



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/4/2004, by Carol Ronen

SYNOPSIS AS INTRODUCED:

New Act
820 ILCS 405/235

from Ch. 48, par. 345

Creates the Illinois Worker Adjustment and Retraining Notification Act. Provides that an employer may not order a mass layoff, relocation, or termination of an industrial or commercial facility without first giving 60 days' notice (subject to specified exceptions) to the Department of Labor and the chief elected official of each municipal and county government within which the termination, relocation, or mass layoff occurs. Provides for the imposition of civil penalties for violations and gives remedies to employees. Provides for the reduction of an employer's liability under specified circumstances. Amends the Unemployment Insurance Act to provide that payments to a person by an employer who is liable to that person under the new Act are not considered wages for purposes of unemployment insurance eligibility. Effective immediately.

LRB093 18523 WGH 44243 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Worker Adjustment and Retraining Notification Act.

6 Section 5. Definitions. As used in this Act:

7 (a) "Covered establishment" means any industrial or
8 commercial facility or part thereof that employs, or has
9 employed within the preceding 12 months, 75 or more persons.

10 (b) "Employer" means any person who directly or indirectly
11 owns and operates a covered establishment. A parent corporation
12 is an employer as to any covered establishment directly owned
13 and operated by its corporate subsidiary.

14 (c) "Layoff" means a separation from a position for lack of
15 funds or lack of work.

16 (d) "Mass layoff" means a layoff during any 30-day period
17 of 50 or more employees at a covered establishment.

18 (e) "Relocation" means the removal of all or substantially
19 all of the industrial or commercial operations in a covered
20 establishment to a different location 100 miles or more away.

21 (f) "Termination" means the cessation or substantial
22 cessation of industrial or commercial operations in a covered
23 establishment.

24 (g) "Employee" means a person employed by an employer for
25 at least 6 months of the 12 months preceding the date on which
26 notice is required, except that this Act does not apply to
27 employees who are employed in seasonal employment where the
28 employees were hired with the understanding that their
29 employment was seasonal and temporary.

30 Section 10. Notice.

31 (a) An employer may not order a mass layoff, relocation, or

1 termination at a covered establishment unless, 60 days before
2 the order takes effect, the employer gives written notice of
3 the order to the following:

4 (1) The employees of the covered establishment
5 affected by the order.

6 (2) The Department of Labor, the Department of
7 Employment Security, and the chief elected official of each
8 municipal and county government within which the
9 termination, relocation, or mass layoff occurs.

10 (b) An employer required to give notice of any mass layoff,
11 relocation, or termination under this Act shall include in its
12 notice the elements required by the federal Worker Adjustment
13 and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

14 (c) Notwithstanding the requirements of subdivision (a),
15 an employer is not required to provide notice if a mass layoff,
16 relocation, or termination is necessitated by a physical
17 calamity or act of war.

18 Section 15. Violation; liability.

19 (a) An employer who fails to give notice as required by
20 paragraph (1) of subdivision (a) of Section 10 before ordering
21 a mass layoff, relocation, or termination is liable to each
22 employee entitled to notice who lost his or her employment for:

23 (1) Back pay at the average regular rate of
24 compensation received by the employee during the last three
25 years of his or her employment, or the employee's final
26 rate of compensation, whichever is higher.

27 (2) The value of the cost of any benefits to which the
28 employee would have been entitled had his or her employment
29 not been lost, including the cost of any medical expenses
30 incurred by the employee that would have been covered under
31 an employee benefit plan.

32 (b) Liability under this Section is calculated for the
33 period of the employer's violation, up to a maximum of 60 days,
34 or one-half the number of days that the employee was employed
35 by the employer, whichever period is smaller.

1 (c) The amount of an employer's liability under subdivision
2 (a) is reduced by the following:

3 (1) Any wages, except vacation moneys accrued prior to
4 the period of the employer's violation, paid by the
5 employer to the employee during the period of the
6 employer's violation.

7 (2) Any voluntary and unconditional payments made by
8 the employer to the employee that were not required to
9 satisfy any legal obligation.

10 (3) Any payments by the employer to a third party or
11 trustee, such as premiums for health benefits or payments
12 to a defined contribution pension plan, on behalf of and
13 attributable to the employee for the period of the
14 violation.

15 Section 20. Exceptions.

16 (a) An employer is not required to comply with the notice
17 requirement contained in subdivision (a) of Section 10 if the
18 Department of Labor determines that all of the following
19 conditions exist:

20 (1) As of the time that notice would have been
21 required, the employer was actively seeking capital or
22 business.

