

2012 -- S 2378 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RHODE ISLAND WORKER
PROTECTION AND JOB LOSS NOTIFICATION ACT

Introduced By: Senators Crowley, Sosnowski, DeVall, P Fogarty, and Perry

Date Introduced: February 14, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 55

4 RHODE ISLAND WORKER PROTECTION AND JOB LOSS NOTIFICATION ACT

5 **28-55-1. Short title.** – This act shall be known and may be cited as the “Rhode Island
6 Worker Protection and Job Loss Notification Act.”

7 **28-55-2. Definitions relative to notification of certain plant closings, transfers and**
8 **mass layoffs.** – (a) As used in this chapter:

9 (1) “Director” means the director of labor and training;

10 (2) “Department” means the department of labor and training;

11 (3) “Employer” means an individual or private business entity that directly or indirectly
12 owns and operates an establishment that employs the workforce at that establishment;

13 (4) “Employee benefit plan” means an employee welfare benefit plan or an employee
14 pension benefit plan or a plan which is both an employee welfare benefit plan and an employee
15 pension benefit plan.

16 (5) “Establishment” means a single place of employment which has been operated by an
17 employer for a period longer than three (3) years and that employs, or has employed within the
18 preceding twelve (12) months, seventy-five (75) or more persons, but shall not include a

1 temporary facility or a temporary project or undertaking, where the affected employees were
2 hired with the understanding that their employment was limited to the duration of the facility or
3 the project or undertaking. “Establishment” may be a single location or a group of contiguous
4 locations, including groups of facilities which form an office or industrial park or separate
5 facilities just across the street from each other;

6 (6) “Facility” means any location or locations within the state where any part of the
7 employer’s business is performed by its employees;

8 (7) “Full-time employee” means an employee who has worked for the employer for an
9 average of more than twenty (20) hours per week during the preceding six (6) months prior to the
10 notification-triggering event;

11 (8) “Mass layoff” means a reduction in force which is not the result of a transfer or
12 termination of operations and which results in the termination of employment at an establishment
13 during any thirty (30) day period for fifty (50) or more full-time employees or for twenty-five
14 (25) or more of the full-time employees representing one-third (1/3) or more of the full-time
15 employees at the establishment;

16 (9) “Operating unit” means an organizationally distinct product, operation, or specific
17 work function within or across facilities at a single establishment;

18 (10) “Part-time employee” means an employee who is employed for an average of fewer
19 than twenty (20) hours per week or who has been employed for fewer than six (6) of the twelve
20 (12) months preceding the date on which notice is required pursuant to this chapter;

21 (11) “Task force” means the plant closing task force established pursuant to section 28-
22 55-6;

23 (12) “Termination of employment” means the layoff of an employee without a
24 commitment to reinstate the employee to his/her previous employment within six (6) months of
25 the layoff, except that “termination of employment” shall not mean a voluntary departure or
26 retirement or a discharge or suspension for misconduct of the employee connected with the
27 employment or any layoff of a seasonal employee or refer to any situation in which an employer
28 offers to an employee, at a location inside the state and not more than fifty (50) miles from the
29 previous place of employment, the same employment or a position with equivalent status,
30 benefits, pay and other terms and conditions of employment, and, except that a layoff of more
31 than six (6) months which, at its outset, was announced to be a layoff of six (6) months or less,
32 shall not be treated as a termination of employment under this act if the extension beyond six (6)
33 months is caused by business circumstances not reasonably foreseeable at the time of the initial
34 layoff, and notice is given at the time it becomes reasonably foreseeable that the extension

1 beyond six (6) months will be required;

2 (13) "Termination of operations" means the permanent or temporary shutdown of a single
3 establishment, or of one or more facilities or operating units within a single establishment, except
4 that "termination of operations" shall not include a termination of operations made necessary
5 because of fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial
6 sabotage, decertification from participation in the Medicare and Medicaid programs as provided
7 under titles XVIII and XIX of the federal "Social Security Act," Pub. L. 74-271 (42 U.S.C. 1395
8 et seq.) or license revocation;

9 (14) "Transfer of operations" means the permanent or temporary transfer of a single
10 establishment, or one or more facilities or operating units within a single establishment, to
11 another location, inside or outside of this state.

12 **28-55-3. Requirements for establishment subject to transfer, termination of**
13 **operations, mass layoffs.** – (a) If an establishment is subject to a transfer of operations or a
14 termination of operations which results, during any continuous period of not more than thirty (30)
15 days, in the termination of employment of twenty-five (25) or more full-time employees, or if an
16 employer conducts a mass layoff, the employer who operates the establishment or conducts the
17 mass layoff shall:

18 (1) Provide, in the case of an employer who employs seventy-five (75) or more full-time
19 employees, not less than sixty (60) days, or the period of time required pursuant to the federal
20 "Worker Adjustment and Retraining Notification Act," (29 U.S.C. 2101 et seq.), or any
21 amendments thereto, whichever is longer, before the first termination of employment occurs in
22 connection with the termination or transfer of operations, or mass layoff, notification of the
23 termination or transfer of operations or mass layoff to the director of labor and training, the chief
24 elected official of the municipality where the establishment is located, each employee whose
25 employment is to be terminated and any collective bargaining units of employees at the
26 establishment;

