

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 472

Introduced by Karpisek, 32.

Read first time January 14, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor and employment; to adopt the Nebraska

2 Workers Adjustment and Retraining Notification Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known
2 and may be cited as the Nebraska Workers Adjustment and Retraining
3 Notification Act.

4 Sec. 2. The purpose of the Nebraska Workers Adjustment
5 and Retraining Notification Act is to protect workers and communities
6 by requiring advance notification of large-scale employment loss. The
7 Legislature finds that advance notice of employment loss allows
8 displaced workers time to financially plan, time to find other
9 employment, and time to learn of and enroll in retraining programs
10 with less time spent in unemployment. The Legislature also finds that
11 advance notice allows all levels of government time to adjust to lost
12 revenue streams and time to develop and deliver services to assist
13 large numbers of affected workers. The Legislature further finds
14 that, while the United States already has a federal Workers
15 Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq.,
16 the State of Nebraska should enforce its own program to provide more
17 meaningful advance notice, to provide coverage of more worksites and
18 employees, and to provide more efficient administrative response and
19 enforcement.

20 Sec. 3. For purposes of the Nebraska Workers Adjustment
21 and Retraining Notification Act:

22 (1) Affected employees means all persons who may
23 reasonably be expected to experience an employment loss as a
24 consequence of a proposed mass layoff, worksite closing, or transfer
25 of operations undertaken by their employer. Affected employees also

1 includes persons who are:

2 (a) Home-based employees that may not work from the
3 single site of employment but who report to that site or who report
4 to home-based supervisory personnel who report to that site; and

5 (b) Employees that experience employment loss as a
6 foreseeable result of the downsizing at a single site of their
7 employer;

8 (2) Commissioner means the Commissioner of Labor;

9 (3) Department means the Department of Labor;

10 (4)(a) Employment loss means:

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

16 (ii) A mass layoff exceeding four months.

17 (b) Notwithstanding subdivision (4)(a) of this section,
18 an employee shall not be considered to have experienced an employment
19 loss if the mass layoff, worksite closing, or transfer of operations
20 is the result of the relocation or consolidation of part or all of
21 the employer's business and, prior to the layoff, closing, or
22 transfer:

23 (i) The employer offers to reassign the employee to a
24 different site of employment within a reasonable commuting distance
25 with no more than a one-month break in employment; or

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

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

10 (6) Mass layoff means a reduction in force which:

11 (a) Is not the result of a worksite closing or transfer
12 of operations; and

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

17 (7) Representative means an exclusive representative of
18 employees within the meaning of section 152 of the federal National
19 Labor Relations Act, 29 U.S.C. 151 et seq., and the federal Railway
20 Labor Act, 45 U.S.C. 151 et seq.;

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

1 (9) Worksite closing means the permanent or temporary
2 shutdown of a single site of employment or one or more facilities or
3 operating units that will result in an employment loss for twenty-
4 five or more persons, including part-time employees.

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

8 (a) Each affected employee;

9 (b) Each representative of the affected employees;

10 (c) The commissioner;

11 (d) The local workforce investment boards established
12 pursuant to the federal Workforce Investment Act, 29 U.S.C. 2801 et
13 seq., for the locality within which the mass layoff, worksite
14 closing, or transfer of operations will occur; and

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

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

24 (a) Each affected employee;

25 (b) Each representative of the affected employees;

1 (c) The commissioner;

2 (d) The local workforce investment boards established
3 pursuant to the federal Workforce Investment Act, 29 U.S.C. 2801 et
4 seq., for the locality within which the mass layoff, worksite
5 closing, or transfer of operations will occur; and

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

10 (3) Within a one-hundred-eighty-day period, if individual
11 employment losses occur at a single site for two or more groups of
12 employees and if any of the individual employment losses involve
13 fewer affected employees than are necessary to require notice under
14 the act, then the individual employment losses shall be aggregated to
15 determine whether the minimum numbers necessary to require notice
16 have been met. If the aggregate numbers require notice, then notice
17 shall be given unless the employer can demonstrate that the
18 individual employment losses arose from separate and distinct causes.

19 (4) In the case of the sale of part or all of an
20 employer's business, the seller shall be responsible for providing
21 notice for any mass layoff, worksite closing, or transfer of
22 operations in accordance with this section, up to and including the
23 effective date of the sale. After the effective date of the sale of
24 part or all of an employer's business, the purchaser shall be
25 responsible for providing notice for any mass layoff, worksite

1 closing, or transfer of operations in accordance with this section.
2 Notwithstanding any other provision of the Nebraska Workers
3 Adjustment and Retraining Notification Act, any person who is an
4 employee of the seller as of the effective date of the sale shall be
5 considered an employee of the purchaser immediately after the
6 effective date of the sale.

