

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 261

Introduced by Hansen, 26.

Read first time January 11, 2017

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to labor; to adopt the Nebraska Worker
- 2 Adjustment and Retraining Notification Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known and may be
2 cited as the Nebraska Worker Adjustment and Retraining Notification Act.

3 Sec. 2. The purpose of the Nebraska Worker Adjustment and
4 Retraining Notification Act is to protect workers and communities by
5 requiring advance notification of large-scale employment loss. The
6 Legislature finds that advance notice of employment loss allows displaced
7 workers time to financially plan, time to find other employment, and time
8 to learn of and enroll in retraining programs with less time spent in
9 unemployment.

10 The Legislature also finds that when employers fail to provide such
11 advance notice, the resulting lack of time in which to financially plan,
12 find other employment, and participate in retraining programs causes
13 displaced workers to incur damages that are not sufficiently compensated
14 by lost wages alone. These losses are worsened by the fact that a large-
15 scale employment loss in a community makes it more difficult for
16 displaced workers to find employment, due to the increased competition
17 for jobs and because other employers in the community may be hurt by the
18 large-scale employment loss.

19 The Legislature also finds that advance notice allows all levels of
20 government time to adjust to lost revenue streams and time to develop and
21 deliver services to assist large numbers of affected workers. The
22 Legislature further finds that, while there is already a federal Worker
23 Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., the
24 State of Nebraska should enforce its own program so as to provide more
25 meaningful advance notice, to cover more worksites and employees, and to
26 provide for more efficient administrative response and enforcement.

27 Sec. 3. For purposes of the Nebraska Worker Adjustment and
28 Retraining Notification Act:

29 (1) Affected employees means all persons who may reasonably be
30 expected to experience an employment loss as a consequence of a proposed
31 mass layoff, worksite closing, or transfer of operations undertaken by

1 their employer. Affected employees also includes home-based employees
2 that may not work from a single site of employment but who report to such
3 a site or who report to home-based supervisory personnel who report to
4 that site;

5 (2) Commissioner means the Commissioner of Labor;

6 (3) County board means the board of commissioners or supervisors for
7 a county;

8 (4) Department means the Department of Labor;

9 (5) Employer means any business enterprise that employs twenty-five
10 or more persons, including part-time employees. If a parent corporation
11 directly owns and operates its corporate subsidiary, a parent corporation
12 is an employer to an establishment covered under the act;

13 (6)(a) Employment loss means:

14 (i) An employment termination other than a discharge for cause or
15 voluntary departure. Employees who voluntarily depart from the company
16 during the notice period in anticipation of a mass layoff, worksite
17 closing, or transfer of operations shall be counted toward all minimum
18 numerical thresholds; or

19 (ii) A mass layoff exceeding four months.

20 (b) Notwithstanding subdivision (6)(a) of this section, an employee
21 shall not be considered to have experienced an employment loss if the
22 mass layoff, worksite closing, or transfer of operations is the result of
23 the relocation or consolidation of part or all of the employer's business
24 and, prior to the layoff, closing, or transfer:

25 (i) The employer offers to reassign the employee to a different site
26 of employment within a reasonable commuting distance from the employee's
27 current residence with no more than a one-month break in employment; or

28 (ii) The employer offers to reassign the employee to any other site
29 of employment regardless of distance with no more than a two-month break
30 in employment and the employee accepts within thirty days after the offer
31 or after the layoff, closing, or transfer, whichever is later;

1 (7) Local workforce development board means a local workforce
2 development board authorized by the federal Workforce Innovation and
3 Opportunity Act and established in Nebraska;

4 (8) Mass layoff means a reduction in force which:

5 (a) Is not the result of a worksite closing or transfer of
6 operations; and

7 (b) Results in an employment loss at a single site of employment
8 during any thirty-day period of twenty-five or more employees, including
9 part-time employees, or at least one-third of the workforce at that
10 worksite;

11 (9) Mayor means the chief executive of a municipality, whether
12 designated as mayor, chairperson, city manager, or otherwise;

13 (10) Representative means an exclusive representative of employees
14 within the meaning of section 9(a) or 8(f) of the National Labor
15 Relations Act, 29 U.S.C. 159(a) or 158(f), or section 2 of the Railway
16 Labor Act, 45 U.S.C. 152;

17 (11) Transfer of operations means the removal of all or
18 substantially all of the operations of a single site of employment to a
19 different location fifty miles or more away that results in employment
20 loss to twenty-five or more persons, including part-time workers, or at
21 least one-half of the workforce at that worksite; and

22 (12) Worksite closing means the permanent or temporary shutdown of a
23 single site of employment or one or more facilities or operating units
24 that will result in an employment loss for twenty-five or more persons,
25 including part-time employees.

