

2011 -- S 0421

=====
LC01444
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

—————
A N A C T

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

Introduced By: Senators Crowley, DeVall, Jabour, Sheehan, and Metts

Date Introduced: March 10, 2011

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 54

4 RHODE ISLAND WORKER PROTECTION AND JOB LOSS NOTIFICATION ACT

5 **28-54-1. Short title.** – This act shall be known and may be cited as the “Rhode Island
6 Worker Protection and Job Loss Notification Act.”

7 **28-54-2. 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) “Establishment” means a single place of employment which has been operated by an
14 employer for a period longer than three (3) years and that employs, or has employed within the
15 preceding twelve (12) months, seventy-five (75) or more persons, but shall not include a
16 temporary construction site. “Establishment” may be a single location or a group of contiguous
17 locations, including groups of facilities which form an office or industrial park or separate
18 facilities just across the street from each other;

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

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

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

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

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

16 (10) “Response team” means the plant closing response team established pursuant to
17 section 5 of this chapter;

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

31 (12) “Termination of operations” means the permanent or temporary shutdown of a single
32 establishment, or of one or more facilities or operating units within a single establishment, except
33 that “termination of operations” shall not include a termination of operations made necessary
34 because of fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial

1 sabotage, decertification from participation in the Medicare and Medicaid programs as provided
2 under titles XVIII and XIX of the federal “Social Security Act,” Pub. L. 74-271 (42 U.S.C. 1395
3 et seq.) or license revocation;

4 (13) “Transfer of operations” means the permanent or temporary transfer of a single
5 establishment, or one or more facilities or operating units within a single establishment, to
6 another location, inside or outside of this state.

7 **28-54-3. Requirements for establishment subject to transfer, termination of**
8 **operations, mass layoffs.** – (a) If an establishment is subject to a transfer of operations or a
9 termination of operations which results, during any continuous period of not more than thirty (30)
10 days, in the termination of employment of twenty-five (25) or more full-time employees, or if an
11 employer conducts a mass layoff, the employer who operates the establishment or conducts the
12 mass layoff shall:

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

22 (2) Provide to each full-time employee whose employment is terminated and to whom the
23 employer provides less than the number of days of notification required pursuant to subsection (a)
24 of this section, severance pay equal to one week of pay for each full year of employment. The rate
25 of severance pay provided by the employer pursuant to this subsection (b) shall be the average
26 regular rate of compensation received during the employee’s last three (3) years of employment
27 with the employer or the final regular rate of compensation paid to the employee, whichever rate
28 is higher. The severance pay provided by the employer pursuant to this subsection (b) shall be in
29 addition to any severance pay provided by the employer pursuant to a collective bargaining
30 agreement or for any other reason, except that any back pay provided by the employer to the
31 employee pursuant to section (5) of the “Worker Adjustment and Retraining Notification Act,”
32 Pub. L. 100-379 (29 U.S.C. 2104), because of a violation of section (3) of that act (29 U.S.C.
33 2102) shall be credited toward meeting the severance pay requirements of this subsection (b); and

34 (3) Provide the response team with the amount of on-site work-time access to the

1 employees of the establishment that the response team determines is necessary for the response
2 team to carry out its responsibilities pursuant to section (5) of this chapter.

3 In determining whether a termination or transfer of operations or a mass layoff is subject
4 to the notification requirements of this section, any terminations of employment for two (2) or
5 more groups at a single establishment occurring with any ninety (90) day period, when each
6 group has less than the number of terminations which would trigger the notification requirements
7 of this section but the aggregate for all of the groups exceeds that number, shall be regarded as
8 subject to the notification requirements unless the employer demonstrates that the cause of the
9 terminations for each group is separate and distinct from the causes of the terminations for the
10 other group or groups.

11 **28-54-4. Contents of required notification.** – (a) The notification provided pursuant to
12 section 28-54-2 of this chapter shall include:

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

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

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

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

24 (5) A disclosure of the amount of the severance pay which is payable pursuant to the
25 provisions of subsection (b) of section (2) of this chapter; and

26 (6) A statement of the employees' right to receive from the response team pursuant to
27 subsection (c) of section (2) and subsection (a) of section (5) of this chapter, information, referral
28 and counseling regarding: public programs which may make it possible to delay or prevent the
29 transfer or termination of operations or mass layoff; public programs and benefits to assist the
30 employees; and employee rights based on law.

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

34 **28-54-5. Construction of chapter relative to collective bargaining agreements.** – This

1 chapter shall not be construed as limiting or modifying any provision of a collective bargaining
2 agreement which requires notification, severance payment or other benefits on terms which are
3 more favorable to employees than those required by this chapter.