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

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

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

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

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

1 employment and the location of the other establishment;

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

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

13 Sec. 6. (1) There is established in the department a
14 rapid response team. The purpose of this team is to organize meetings
15 in order to provide employers and employee representatives an
16 opportunity to obtain invaluable information about dislocated worker
17 services that are available locally to eligible employees.

18 (2) In the case where twenty-five or more workers or at
19 least one-half of the workforce at that worksite will suffer an
20 employment loss as the result of a mass layoff, worksite closing, or
21 transfer of operations, the rapid response team shall:

22 (a) Offer to meet with the management or agents of the
23 employer to discuss available public programs which may make it
24 possible to delay or prevent the mass layoff, worksite closing, or
25 transfer of operations, including economic development incentive and

1 workforce development programs;

2 (b) Facilitate cooperation between the management or
3 agents of the employer and affected employees to most effectively
4 utilize public programs which may make it possible to delay or
5 prevent the mass layoff, worksite closing, or transfer of operations
6 or to assist employees if it is not possible to prevent the mass
7 layoff, worksite closing, or transfer of operations; and

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

12 (i) Available public programs which may make it possible
13 to delay or prevent the mass layoff, worksite closing, or transfer of
14 operations, including economic development and workforce development
15 programs, retraining programs, job search assistance, and
16 unemployment compensation benefits; and

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

20 Sec. 7. (1) The Nebraska Workers Adjustment and
21 Retraining Notification Act shall not apply to a mass layoff,
22 worksite closing, or transfer of operations if the action involves a
23 temporary facility or is the result of the completion of a particular
24 project or undertaking, and the affected employees were hired with
25 the understanding that their employment was limited to the duration

1 of the facility, project, or undertaking.

2 (2)(a) An employer may order a mass layoff, worksite
3 closing, or transfer of operations of a single site of employment
4 before the conclusion of the ninety-day period if:

5 (i) As of the time that notice would have been required
6 the employer was actively seeking capital or business which, if
7 obtained, would have enabled the employer to avoid or postpone the
8 shutdown and the employer reasonably and in good faith believed that
9 giving the required notice would have precluded the employer from
10 obtaining the needed capital or business; or

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

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

17 Sec. 8. (1) The commissioner and department may adopt and
18 promulgate rules and regulations for procedures for the review of
19 complaints from persons whose rights under the Nebraska Workers
20 Adjustment and Retraining Notification Act are alleged to have been
21 violated. Pursuant to this subsection, all complaints shall be filed
22 with the department within one hundred eighty days after the alleged
23 violation. The commissioner and department shall investigate
24 complaints, issue subpoenas, and determine liabilities and civil
25 penalties established under the act. The commissioner and

1 department's authority includes, but is not limited to:

2 (a) Examining the books and records of an employer; and

3 (b) Holding in trust any proceeds from a lien filed under

4 section 11 of this act pending adjudication of any claims to the

5 proceeds by an employer. Following the final adjudication of such

6 claims, the commissioner shall distribute any proceeds from the lien

7 on a pro rata basis to the employees of the employer or employers

8 against whose business revenue and real and personal property the

9 lien was obtained.

10 (2) During the pendency of the department's investigation

11 of a person's complaint, that person may not proceed with a civil

12 action in the courts of this state unless more than one hundred

13 eighty days have passed since the filing of the complaint and the

14 complaining party files with the department a request to withdraw the

15 complaint before filing a civil suit in court.

16 Sec. 9. (1) Employees whose rights have been violated

17 under the act by an employer's failure to provide the required

18 notice, and their representatives, may proceed with a civil action in

19 the district court.

20 (2) Any employer who orders a mass layoff, worksite

21 closing, or transfer of operations in violation of the Nebraska

22 Workers Adjustment and Retraining Notification Act shall be liable to

23 each aggrieved employee who suffers an employment loss as a result of

24 such layoffs, closing, or transfer for:

25 (a) Double back pay for each calendar day of the

1 violation at an employee's rate of compensation which is the higher
2 of:

3 (i) The average regular rate received by such employee
4 during the last three years of the employee's employment; or

5 (ii) The final regular rate received by such employee;

6 (b) The value of benefits from the employer's employee
7 benefit plan throughout the entire notice period, including the cost
8 of medical expenses incurred during the employment loss which would
9 have been covered under an employee benefit plan if the employment
10 loss had not occurred;

11 (c) Other economic damages and exemplary damages suffered
12 by an employee and shown by a preponderance of the evidence to have
13 been caused by an employer's violation of the act; and

14 (d) Reasonable attorney's fees and costs awarded to
15 prevailing employees.