26 Sec. 4. (1) An employer shall not order a mass layoff, worksite
27 closing, or a transfer of operations unless sixty days before the order
28 takes effect the employer gives written notice to:

29 (a) Each affected employee;

30 (b) Each representative of the affected employees;

31 (c) The commissioner;

1 (d) The local workforce development board for the area within which
2 the mass layoff, worksite closing, or transfer of operations will occur;
3 and

4 (e) The mayor of the city or village within which the mass layoff,
5 worksite closing, or transfer of operations will occur or the county
6 board of the affected county if not within a city or village.

7 (2) An employer shall not order a mass layoff, worksite closing, or
8 a transfer of operations that results in employment loss for two hundred
9 fifty or more employees unless one hundred twenty days before the order
10 takes effect the employer gives written notice to:

11 (a) Each affected employee;

12 (b) Each representative of the affected employees;

13 (c) The commissioner;

14 (d) The local workforce development board for the area within which
15 the mass layoff, worksite closing, or transfer of operations will occur;
16 and

17 (e) The mayor of the city or village within which the mass layoff,
18 worksite closing, or transfer of operations will occur or the county
19 board of the affected county if not within a city or village.

20 (3) If, within a one-hundred-eighty-day period, separate employment
21 losses occur at a single site for two or more groups of employees and if
22 any of the separate employment losses involve fewer affected employees
23 than are necessary to require notice under this section, then the
24 separate employment losses shall be aggregated to determine whether the
25 minimum numbers necessary to require notice have been met. If the
26 aggregate numbers require notice, then notice shall be given unless the
27 employer can demonstrate that the individual employment losses arose from
28 separate and distinct causes.

29 (4) In the case of the sale of part or all of an employer's
30 business, the seller shall be responsible for providing notice for any
31 mass layoff, worksite closing, or transfer of operations in accordance

1 with this section, up to and including the effective date of the sale.
2 After the effective date of the sale of part or all of an employer's
3 business, the purchaser shall be responsible for providing notice for any
4 mass layoff, worksite closing, or transfer of operations in accordance
5 with this section. Notwithstanding any other provision of the Nebraska
6 Worker Adjustment and Retraining Notification Act, any person who is an
7 employee of the seller as of the effective date of the sale shall be
8 considered an employee of the purchaser immediately after the effective
9 date of the sale.

10 (5) The mailing of notice to an employee's last-known address by
11 either first-class or certified mail or the inclusion of notice in an
12 employee's paycheck shall be considered acceptable methods for
13 fulfillment of the employer's obligation to give notice to each affected
14 employee under this section.

15 Sec. 5. The notification provided pursuant to section 4 of this act
16 shall include the notice elements required by the federal Worker
17 Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., and:

18 (1) A statement of the number of employees whose employment will be
19 terminated in connection with the mass layoff, worksite closing, or
20 transfer of operations and the date or dates on which the mass layoff,
21 worksite closing, or transfer of operations and each termination of
22 employment will occur;

23 (2) A statement of the reasons for the worksite closing, mass
24 layoff, or transfer of operations;

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

29 (4) A statement of any employee rights with respect to wages,
30 severance pay, benefits, pension, or other terms of employment as they
31 relate to the termination, including, but not limited to, any rights

1 based on a collective bargaining agreement or other existing employer
2 policy; and

3 (5) A statement of the employees' rights to receive information,
4 referral, and counseling from the rapid response team regarding: Public
5 programs which may make it possible to delay or prevent the mass layoff,
6 worksite closing, or transfer of operations; public programs and benefits
7 to assist the employees; and employee rights based on law.

8 Sec. 6. (1) There is established in the department a rapid response
9 team. The purpose of this team is to organize meetings in order to
10 provide employers and employee representatives an opportunity to obtain
11 valuable information about dislocated worker services that are available
12 locally to eligible employees.

13 (2) If twenty-five or more workers or at least one-half of the
14 workforce at a worksite will suffer an employment loss as the result of a
15 mass layoff, worksite closing, or transfer of operations, the rapid
16 response team shall:

17 (a) Offer to meet with the management or agents of the employer to
18 discuss available public programs which may make it possible to delay or
19 prevent the mass layoff, worksite closing, or transfer of operations,
20 including economic development incentives and workforce development
21 programs;

22 (b) Facilitate cooperation between the management or agents of the
23 employer and affected employees to most effectively utilize public
24 programs which may make it possible to delay or prevent the mass layoff,
25 worksite closing, or transfer of operations or to assist employees if it
26 is not possible to prevent the mass layoff, worksite closing, or transfer
27 of operations; and

28 (c) Meet onsite with workers, including as much onsite work-time
29 access as necessary to carry out such responsibilities, to provide
30 information, educational materials, referrals, and counseling regarding:

31 (i) Available public programs which may make it possible to delay or

1 prevent the mass layoff, worksite closing, or transfer of operations,
2 including economic development and workforce development programs,
3 retraining programs, job search assistance, and unemployment compensation
4 benefits; and

5 (ii) Informing employees of their rights with respect to wages,
6 severance pay, benefits, pensions, and other terms of employment.

