The Commonwealth of Massachusetts

PRESENTED BY:

Daniel J. Hunt

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the notification of large job layoffs.

PETITION OF:

<table>
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<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
<th>DATE ADDED</th>
</tr>
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<tbody>
<tr>
<td>Daniel J. Hunt</td>
<td>13th Suffolk</td>
<td>1/17/2019</td>
</tr>
<tr>
<td>Daniel R. Cullinane</td>
<td>12th Suffolk</td>
<td>2/1/2019</td>
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By Mr. Hunt of Boston, a petition (accompanied by bill, House, No. 1640) of Daniel J. Hunt and Daniel R. Cullinane for legislation to require certain notices prior to plant closings or layoffs. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3148 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the notification of large job layoffs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 71A of chapter 151A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 4, the word "voluntary."

SECTION 2. Section 71A of chapter 151A, as so appearing, is hereby further amended by inserting before the word “as,” in line 13, the following words: - “, or mass layoff”

SECTION 3. Section 71A of chapter 151A, as so appearing, is hereby further amended by inserting before the word “as,” in line 16, the following words: - “, or mass layoff”

SECTION 4. Section 71A of chapter 151A, as so appearing, is hereby further amended by
inserting after the thirteenth paragraph the following paragraph:— "Mass Layoff,' the reduction, during any 30 days, of an employer's workforce, within a single municipality or employment site, that is not the result of a plant closing or partial closing that affects either at least 25 workers and 25 percent of the workforce, or at least 200 workers."

SECTION 5. Section 71A of chapter 151A, as so appearing, is hereby further amended by striking out, in lines 48-49, the words “a significant number of employees of said facility” and inserting in place thereof the following words:— “at least 25 workers and 25 percent of the workforce, or at least 200 workers.”

SECTION 6. Section 71A of chapter 151A, as so appearing, is hereby further amended by inserting after the word “employer,” in line 81, the following words:— “, or employer performing a mass layoff.”

SECTION 7. Subsection (a) of section 71B of chapter 151A, as so appearing, is hereby amended by striking out subsection (a) and inserting in place the following subsection:—

(a) An employer may not order a plant closing, partial closing, or mass layoff unless 60 days prior to such plant closing, partial closing, or mass layoff, the employer gives written notice of
the order to the commissioner, in such form and manner as the commissioner prescribes,
such information as may be necessary to determine an employee's reemployment assistance
benefits rights under section 71A to 71G, inclusive. An employer giving such notice shall
include in its notice the elements required by the Worker Adjustment and Notification Act (29
U.S.C. Sec. 2101 et. Seq.). The commissioner, after making such inquiries and investigations as
deemed necessary, shall certify whether a plant closing, partial closing, or mass layoff has
occurred or will occur.

(1) The commissioner shall certify that a plant closing has or will occur if the
commissioner determines that at least ninety per cent of the employees of a facility have been or
will be
permanently separated within the six month period prior to the date of certification or
within
such other period as the commissioner shall prescribe; provided that, such period shall
fall within six month period prior to the date of certification. The commissioner shall give notice
of the determination regarding certification to the employer and if the employees are represented
by a labor union to such union and to any other person or organization that the commissioner
determines is an interested party.

(2) The commissioner shall certify that a partial closing has or will occur if the
commissioner
determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers have been or will be permanently separated within the six month period prior to the date of certification or within such other period as the commissioner shall prescribe; provided that, such period shall fall within six month period prior to the date of certification. The commissioner shall give notice of the determination regarding certification to the employer and if the employees are represented by a labor union to such union and to any other person or organization that the commissioner determines is an interested party.

(3) The commissioner shall certify that a mass layoff has or will occur if the commissioner determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers have been or will be permanently separated within the six month period prior to the date of certification or within such other period as the commissioner shall prescribe; provided that, such period shall fall within six month period prior to the date of certification. The commissioner shall give notice of the determination regarding certification to the employer and if the employees are represented by a labor union to such union and to any other person or organization that the commissioner determines is an interested party.

SECTION 8. Section 71B of chapter 151A, as so appearing, is hereby amended by inserting after subsection (c) the following subsections:--
(d) An employer who fails to give notice as required by this section before ordering a plant closing, partial closing, or mass layoff, is liable to each employee entitled to notice who lost his or her employment for:

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

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

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

(e) The amount of an employer's liability under subdivision (d) is reduced by the following:
(1) Any wages, except vacation moneys accrued prior to the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

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

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

(f) Notwithstanding the requirements of subdivision (a), an employer is not required to provide notice if a plant closing, partial closing, or mass layoff, is necessitated by a physical calamity or act of war.

(g) An employer is not required to comply with the notice requirement contained in this section if the commissioner determines that all of the following conditions exist:

(1) As of the time that notice would have been required, the employer was actively seeking capital or business.
The capital or business sought, if obtained, would have enabled the employer to avoid
postpone the plant closing, partial closing, or mass layoff.

The employer reasonably and in good faith believed that giving the notice required by
section would have precluded the employer from obtaining the needed capital or
business.

The commissioner may not determine that the employer was actively seeking capital
or
business under paragraph (g) unless the employer provides the department with both of
the
following:

(1) A written record consisting of all documents relevant to the determination of whether
the
employer was actively seeking capital or business, as specified by the commissioner.

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

(i) The affidavit provided to the commissioner pursuant to paragraph (h)(2) of this section
shall
contain a declaration signed under penalty of perjury stating that the affidavit and the
contents of the documents contained in the record submitted pursuant to paragraph (h)(1) of this
section are true and correct.

SECTION 9. Chapter 151A, as so appearing, is hereby amended by striking out section
71C, and inserting in place thereof the following section: --

"Any proposed regulations to be issued pursuant to section 71B shall be filed with the
clerk of
the house and the clerk of the senate thirty days before publishing a notice of a public
hearing,
pursuant to section 2 of chapter 30A.

SECTION 10. Section 71D of chapter 151A, as so appearing, is hereby amended by
inserting after the words “partial closings,” in line 5, the following words:-- “or mass layoff"

SECTION 11. Section 71F of chapter 151A, as so appearing, is hereby amended by
inserting after the words "partial closing," in line 6, the following words:-- ", or mass
layoff"

SECTION 12. This act shall take effect upon its passage.