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

25 (2) In suits brought under subsection (1) of this

1 section, an employer who orders a mass layoff, worksite closing, or
2 transfer of operations in violation of the act shall be liable:

3 (a) For failure to timely notify any state official or
4 agent of state government, a civil penalty in the amount of five
5 hundred dollars for each calendar day of the violation multiplied by
6 the number of employees who suffered an employment loss as a result
7 of the mass layoff, worksite closing, or transfer of operations;

8 (b) For failure to timely notify any designated local
9 governmental official, a civil penalty in the amount of five hundred
10 dollars for each calendar day of the violation multiplied by the
11 number of employees who suffered an employment loss as a result of
12 the mass layoff, worksite closing, or transfer of operations;

13 (c) If an employer is found to have acted in bad faith
14 through intentional, willful, or reckless conduct in violation of the
15 act's requirements or to avoid application of the act, the employer
16 shall be liable for a civil penalty in the amount of one thousand
17 dollars for each calendar day of the violation multiplied by the
18 number of employees who suffered an employment loss as a result of
19 the mass layoff, worksite closing, or transfer of operations;

20 (d) To each aggrieved employee who suffers an employment
21 loss as a result of such layoffs, closing, or transfer for:

22 (i) Double back pay for each calendar day of the
23 violation at an employee's rate of compensation which is the higher
24 of:

25 (A) The average regular rate received by such employee

1 during the last three years of the employee's employment; or
2 (B) The final regular rate received by such employee;
3 (ii) The value of benefits from the employer's employee
4 benefit plan through the entire sixty-day notice period, including
5 the cost of medical expenses incurred during the employment loss
6 which would have been covered under an employee benefit plan if the
7 employment loss had not occurred; and
8 (iii) Other economic damages and exemplary damages
9 suffered by an employee and shown by a preponderance of the evidence
10 to have been caused by an employer's violation of the act.

11 Sec. 11. The commissioner and department shall have a
12 lien upon the business revenue and all real and personal property of
13 the employer for the employer's liability in a suit brought by the
14 commissioner or the department under section 10 of this act. In order
15 for such lien to be valid and effective against the employer's
16 interest in real property, the department shall record a notice of
17 lien in each county in which the employer holds an interest in real
18 property. In order for such lien to be perfected and valid against
19 business revenue and personal property of the employer, the
20 department shall record a notice of lien in the office of the
21 Secretary of State. The notice of lien shall constitute a lien of the
22 department that is effective as of the date and time of the recording
23 or filing. The department shall send a copy of the notice of lien to
24 the employer by certified mail, return receipt requested, postage
25 prepaid. The commissioner shall prescribe the form for the notice of

1 lien which shall include the name and address of the employer, that
2 this is a lien of the Department of Labor, the suit caption, the
3 damages awarded, which is the amount of the lien, and the date of the
4 judgment.

5 Sec. 12. Whenever the Attorney General has reason to
6 believe that an employer is violating or is about to violate the
7 Nebraska Workers Adjustment and Retraining Notification Act, the
8 Attorney General may petition the court for an order of restitution
9 of money or property to any person or class of persons injured
10 thereby. The action may be brought in the district court of the
11 county in which the employer allegedly in violation of the act
12 resides or in which the principal place of business is located. Under
13 the act, the state courts do not have authority to enjoin a plant
14 closing or mass layoff.

15 Sec. 13. (1) All agreements to waive the rights of
16 employees as contained in the Nebraska Workers Adjustment and
17 Retraining Notification Act are voidable before, during, and within
18 thirty days after the advance notification period unless payment is
19 received by the employee in an amount that meets or exceeds the wages
20 and value of benefits to which the employee would have been entitled
21 throughout the advance notification period. If an employee elects to
22 render void such an agreement, the employee shall return the lesser
23 amounts paid by the employer within fourteen days of such election.

24 (2) An employee's acceptance of severance payments cannot
25 be used to offset an award of damages when such payments are:

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

4 (b) Paid pursuant to contractual obligations of the
5 employer owed to the employee.

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

10 Sec. 14. Claims under the Nebraska Workers Adjustment and
11 Retraining Notification Act shall be brought within three years after
12 the date the violation occurred.