27 (2) Provide to each full-time employee whose employment is terminated and to whom the
28 employer provides less than the number of days of notification required pursuant to subsection (a)
29 of this section, severance pay equal to: (i) Back pay for each day of violation. The rate of
30 severance pay provided by the employer pursuant to this subsection shall be the average regular
31 rate of compensation received during the employee's last three (3) years of employment with the
32 employer or the final regular rate of compensation paid to the employee, whichever rate is higher.
33 (ii) Benefits under an employee benefit plan, including the cost of medical expenses incurred
34 during the employment loss which would have been covered under an employee benefit plan if

1 the employment loss had not occurred.

2 (3) Severance pay pursuant to subdivision 28-55-3(a)(2) shall be calculated for the period
3 of the violation, up to a maximum of sixty (60) days, but in no event for more than one-half (1/2)
4 the number of days the employee was employed by the employer.

5 (4) The amount for which an employer is liable under subdivision 28-55-3(a)(2) shall be
6 reduced by:

7 (i) Any wages paid by the employer to the employee for the period of the violation;

8 (ii) Any voluntary and unconditional payment by the employer to the employee that is not
9 required by any legal obligation:

10 (iii) Any payment by the employer to a third party or trustee (such as premiums for health
11 benefits or payments to a defined contribution pension plan) on behalf of and attributable to the
12 employee for the period of the violation. In addition, any liability incurred under subdivision 28-
13 55-3(a)(2) with respect to a defined benefit pension plan may be reduced by crediting the
14 employee with service for all purposes under such a plan for the period of the violation; and

15 (iv) Any back pay and benefits provided by the employer to the employee pursuant to
16 section (5) of the “Worker Adjustment and Retraining Notification Act,” Pub. L. 100-379 (29
17 U.S.C. 2104), because of a violation of section (3) of that act (29 U.S.C. 2102) and;

18 (5) Provide the task force with the amount of on-site work-time access to the employees
19 of the establishment that the task force determines is necessary for the task force to carry out its
20 responsibilities pursuant to section 28-55-6.

21 (b) In determining whether a termination or transfer of operations or a mass layoff is
22 subject to the notification requirements of this section, any terminations of employment for two
23 (2) or more groups at a single establishment occurring within any ninety (90) day period, when
24 each group has less than the number of terminations which would trigger the notification
25 requirements of this section but the aggregate for all of the groups exceeds that number, shall be
26 regarded as subject to the notification requirements unless the employer demonstrates that the
27 cause of the terminations for each group is separate and distinct from the causes of the
28 terminations for the other group or groups.

29 **28-55-4. Contents of required notification.** – (a) The notification provided pursuant to
30 section 28-55-2 of this chapter shall include:

31 (1) A statement of the number of employees whose employment will be terminated in
32 connection with the mass layoff or transfer or termination of operations of the establishment, the
33 date or dates on which the mass layoff or transfer or termination of operations and each
34 termination of employment will occur;

1 (2) A statement of the reasons for the mass layoff or transfer or termination of operations;

2 (3) A statement of any employment available to employees at any other establishment
3 operated by the employer, and information regarding the benefits, pay and other terms and
4 conditions of that employment and the location of the other establishment;

5 (4) A statement of any employee rights with respect to wages, severance pay, benefits,
6 pension or other terms of employment as they relate to the termination, including, but not limited
7 to, any rights based on a collective bargaining agreement or other existing employer policy;

8 (5) A disclosure of the amount of the severance pay which is payable pursuant to the
9 subdivision 28-55-3(a)(2); and

10 (6) A statement of the employees' right to receive from the task force pursuant to
11 subsection 28-55-6(b), information, referral and counseling regarding: public programs which
12 may make it possible to delay or prevent the transfer or termination of operations or mass layoff;
13 public programs and benefits to assist the employees; and employee rights based on law.

14 (b) The notification shall be in writing and, after the director has made a form for the
15 notification available to employers, provided on that form. The director shall make the form
16 available to employers not more than ninety (90) days following the effective date of this chapter.

17 **28-55-5. Construction of chapter relative to collective bargaining agreements.** – This
18 chapter shall not be construed as limiting or modifying any provision of a collective bargaining
19 agreement which requires notification, severance payment or other benefits on terms which are
20 more favorable to employees than those required by this chapter.