23 (2) The capital or business sought, if obtained, would
24 have enabled the employer to avoid or postpone the
25 relocation or termination.

26 (3) The employer reasonably and in good faith believed
27 that giving the notice required by subdivision (a) of
28 Section 10 would have precluded the employer from obtaining
29 the needed capital or business.

30 (b) The Department of Labor may not determine that the
31 employer was actively seeking capital or business under
32 subdivision (a) unless the employer provides the Department
33 with both of the following:

34 (1) A written record consisting of all documents
35 relevant to the determination of whether the employer was

1 actively seeking capital or business, as specified by the
2 Department of Labor.

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

5 (c) The affidavit provided to the Department of Labor
6 pursuant to paragraph (2) of subdivision (b) shall contain a
7 declaration signed under penalty of perjury stating that the
8 affidavit and the contents of the documents contained in the
9 record submitted pursuant to paragraph (1) of subdivision (b)
10 are true and correct.

11 (d) This Section does not apply to notice of a mass layoff
12 as defined by subdivision (d) of Section 5.

13 Section 25. Civil penalty. An employer who fails to give
14 notice as required by paragraph (2) of subdivision (a) of
15 Section 10 is subject to a civil penalty of not more than \$500
16 for each day of the employer's violation. The employer is not
17 subject to a civil penalty under this Section, however, if the
18 employer pays to all applicable employees the amounts for which
19 the employer is liable under Section 15 within 3 weeks from the
20 date the employer orders the mass layoff, relocation, or
21 termination.

22 Section 30. Civil action. A person, including a local
23 government or an employee representative, seeking to establish
24 liability against an employer may bring a civil action on
25 behalf of the person, other persons similarly situated, or
26 both, in any court of competent jurisdiction. The court may
27 award reasonable attorney's fees as part of costs to any
28 plaintiff who prevails in a civil action brought under this
29 Act.

30 Section 35. Reduction of penalty. If the court determines
31 that an employer conducted a reasonable investigation in good
32 faith, and had reasonable grounds to believe that its conduct
33 was not a violation of this Act, the court may reduce the

1 amount of any penalty imposed against the employer under this
2 Act.

3 Section 40. Powers of Director of Labor. In any
4 investigation or proceeding under this Act, the Director of
5 Labor has, in addition to all other powers granted by law, the
6 authority to examine the books and records of an employer.

7 Section 90. The Unemployment Insurance Act is amended by
8 changing Section 235 as follows:

9 (820 ILCS 405/235) (from Ch. 48, par. 345)

10 Sec. 235. The term "wages" does not include:

11 A. That part of the remuneration which, after remuneration
12 equal to \$6,000 with respect to employment has been paid to an
13 individual by an employer during any calendar year after 1977
14 and before 1980, is paid to such individual by such employer
15 during such calendar year; and that part of the remuneration
16 which, after remuneration equal to \$6,500 with respect to
17 employment has been paid to an individual by an employer during
18 each calendar year 1980 and 1981, is paid to such individual by
19 such employer during that calendar year; and that part of the
20 remuneration which, after remuneration equal to \$7,000 with
21 respect to employment has been paid to an individual by an
22 employer during the calendar year 1982 is paid to such
23 individual by such employer during that calendar year.

24 With respect to the first calendar quarter of 1983, the
25 term "wages" shall include only the remuneration paid to an
26 individual by an employer during such quarter with respect to
27 employment which does not exceed \$7,000. With respect to the
28 three calendar quarters, beginning April 1, 1983, the term
29 "wages" shall include only the remuneration paid to an
30 individual by an employer during such period with respect to
31 employment which when added to the "wages" (as defined in the
32 preceding sentence) paid to such individual by such employer
33 during the first calendar quarter of 1983, does not exceed

1 \$8,000.

2 With respect to the calendar year 1984, the term "wages"
3 shall include only the remuneration paid to an individual by an
4 employer during that period with respect to employment which
5 does not exceed \$8,000; with respect to calendar years 1985,
6 1986 and 1987, the term "wages" shall include only the
7 remuneration paid to such individual by such employer during
8 that calendar year with respect to employment which does not
9 exceed \$8,500.

10 With respect to the calendar years 1988 through 2003 and
11 calendar year 2005 and each calendar year thereafter, the term
12 "wages" shall include only the remuneration paid to an
13 individual by an employer during that period with respect to
14 employment which does not exceed \$9,000.