4 **28-54-6. Establishment of response team.** – (a) There is established, in the department
5 of labor and training, a response team. The purpose of the response team is to provide appropriate
6 information, referral and counseling, as rapidly as possible, to workers who are subject to plant
7 closings or mass layoffs;

8 (b) In the case of each transfer or termination of the operations in an establishment which
9 results in the termination of the lesser of one-third (1/3) of the employees (in the case of a
10 business with only seventy-five (75) employees) or fifty (50) employees (in the case of a business
11 with greater than one hundred fifty (150) employees), the response team shall:

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

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

17 (i) Available public programs which may make it possible to delay or prevent the transfer
18 or termination of operations, including economic development incentive and workforce
19 development programs;

20 (ii) Public programs or benefits which may be available to assist the employees,
21 including, but not limited to, unemployment compensation benefits, job training or retraining
22 programs, and job search assistance; and

23 (iii) Employee rights based on this act or any other law which applies to the employees
24 with respect to wages, severance pay, benefits, pensions or other terms of employment as they
25 relate to the termination of employment; and

26 (3) Seek to facilitate cooperation between representatives of the management and
27 employees at the establishment to most effectively utilize available public programs which may
28 make it possible to delay or prevent the transfer or termination of operations or to assist
29 employees if it is not possible to prevent the termination.

30 **28-54-7. Initiation of suit by aggrieved employee, former employee.** – Pursuant to
31 section 42-35-15, judicial review of contested cases in chapter 42-35, entitled “Administrative
32 Procedures,” any person, including any small business having exhausted all administrative
33 remedies available within the agency and aggrieved by a final order is entitled to judicial review.

34 However, before a proceeding is instituted by filing a complaint in superior court, the

1 aggrieved employee shall appeal the decision of the department of labor and training. After an
2 appeal to the department of labor and training, an aggrieved employee or former employee or
3 his/her authorized representative may initiate suit in superior court under this chapter either
4 individually or on behalf of employees or former employees affected by a violation of the
5 provisions of this chapter. If an action is undertaken on behalf of affected employees or former
6 employees, the party initiating the action shall inform the department, which shall notify each
7 affected employee or former employee. If the court finds the employer has violated the provisions
8 of this chapter, it shall award to the aggrieved present or former employees: costs of the action,
9 including reasonable attorneys' fees; and compensatory damages, including lost wages, the value
10 of the cost of any benefits to which the employee would have been entitled had his or her
11 employment not been lost, including the cost of any medical expenses incurred by the employee
12 that would have been covered under an employee benefit plan, benefits and other remuneration.
13 Any award of compensatory damages for lost wages shall be limited to the amount of severance
14 pay required pursuant to subsection 28-54-2(b).

15 **28-54-8. Liability of employer.** – An employer who fails to give notice as required by
16 section 28-54-3 is subject to a civil penalty of not more than five hundred dollars (\$500) per
17 employee affected for each day of the employer's violation. The employer is not subject to a civil
18 penalty under this section, however, if the employer pays to all applicable employees the amounts
19 for which the employer is liable under section 28-54-2 within three (3) weeks from the date the
20 employer actually conducts the mass layoff, relocation, or termination.

21 If the employer fails to give the proper notice and is in violation of this chapter, the sixty
22 (60) days pay or the residual days up to sixty (60) days shall become a current wage claim and
23 shall be considered the first obligation (secured creditor) under any distribution by the court.

24 **28-54-9. Exemption to notification.** – (a) An employer is not required to comply with
25 the notice requirement contained in section 28-54-2 if the department determines that all of the
26 following conditions exist:

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

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

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

33 (b) The department may not determine that the employer was actively seeking capital or
34 business under subsection (a) unless the employer provides the department with both of the

1 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, as specified by the department;

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

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

9 (d) An aggrieved employee or former employee or his authorized representative shall
10 upon request have copies made available of all records and documents provided by the employer
11 to the department of labor and training pursuant to subdivisions (b)(1) and (2) of this section.

12 (e) This section does not apply to notice of a mass layoff as defined in section 28-54-1.

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

=====
LC01444
=====

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 response team within the department of labor and training to
6 provide employment counseling to the employees, and work with the employer in an attempt to
7 avoid the loss of jobs. This act would also allow for a current wage claim to be considered the
8 first obligation under any distribution by the court whereby the employer fails to give the proper
9 notice and is in violation of the act.

10 This act would take effect upon passage.

=====
LC01444
=====