21 **28-55-6. Establishment of task force.** – (a) There is established, in the department of
22 labor and training, a task force. The task force shall be approved by the director. The purpose of
23 the task force is to provide appropriate information, referral and counseling, as rapidly as
24 possible, to workers who are subject to plant closings or mass layoffs;

25 (b) In the case of each transfer or termination of the operations in an establishment which
26 results in the termination of the lesser of one-third (1/3) of the employees (in the case of a
27 business with only seventy-five (75) employees) or fifty (50) employees (in the case of a business
28 with greater than one hundred fifty (150) employees), the task force shall:

29 (1) Offer to meet with the representatives of the management of the establishment to
30 discuss available public programs which may make it possible to delay or prevent the transfer or
31 termination of operations, including economic development incentive and workforce
32 development programs;

33 (2) Meet on site with workers and provide information, referral and counseling regarding:

34 (i) Public programs or benefits which may be available to assist the employees, including,

1 but not limited to, unemployment compensation benefits, job training or retraining programs, and
2 job search assistance; and

3 (ii) Employee rights based on this act or any other law which applies to the employees
4 with respect to wages, severance pay, benefits, pensions or other terms of employment as they
5 relate to the termination of employment.

6 **28-55-7. Initiation of suit by aggrieved employee, former employee.** – An aggrieved
7 employee or former employee or his authorized representative may initiate suit in superior court
8 under this act either individually or on behalf of employees or former employees affected by a
9 violation of the provisions of this chapter. If an action is undertaken on behalf of affected
10 employees or former employees, the party initiating the action shall inform the department, which
11 shall notify each affected employee or former employee. If the court finds the employer has
12 violated the provision of this chapter, it shall award to the aggrieved present or former
13 employees: costs of the action, including reasonable attorneys' fees; and compensatory damages,
14 including lost wages, the value of the cost of any benefits to which the employee would have
15 been entitled had his or her employment not been lost, including the cost of any medical expenses
16 incurred by the employee that would have been covered under an employee benefit plan, benefits
17 and other remuneration. Any award of compensatory damages for lost wages shall be limited to
18 the amount of severance pay required pursuant to subdivision 28-55-3(a)(2).

19 **28-55-8. Liability of employer.** – An employer who fails to give notice as required by
20 section 28-55-3 is subject to a civil penalty of not more than five hundred dollars (\$500) per
21 employee affected for each day of the employer's violation. The employer is not subject to a civil
22 penalty under this section, however, if the employer pays to all applicable employees the amounts
23 for which the employer is liable under section 28-55-3 within three (3) weeks from the date the
24 employer actually conducts the mass layoff, relocation, or termination.

25 **28-55-9. Exemption to notification.** – (a) An employer is not required to comply with
26 the notice requirement contained in subdivision 28-55-3(a)(1) if the court determines that all of
27 the following conditions exist:

28 (1) As of the time that notice would have been required, the employer was actively
29 seeking capital or business;

30 (2) The capital or business sought, if obtained, would have enabled the employer to avoid
31 or postpone the relocation or termination;

32 (3) The employer reasonably and in good faith believed that giving the notice required by
33 section (2) would have precluded the employer from obtaining the needed capital or business;

34 (b) The court may not determine that the employer was actively seeking capital or

1 business under subsection (a) unless the employer provides the court with both of the following:

2 (1) A written record consisting of all documents relevant to the determination of whether
3 the employer was actively seeking capital or business;

4 (2) An affidavit verifying the contents of the documents contained in the record;

5 (c) The affidavit provided to the court pursuant to subdivision (b)(2) of this section shall
6 contain a declaration signed under penalty of perjury stating that the affidavit and the contents of
7 the documents contained in the record submitted pursuant to subdivision (b)(1) of this section are
8 true and correct;

9 (d) This section does not apply to notice of a mass layoff as defined in subdivision 28-55-
10 2(7).

11 **28-55-10. Exemption from notification - unforeseen circumstances.** – (a) An employer
12 is not required to provide notice sixty (60) days prior to a termination of operations or mass layoff
13 as provided for in subdivision 28-55-3(a)(1) if the court determines that any one of the following
14 conditions are met:

15 (1) Business circumstances occurred that were not reasonably foreseeable at the time that
16 the sixty (60) day notice would have been required; or

17 (2) The employer must, at the time notice is actually given, provide a statement of
18 explanation for reducing the notice period in addition to the other notice requirements in section
19 28-54-4; or

20 (3) An important indicator of a reasonably unforeseeable business circumstance is that
21 the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside
22 the employer's control; or

23 (4) The employer must exercise commercially reasonable business judgment as would a
24 similarly situated employer in predicting the demands of the employer's particular market. The
25 employer is not required to accurately predict general economic conditions that also may affect
26 demand for products or services.

27 (b) An employer relying on this section shall give as much notice as is practicable. The
28 court shall have discretion to reduce the notification provision from sixty (60) days under this
29 section to a shorter period, and to impose adjusted penalties and liability to employees in concert
30 with this reduction.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RHODE ISLAND WORKER
PROTECTION AND JOB LOSS NOTIFICATION ACT

1 This act would create the “Rhode Island Worker Protection and Job Loss Notification
2 Act” which would require an employer to give certain notifications to employees in businesses
3 with at least seventy-five (75) employees, operating for more than three (3) years, where at least
4 one-third (1/3) of the workforce would be subject to a mass layoff or temporary suspension of
5 work. This act would also create a task force within the department of labor and training to give
6 employment counseling to the employees, and to work with the employer in an attempt to avoid
7 the loss of jobs.

8 This act would take effect upon passage.

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