7 Sec. 7. (1) The Nebraska Worker Adjustment and Retraining
8 Notification Act shall not apply to a mass layoff, worksite closing, or
9 transfer of operations if the action involves a temporary facility or is
10 the result of the completion of a particular project or undertaking, and
11 the affected employees were hired with the understanding that their
12 employment was limited to the duration of the facility, project, or
13 undertaking.

14 (2)(a) An employer may order a mass layoff, worksite closing, or
15 transfer of operations of a single site of employment before the
16 conclusion of the notice period required by section 4 of this act if:

17 (i) As of the time that notice would have been required the employer
18 was actively seeking capital or business which, if obtained, would have
19 enabled the employer to avoid or postpone the shutdown and the employer
20 reasonably and in good faith believed that giving the required notice
21 would have precluded the employer from obtaining the needed capital or
22 business; or

23 (ii) The mass layoff, worksite closing, or transfer of operations is
24 caused by any form of physical calamity, natural disaster, or act of war.

25 (b) An employer relying on this subsection shall give as much notice
26 as is practicable and, at that time, shall give a brief statement of the
27 basis for reducing the notification period.

28 Sec. 8. (1) Any person, including a political subdivision,
29 aggrieved by a suspected violation of the Nebraska Worker Adjustment and
30 Retraining Notification Act shall file with the commissioner a formal
31 complaint in such manner and form as prescribed by the commissioner. Such

1 complaint shall be filed within two hundred days of the date of the mass
2 layoff, worksite closing, or transfer of operations that is the subject
3 of the alleged violation. The commissioner shall investigate complaints,
4 issue subpoenas, and determine liabilities and civil penalties
5 established under the act. The commissioner shall make an investigation
6 and may initiate an action to enforce the rights of such person under the
7 provisions of the act. The commissioner may examine the books and records
8 of any employer that is the subject of an investigation.

9 (2) If the commissioner does not initiate an action within one
10 hundred eighty days after receipt of a complaint under subsection (1) of
11 this section, the person aggrieved may bring a civil action pursuant to
12 section 9 of this act. Filing of an action by either the commissioner or
13 the person aggrieved shall be a bar to the filing of the action by the
14 other.

15 (3) The requirements of this section do not apply to suits brought
16 by the Attorney General.

17 (4) The commissioner shall adopt and promulgate rules and
18 regulations for procedures for the review and prosecution of complaints
19 under this section.

20 Sec. 9. (1) An employee aggrieved by an employer's failure to
21 provide the notice under section 4 of this act, or his or her
22 representative, may proceed with a civil action against the employer in
23 the district court.

24 (2) Any employer who orders a mass layoff, worksite closing, or
25 transfer of operations in violation of the Nebraska Worker Adjustment and
26 Retraining Notification Act shall be liable to each aggrieved employee
27 who suffers an employment loss as a result of such layoff, closing, or
28 transfer for:

29 (a) Double back pay for each calendar day of the violation at a rate
30 of compensation which is the higher of:

31 (i) The average regular rate received by such employee during the

1 last three years of the employee's employment; or
2 (ii) The final regular rate received by such employee;
3 (b) The value of benefits from the employer's employee benefit plan
4 throughout the entire notice period, including the cost of medical
5 expenses incurred during the employment loss which would have been
6 covered under an employee benefit plan if the employment loss had not
7 occurred;

8 (c) Other economic damages suffered by an employee and shown by a
9 preponderance of the evidence to have been caused by an employer's
10 violation of the act; and

11 (d) Reasonable attorney's fees and costs awarded to a prevailing
12 employee or representative.

13 Sec. 10. (1) The Attorney General, the commissioner, or the
14 affected city, village, or county may proceed with a civil action in the
15 district court for a violation of the Nebraska Worker Adjustment and
16 Retraining Notification Act. The Attorney General or the commissioner may
17 bring suit on behalf of the state, affected political subdivisions, and
18 affected employees for violations of the act. An affected political
19 subdivision may bring suit on its own behalf or on behalf of affected
20 employees.

