

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) "Affected employees" means employees who may
8 reasonably be expected to experience an employment loss as a
9 consequence of a proposed plant closing or mass layoff by their
10 employer.

11 (b) "Employment loss" means:

12 (1) an employment termination, other than a discharge
13 for cause, voluntary departure, or retirement;

14 (2) a layoff exceeding 6 months; or

15 (3) a reduction in hours of work of more than 50%
16 during each month of any 6-month period.

17 "Employment loss" does not include instances when the plant
18 closing or layoff is the result of the relocation or
19 consolidation of part or all of the employer's business and,
20 before the closing or layoff, the employer offers to transfer
21 the employee to a different site of employment within a
22 reasonable commuting distance with no more than a 6-month break
23 in employment, or the employer offers to transfer the employee
24 to any other site of employment, regardless of distance, with
25 no more than a 6-month break in employment, and the employee
26 accepts within 30 days of the offer or of the closing or
27 layoff, whichever is later.

28 (c) "Employer" means any business enterprise that employs:

29 (1) 75 or more employees, excluding part-time
30 employees; or

31 (2) 75 or more employees who in the aggregate work at
32 least 4,000 hours per week (exclusive of hours of

1 overtime).

2 (d) "Mass layoff" means a reduction in force which:

3 (1) is not the result of a plant closing; and

4 (2) results in an employment loss at the single site of
5 employment during any 30-day period for:

6 (A) at least 33% of the employees (excluding any
7 part-time employees) and at least 25 employees
8 (excluding any part-time employees); or

9 (B) at least 250 employees (excluding any
10 part-time employees).

11 (e) "Part-time employee" means an employee who is employed
12 for an average of fewer than 20 hours per week or who has been
13 employed for fewer than 6 of the 12 months preceding the date
14 on which notice is required.

15 (f) "Plant closing" means the permanent or temporary
16 shutdown of a single site of employment, or one or more
17 facilities or operating units within a single site of
18 employment, if the shutdown results in an employment loss at
19 the single site of employment during any 30-day period for 50
20 or more employees excluding any part-time employees.

21 (g) "Representative" means an exclusive representative of
22 employees within the meaning of Section 9(a) or 8(f) of the
23 National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or
24 Section 2 of the Railway Labor Act (45 U.S.C. 152).

25 Section 10. Notice.

26 (a) An employer may not order a mass layoff, relocation, or
27 employment loss unless, 60 days before the order takes effect,
28 the employer gives written notice of the order to the
29 following:

30 (1) affected employees and representatives of affected
31 employees; and

32 (2) the Department of Commerce and Economic
33 Opportunity and the chief elected official of each
34 municipal and county government within which the
35 employment loss, relocation, or mass layoff occurs.

1 (b) An employer required to give notice of any mass layoff,
2 relocation, or employment loss under this Act shall include in
3 its notice the elements required by the federal Worker
4 Adjustment and Retraining Notification Act (29 U.S.C. 2101 et
5 seq.).

6 (c) Notwithstanding the requirements of subsection (a), an
7 employer is not required to provide notice if a mass layoff,
8 relocation, or employment loss is necessitated by a physical
9 calamity or an act of terrorism or war.

10 (d) The mailing of notice to an employee's last known
11 address or inclusion of notice in the employee's paycheck shall
12 be considered acceptable methods for fulfillment of the
13 employer's obligation to give notice to each affected employee
14 under this Act.

15 (e) In the case of a sale of part or all of an employer's
16 business, the seller shall be responsible for providing notice
17 for any plant closing or mass layoff in accordance with this
18 Section, up to and including the effective date of the sale.
19 After the effective date of the sale of part or all of an
20 employer's business, the purchaser shall be responsible for
21 providing notice for any plant closing or mass layoff in
22 accordance with this Section. Notwithstanding any other
23 provision of this Act, any person who is an employee of the
24 seller (other than a part-time employee) as of the effective
25 date of the sale shall be considered an employee of the
26 purchaser immediately after the effective date of the sale.

27 (f) An employer which is receiving State or local economic
28 development incentives for doing or continuing to do business
29 in this State may be required to provide additional notice
30 pursuant to Section 15 of the Business Economic Support Act.

31 (g) The rights and remedies provided to employees by this
32 Act are in addition to, and not in lieu of, any other
33 contractual or statutory rights and remedies of the employees,
34 and are not intended to alter or affect such rights and
35 remedies, except that the period of notification required by
36 this Act shall run concurrently with any period of notification

1 required by contract or by any other law.