15 With respect to the calendar year 2004, the term "wages"
16 shall include only the remuneration paid to an individual by an
17 employer during that period with respect to employment which
18 does not exceed \$9,800. With respect to the calendar years 2005
19 through 2009, the term "wages" shall include only the
20 remuneration paid to an individual by an employer during that
21 period with respect to employment which does not exceed the
22 following amounts: \$10,500 with respect to the calendar year
23 2005; \$11,000 with respect to the calendar year 2006; \$11,500
24 with respect to the calendar year 2007; \$12,000 with respect to
25 the calendar year 2008; and \$12,300 with respect to the
26 calendar year 2009.

27 With respect to the calendar year 2010 and each calendar
28 year thereafter, the term "wages" shall include only the
29 remuneration paid to an individual by an employer during that
30 period with respect to employment which does not exceed the sum
31 of the wage base adjustment applicable to that year pursuant to
32 Section 1400.1, plus the maximum amount includable as "wages"
33 pursuant to this subsection with respect to the immediately
34 preceding calendar year. Notwithstanding any provision to the
35 contrary, the maximum amount includable as "wages" pursuant to
36 this Section shall not be less than \$12,300 or greater than

1 \$12,960 with respect to any calendar year after calendar year
2 2009.

3 The remuneration paid to an individual by an employer with
4 respect to employment in another State or States, upon which
5 contributions were required of such employer under an
6 unemployment compensation law of such other State or States,
7 shall be included as a part of the remuneration herein referred
8 to. For the purposes of this subsection, any employing unit
9 which succeeds to the organization, trade, or business, or to
10 substantially all of the assets of another employing unit, or
11 to the organization, trade, or business, or to substantially
12 all of the assets of a distinct severable portion of another
13 employing unit, shall be treated as a single unit with its
14 predecessor for the calendar year in which such succession
15 occurs, and any employing unit which is owned or controlled by
16 the same interests which own or control another employing unit
17 shall be treated as a single unit with the unit so owned or
18 controlled by such interests for any calendar year throughout
19 which such ownership or control exists. This subsection applies
20 only to Sections 1400, 1405A, and 1500.

21 B. The amount of any payment (including any amount paid by
22 an employer for insurance or annuities, or into a fund, to
23 provide for any such payment), made to, or on behalf of, an
24 individual or any of his dependents under a plan or system
25 established by an employer which makes provision generally for
26 individuals performing services for him (or for such
27 individuals generally and their dependents) or for a class or
28 classes of such individuals (or for a class or classes of such
29 individuals and their dependents), on account of (1) sickness
30 or accident disability (except those sickness or accident
31 disability payments which would be includable as "wages" in
32 Section 3306(b)(2)(A) of the Federal Internal Revenue Code of
33 1954, in effect on January 1, 1985, such includable payments to
34 be attributable in such manner as provided by Section 3306(b)
35 of the Federal Internal Revenue Code of 1954, in effect on
36 January 1, 1985), or (2) medical or hospitalization expenses in

1 connection with sickness or accident disability, or (3) death.

2 C. Any payment made to, or on behalf of, an employee or his
3 beneficiary which would be excluded from "wages" by
4 subparagraph (A), (B), (C), (D), (E), (F) or (G), of Section
5 3306(b)(5) of the Federal Internal Revenue Code of 1954, in
6 effect on January 1, 1985.

7 D. The amount of any payment on account of sickness or
8 accident disability, or medical or hospitalization expenses in
9 connection with sickness or accident disability, made by an
10 employer to, or on behalf of, an individual performing services
11 for him after the expiration of six calendar months following
12 the last calendar month in which the individual performed
13 services for such employer.

14 E. Remuneration paid in any medium other than cash by an
15 employing unit to an individual for service in agricultural
16 labor as defined in Section 214.

17 F. The amount of any supplemental payment made by an
18 employer to an individual performing services for him, other
19 than remuneration for services performed, under a shared work
20 plan approved by the Director pursuant to Section 407.1.

21 G. 1. Payments to a person under subdivision (a) of Section
22 15 of the Illinois Worker Adjustment and Retraining
23 Notification Act by an employer who has failed to provide the
24 advance notice of facility closure required by that Act or the
25 federal Worker Adjustment and Retraining Notification Act (29
26 U.S.C. Sec. 2101 et seq.).

27 2. Benefits payable under this Act may not be denied or
28 reduced because of the receipt of payments related to an
29 employer's violation of the Illinois Worker Adjustment and
30 Retraining Notification Act or the federal Worker Adjustment
31 and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

32 (Source: P.A. 93-634, eff. 1-1-04.)

33 Section 97. Severability. The provisions of this Act are
34 severable under Section 1.31 of the Statute on Statutes.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.