21 (2) In a suit brought under this section, an employer who orders a
22 mass layoff, worksite closing, or transfer of operations in violation of
23 the act shall:

24 (a) For failure to timely notify the commissioner, be subject to a
25 civil penalty in the amount of five hundred dollars for each calendar day
26 of the violation multiplied by the number of employees who suffered an
27 employment loss as a result of the mass layoff, worksite closing, or
28 transfer of operations;

29 (b) For failure to timely notify the mayor, county board, or local
30 workforce development board, be subject to a civil penalty in the amount
31 of five hundred dollars for each calendar day of the violation multiplied

1 by the number of employees who suffered an employment loss as a result of
2 the mass layoff, worksite closing, or transfer of operations;

3 (c) If an employer is found to have acted in bad faith in violating
4 the act or acting to avoid application of the act, be subject to a civil
5 penalty in the amount of one thousand dollars for each calendar day of
6 the violation multiplied by the number of employees who suffered an
7 employment loss as a result of the mass layoff, worksite closing, or
8 transfer of operations; and

9 (d) Be liable to each aggrieved employee who suffers an employment
10 loss as a result of such layoffs, closing, or transfer for:

11 (i) Double back pay for each calendar day of the violation at a rate
12 of compensation which is the higher of:

13 (A) The average regular rate received by such employee during the
14 last three years of the employee's employment; or

15 (B) The final regular rate received by such employee;

16 (ii) The value of benefits from the employer's employee benefit plan
17 through the entire notice period, including the cost of medical expenses
18 incurred during the employment loss which would have been covered under
19 an employee benefit plan if the employment loss had not occurred; and

20 (iii) Other economic damages suffered by an employee and shown by a
21 preponderance of the evidence to have been caused by an employer's
22 violation of the act.

23 (3) Any civil penalty collected under subdivision (2)(a), (b), or
24 (c) of this section shall be remitted to the State Treasurer for
25 distribution in accordance with Article VII, section 5, of the
26 Constitution of Nebraska.

27 Sec. 11. (1) A prevailing party in a suit brought under section 10
28 of this act shall have a lien upon the business revenue and all real and
29 personal property of the employer for the employer's liability. In order
30 for such lien to be valid and effective against the employer's interest
31 in real property, the prevailing party shall record a notice of lien in

1 each county in which the employer holds an interest in real property. In
2 order for such lien to be perfected and valid against business revenue
3 and personal property of the employer, the prevailing party shall record
4 a notice of lien in the office of the Secretary of State. The notice of
5 lien shall constitute a lien of the prevailing party that is effective as
6 of the date and time of the recording or filing. The prevailing party
7 shall send a copy of the notice of lien to the employer by certified
8 mail, return receipt requested, postage prepaid. The commissioner shall
9 prescribe the form for the notice of lien which shall include the name
10 and address of the employer, that the lien belongs to the prevailing
11 party, the suit caption, the damages awarded, the amount of the lien, and
12 the date of the judgment.

13 (2) The prevailing party shall hold in trust any proceeds from such
14 a lien pending adjudication of any claims to the proceeds by an employer.
15 Following the final adjudication of such claims, the prevailing party
16 shall distribute any proceeds from the lien on a pro rata basis to the
17 employees of the employer or employers against whose business revenue and
18 real and personal property the lien was obtained.

19 Sec. 12. Whenever the Attorney General has reason to believe that
20 an employer is violating or is about to violate the Nebraska Worker
21 Adjustment and Retraining Notification Act, the Attorney General may
22 petition the court for an order of restitution of money or property to
23 any person or class of persons injured thereby. The action may be brought
24 in the district court of the county in which the employer allegedly in
25 violation of the act resides or in which the principal place of business
26 is located. Under the act, the state courts do not have authority to
27 enjoin a mass layoff, worksite closing, or transfer of operations.

28 Sec. 13. (1) Any agreement to waive the rights of an employee under
29 the Nebraska Worker Adjustment and Retraining Notification Act is
30 voidable before, during, and within thirty days after the advance
31 notification period unless payment is received by the employee in an

1 amount that meets or exceeds the wages and value of benefits to which the
2 employee would have been entitled throughout the advance notification
3 period. If an employee elects to render void such an agreement, the
4 employee shall return any amounts paid by the employer within fourteen
5 days of such election.

6 (2) An employee's acceptance of severance payments cannot be used to
7 offset an award of damages under the act when such payments are:

8 (a) Voluntarily and unconditionally paid in an amount that is less
9 than the value of the wages and benefits to which the employee is
10 entitled during the advance notification period; or

11 (b) Paid pursuant to contractual obligations of the employer owed to
12 the employee.

13 (3) An employee's waiver of claims or acceptance of any severance
14 payment does not absolve or mitigate an employer's obligation to provide
15 notice to other persons or entities entitled to notice under the act.

16 Sec. 14. Claims under the Nebraska Worker Adjustment and Retraining
17 Notification Act shall be brought within three years after the date of
18 the mass layoff, worksite closing, or transfer of operations that was the
19 subject of the violation.

20 Sec. 15. The commissioner may adopt and promulgate rules and
21 regulations to carry out the Nebraska Worker Adjustment and Retraining
22 Notification Act.