2 (h) It is the sense of the General Assembly that an
3 employer who is not required to comply with the notice
4 requirements of this Section should, to the extent possible,
5 provide notice to its employees about a proposal to close a
6 plant or permanently reduce its workforce.

7 Section 15. Exceptions.

8 (a) In the case of a plant closing, an employer is not
9 required to comply with the notice requirement in subsection
10 (a) of Section 10 if:

11 (1) the Department of Labor determines:

12 (A) at the time that notice would have been
13 required, the employer was actively seeking capital or
14 business; and

15 (B) the capital or business sought, if obtained,
16 would have enabled the employer to avoid or postpone
17 the relocation or termination; and

18 (C) the employer reasonably and in good faith
19 believed that giving the notice required by subsection
20 (a) of Section 10 would have precluded the employer
21 from obtaining the needed capital or business; or

22 (2) the Department of Labor determines that the need
23 for a notice was not reasonably foreseeable at the time the
24 notice would have been required.

25 (b) To determine whether the employer was actively seeking
26 capital or business, or that the need for notice was not
27 reasonably foreseeable under subsection (a), the employer
28 shall provide to the Department of Labor:

29 (1) a written record consisting of those documents
30 relevant to the determination of whether the employer was
31 actively seeking capital or business, or that the need for
32 notice was not reasonably foreseeable; and

33 (2) an affidavit verifying the contents of the
34 documents contained in the record.

35 (c) An employer is not required to comply with the notice

1 requirement in subsection (a) of Section 10 if:

2 (1) the plant closing is of a temporary facility or the
3 plant closing or layoff is the result of the completion of
4 a particular project or undertaking, and the affected
5 employees were hired with the understanding that their
6 employment was limited to the duration of the facility or
7 the project or undertaking; or

8 (2) the closing or layoff constitutes a strike or
9 constitutes a lockout not intended to evade the
10 requirements of this Act. Nothing in this Act shall require
11 an employer to serve written notice when permanently
12 replacing a person who is deemed to be an economic striker
13 under the National Labor Relations Act (29 U.S.C. 151 et
14 seq.). Nothing in this Act shall be deemed to validate or
15 invalidate any judicial or administrative ruling relating
16 to the hiring of permanent replacements for economic
17 strikers under the National Labor Relations Act.

18 (d) An employer relying on this Section shall provide as
19 much notice as is practicable and at that time shall provide a
20 brief statement of the basis for reducing the notification
21 period.

22 Section 20. Extension of layoff period. A layoff of more
23 than 6 months which, at its outset, was announced to be a
24 layoff of 6 months or less shall be treated as an employment
25 loss under this Act unless:

26 (1) the extension beyond 6 months is caused by business
27 circumstances (including unforeseeable changes in price or
28 cost) not reasonably foreseeable at the time of the initial
29 layoff; and

30 (2) notice is given at the time it becomes reasonably
31 foreseeable that the extension beyond 6 months will be
32 required.

33 Section 25. Determinations with respect to employment
34 loss. In determining whether a plant closing or mass layoff has

1 occurred or will occur, employment losses for 2 or more groups
2 at a single site of employment, each of which is less than the
3 minimum number of employees specified in subsection (d) or (f)
4 of Section 5 of this Act but which in the aggregate exceed that
5 minimum number, and which occur within any 90-day period shall
6 be considered to be a plant closing or mass layoff unless the
7 employer demonstrates that the employment losses are the result
8 of separate and distinct actions and causes and are not an
9 attempt by the employer to evade the requirements of this Act.

10 Section 30. Powers of Director of Labor.

11 (a) Pursuant to the Illinois Administrative Procedure Act,
12 the Director of Labor shall prescribe such rules as may be
13 necessary to carry out this Act. The rules shall, at a minimum,
14 include provisions that allow the parties access to
15 administrative hearings for any actions of the Department under
16 this Act. The provisions of the Administrative Review Law, and
17 the rules adopted pursuant thereto, apply to and govern all
18 proceedings for the judicial review of decisions under this
19 Act.

20 (b) In any investigation or proceeding under this Act, the
21 Director of Labor has, in addition to all other powers granted
22 by law, the authority to examine the books and records of an
23 employer, but only to the extent to determine whether a
24 violation of this Act has occurred.

25 (c) Except as provided in this Section, information
26 obtained from any employer subject to this Act regarding the
27 books, records, or wages paid to workers during the
28 administration of this Act shall:

29 (1) be confidential;

30 (2) not be published or open to public inspection;

31 (3) not be used in any court in any pending action or
32 proceeding; and

33 (4) not be admissible in evidence in any action or
34 proceeding other than one arising out of this Act.

