

HOUSE No. 1998

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:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/16/2021</i>

HOUSE No. 1998

By Mr. Hunt of Boston, a petition (accompanied by bill, House, No. 1998) of Daniel J. Hunt 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. 1640 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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:

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

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

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

7 SECTION 4. Section 71A of chapter 151A, as so appearing, is hereby further amended
8 by inserting after the thirteenth paragraph the following paragraph:- "'Mass Layoff,' the
9 reduction, during any 30 days, of an employer's workforce, within a single municipality or

10 employment site, that is not the result of a plant closing or partial closing that affects either at
11 least 25 workers and 25 percent of the workforce, or at least 200 workers."

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

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

19 SECTION 7. Subsection (a) of section 71B of chapter 151A, as so appearing, is hereby
20 amended by striking out subsection (a) and inserting in place the following subsection:-- (a) An
21 employer may not order a plant closing, partial closing, or mass layoff unless 60 days prior to
22 such plant closing, partial closing, or mass layoff, the employer gives written notice of the order
23 to the commissioner, in such form and manner as the commissioner prescribes, such information
24 as may be necessary to determine an employee's reemployment assistance benefits rights under
25 section 71A to 71G, inclusive. An employer giving such notice shall include in its notice the
26 elements required by the Worker Adjustment and Notification Act (29 U.S.C. Sec. 2101 et.
27 Seq.). The commissioner, after making such inquiries and investigations as deemed necessary,
28 shall certify whether a plant closing, partial closing, or mass layoff has occurred or will occur.
29 (1) The commissioner shall certify that a plant closing has or will occur if the commissioner
30 determines that at least ninety per cent of the employees of a facility have been or will be
31 permanently separated within the six month period prior to the date of certification or within

32 such other period as the commissioner shall prescribe; provided that, such period shall fall within
33 six month period prior to the date of certification. The commissioner shall give notice of the
34 determination regarding certification to the employer and if the employees are represented by a
35 labor union to such union and to any other person or organization that the commissioner
36 determines is an interested party. (2) The commissioner shall certify that a partial closing has or
37 will occur if the commissioner

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

52 SECTION 8. Section 71B of chapter 151A, as so appearing, is hereby amended by
53 inserting after subsection (c) the following subsections:--

54 (d) An employer who fails to give notice as required by this section before ordering a
55 plant
56 closing, partial closing, or mass layoff, is liable to each employee entitled to notice who
57 lost his
58 or her employment for: (1) Back pay at the average regular rate of compensation received
59 by the employee during the last three years of his or her employment, or the employee's final
60 rate of compensation,
61 whichever is higher. (2) The value of the cost of any benefits to which the employee
62 would have been entitled had his or her employment not been lost, including the cost of any
63 medical expenses incurred by the employee that would have been covered under an employee
64 benefit plan. (3) Liability under this section is calculated for the period of the employer's
65 violation, up to a
66 maximum of 60 days, or one-half the number of days that the employee was employed by
67 the employer, whichever period is smaller.

68 (e) The amount of an employer's liability under subdivision (d) is reduced by the
69 following: (1) Any wages, except vacation moneys accrued prior to the period of the employer's
70 violation, paid by the employer to the employee during the period of the employer's violation. (2)
71 Any voluntary and unconditional payments made by the employer to the employee that were not
72 required to satisfy any legal obligation. (3) Any payments by the employer to a third party or
73 trustee, such as premiums for health benefits or payments to a defined contribution pension plan,
74 on behalf of and attributable to the employee for the period of the violation.

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

80 (g) An employer is not required to comply with the notice requirement contained in this
81 section

82 if the commissioner determines that all of the following conditions exist: (1) As of the
83 time that notice would have been required, the employer was actively seeking capital or business.

84 (2) The capital or business sought, if obtained, would have enabled the employer to avoid or
85 postpone the plant closing, partial closing, or mass layoff. (3) The employer reasonably and in
86 good faith believed that giving the notice required by this

87 section would have precluded the employer from obtaining the needed capital or
88 business.

89 (h) The commissioner may not determine that the employer was actively seeking capital
90 or business under paragraph

91 (g) unless the employer provides the department with both of the following:(1) A written
92 record consisting of all documents relevant to the determination of whether the employer was
93 actively seeking capital or business, as specified by the commissioner. (2) An affidavit verifying
94 the contents of the documents contained in the record.

95 (i) The affidavit provided to the commissioner pursuant to paragraph

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

99 SECTION 9. Chapter 151A, as so appearing, is hereby amended by striking out section
100 71C, and inserting in place thereof the following section: -- "Any proposed regulations to be
101 issued pursuant to section 71B shall be filed with the clerk of the house and the clerk of the
102 senate thirty days before publishing a notice of a public hearing, pursuant to section 2 of chapter
103 30A.

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

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

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

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