide, in the case of an employer who employs 100 or more employees, not less than 90 days, or the period of time required pursuant to the federal "Worker Adjustment and Retraining Notification Act," 29 U.S.C. s.2101 et seq., or any amendments thereto, whichever is longer, before the first termination of employment occurs in connection with the termination or transfer of operations, or mass layoff, notification of the termination or transfer of operations or mass layoff to the Commissioner of Labor and Workforce Development, the chief elected official of the municipality where the establishment is located, each employee whose employment is to be terminated and any collective bargaining units of employees at the establishment;

b. Provide to each employee whose employment is terminated severance pay equal to one week of pay for each full year of employment. If the employer provides any employee with less than the number of days of notification required pursuant to subsection a. of this section, the employer shall provide that employee with an additional four weeks of pay. The rate of severance pay provided by the employer pursuant to this subsection b. shall be the average regular rate of compensation received during the employee's last three years of employment with the employer or the final regular rate of compensation paid to the employee, whichever rate is higher. Severance under this subsection shall be regarded as compensation due to an employee for back pay and losses associated with the termination of the employment relationship, and earned in full upon the termination of the employment relationship, notwithstanding the calculation of the amount of the payment with reference to the employee's length of service. An employer shall provide an employee the severance pay required pursuant to this subsection b. or any severance pay provided by the employer pursuant to a collective bargaining agreement or for any other reason, whichever is greater. Any back pay provided by the employer to the employee pursuant to section 5 of the "Worker Adjustment and Retraining Notification Act," Pub.L.100-379 (29 U.S.C. s.2104), because of a violation of section 3 of that act (29 U.S.C. s. 2102) shall be credited toward meeting the severance pay requirements of this subsection b.; and

c. Provide the response team with the amount of on-site work-time access to the employees of the establishment that the response team determines is necessary for the response team to carry out its responsibilities pursuant to section 5 of P.L.2007, c.212 (C.34:21-5).

In determining whether a termination or transfer of operations or a mass layoff is subject to the notification requirements of this section, any terminations of employment for two or more groups at a single establishment occurring within any 90-day period, when each group has less than the number of terminations which would trigger the notification requirements of this section but the aggregate for all of the groups exceeds that number, shall be regarded as subject to the notification requirements unless the employer demonstrates that the cause of

the terminations for each group is separate and distinct from the causes of the terminations for the other group or groups.

d. For purposes of this section, “employer” includes any individual, partnership, association, corporation, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and includes any person who, directly or indirectly, owns and operates the nominal employer, or owns a corporate subsidiary that, directly or indirectly, owns and operates the nominal employer or makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification.

e. No waiver of the right to severance provided pursuant to this section shall be effective without approval of the waiver by the commissioner or a court of competent jurisdiction.

3. This act shall take effect on the 180th day next following the date of enactment.

Approved January 21, 2020.