35 (d) No finding, determination, decision, ruling, or order

1 (including any finding of fact, statement, or conclusion made
2 therein) issued pursuant to this Act shall be admissible or
3 used in evidence in any action other than one arising out of
4 this Act, nor shall it be binding or conclusive except as
5 provided in the Act, nor shall it constitute res judicata,
6 regardless of whether the actions were between the same or
7 related parties or involved the same facts.

8 (e) Any officer or employer of this State, any officer or
9 employee of any entity authorized to obtain information
10 pursuant to this Section, and any agent of this State or of
11 such entity who, except with authority of the Director under
12 this Section, discloses information is guilty of a Class B
13 misdemeanor and is disqualified from holding any appointment or
14 employment by the State.

15 (f) The Director of Labor has the authority to determine
16 any liabilities or civil penalties under Section 35 and Section
17 40 of this Act.

18 Section 35. Violation; liability.

19 (a) An employer who fails to give notice as required by
20 paragraph (1) of subsection (a) of Section 10 before ordering a
21 mass layoff, relocation, or employment loss 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 subsection
2 (a) is reduced by the following:

3 (1) Any wages, except vacation moneys accrued before
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 (4) Any liability paid by the employer under federal
16 law.

17 (d) Any liability incurred by an employer under subsection
18 (a) of this Section with respect to a defined benefit pension
19 plan may be reduced by crediting the employee with service for
20 all purposes under such a plan for the period of the violation.

21 (e) If an employer proves to the satisfaction of the
22 Director that the act or omission that violated this Act was in
23 good faith and that the employer had reasonable grounds for
24 believing that the act or omission was not a violation of this
25 Act, the Director may in his or her discretion reduce the
26 amount of liability provided for in this Section.

27 Section 40. Civil penalty.

28 (a) An employer who fails to give notice as required by
29 paragraph (2) of subsection (a) of Section 10 is subject to a
30 civil penalty of not more than \$500 for each day of the
31 employer's violation. The employer is not subject to a civil
32 penalty under this Section if the employer pays to all
33 applicable employees the amounts for which the employer is
34 liable under Section 35 within 3 weeks from the date the
35 employer orders the mass layoff, relocation, or employment

1 loss.

2 (b) The total amount of penalties for which an employer may
3 be liable under this Section shall not exceed the maximum
4 amount of penalties for which the employer may be liable under
5 federal law for the same violation.

6 (c) Any penalty amount paid by the employer under federal
7 law shall be considered a payment made under this Act.

8 (d) If an employer proves to the satisfaction of the
9 Director that the act or omission that violated this Act was in
10 good faith and that the employer had reasonable grounds for
11 believing that the act or omission was not a violation of this
12 Act, the Director may in his or her discretion reduce the
13 amount of the penalty provided for in this Section.

14 Section 45. Advisory notice from Department of Commerce and
15 Economic Opportunity. Before September 30 of each year, the
16 Department of Commerce and Economic Opportunity, with the
17 cooperation of the Department of Employment Security, must
18 issue a written notice to each employer that reported to the
19 Department of Employment Security that the employer paid wages
20 to 75 or more individuals with respect to any quarter in the
21 immediately preceding calendar year. The notice must indicate
22 that the employer may be subject to this Act and must generally
23 advise the employer about the requirements of this Act and the
24 remedies provided for violations of this Act.

25 Section 50. Applicability. This Act applies to plant
26 closings or relocations occurring on or after January 1, 2005.

27 Section 55. Interpretation. Whenever possible, this Act
28 shall be interpreted in a manner consistent with the federal
29 Worker Adjustment and Retraining Notification Act and the
30 federal regulations and court decisions interpreting that Act
31 to the extent that the provisions of federal and State law are
32 the same.

1 (20 ILCS 1005/1005-60 rep.)

2 Section 85. The Department of Employment Security Law of
3 the Civil Administrative Code of Illinois is amended by
4 repealing Section 1005-60.

5 Section 90. The Unemployment Insurance Act is amended by
6 adding Section 500.1 as follows:

7 (820 ILCS 405/500.1 new)

8 Sec. 500.1. Illinois Worker Adjustment and Retraining
9 Notification Act; federal Worker Adjustment and Retraining
10 Notification Act. Benefits payable under this Act may not be
11 denied or reduced because of the receipt of payments related to
12 an employer's violation of the Illinois Worker Adjustment and
13 Retraining Notification Act or the federal Worker Adjustment
14 and Retraining Notification Act (29 U.S.C. 2101 et seq.).

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

17 Section 99. Effective date. This Act takes effect January
18 1, 2005.