

/\* The famous "Plant Closing Act" follows in full text. It is officially known as the "Worker Adjustment and Retraining Notification Act, and is found at 29 United States Code 2101. \*/

Section 2101. Definitions, exclusions from definition of loss of employment

/\* In this section the minimum size of employers and minimum length of service are described. \*/

(a) Definitions. As used in this Act--

(1) the term "employer" means any business enterprise that employs--

(A) 100 or more employees, excluding part-time employees; or

(B) 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime);

/\* Next the act also defines a plant closing or mass layoff. \*/

(2) the term "plant closing" means the permanent or temporary shutdown of a single site of employment, or one of more facilities or operating units within a single site of employment, if the shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, of the shutdown results in an employment loss at the single site of employment during any 30 day period for 50 or more employees excluding any part-time employees;

(3) the term "mass layoff" means a reduction in force which--

(A) is not the result of a plant closing; and

(B) results in an employment loss at the single site of employment during any 30 day period for--

(i)(I) at least 33 percent of the employees (excluding any part-time employees); or

(ii) at least 500 employees (excluding any part-time employees);

(4) the term "representative" means an exclusive bargaining representative of employees within the meaning of section 9(a) or 8(f) of the National Labor Relations Act, or section 2 of the Railway Labor Act;

(5) the term "affected employees: means employees who may be reasonably expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their

employer;

(6) subject to subsection (b), the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff exceeding 6 months or (C) a reduction in hours of work of more than 50 per cent during each month of any 6-month period;

(7) the term "unit of local government" means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers; and

(8) the term "part-time employee" means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which a notice is required.

(b) Exclusions from definition of employment loss. (1) In the case of a sale of part or all of an employer's business, the seller shall be responsible for providing notice of any plant closing or mass layoff in accordance with section 3 of this Act, up to and including the effective date of the sale. After the effective date of the sale of part or all of an employer's business, the purchaser shall be responsible for providing notice of any plant closing or mass layoff in accordance with section 3 of this Act. Notwithstanding any other provisions of this Act, any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

(2) Notwithstanding subsection (a)(6) an employee may not be considered to have considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff--

(A) the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment; or

(B) the employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or the closing of the plant, whichever is later.

Section 2102. Notice required before plant closing and mass layoffs

/\* Here is the general rule regarding the 60 day notice that must be given before a plant closing- but watch out-- there are many exceptions. \*/

(a) Notice to employees, state dislocated worker units, and local governments. An employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order--

(1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and

(2) to the State dislocated worker unit and the chief elected official of the unit of local government within which the determination is made.

(b) Reduction of notification period. (1) An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business, which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice would have precluded the employer from obtaining the needed capital or business.

(2)(A) An employer may order a plant closing or mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

(B) No notice under this Act shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.

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

(c) Extension of layoff period. A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less, shall be treated as an employment loss under this Act unless--

(1) the extension beyond 6 months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonable foreseeable at the time of the initial layoff; and

(2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

(d) Determination with respect to employment loss. For purposes of this section, in determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in section 2(a)(2) or (3) [section 29 USC 2101(a)(2) or (3)] but which in the

aggregate exceed that minimum or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct action and causes and are not an attempt by the employer to evade to evade the requirements of this Act.

### Section 2103. Exemption.

This Act shall not apply to a plant closing or mass layoff if--

(1) the closing is of a temporary facility or the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or project or undertaking; or

(2) the closing or layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this Act. Nothing in this Act shall require an employer to serve written notice pursuant to section 3(a) of this act [29 USC 2102(a)] when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act: Provided, That nothing in this Act shall be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

### Section 2104. Administration and enforcement of requirements

/\* Here are the penalties (both \$ 500 a day and back pay) and the various ways that an employer can seek to get around the penalties. \*/

(a) Civil actions against employers. (1) Any employer who orders a plant closing or mass layoff in violation of section 3 of this Act shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for--

(A) back pay for each day of violation at a rate of compensation not less than the higher of--

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

(ii) the final regular rate received by such employee;  
and

(B) benefits under an employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974, including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.

Such liability shall be calculated for the period of violation, up to a maximum of 60 days, but in no event for more than one-half the number of day the employee was employed by the employer.

(2) The amount for which an employer is liable under paragraph (1) shall be reduced by--

(A) any wages paid by the employer to the employee for the period of the violation;

(B) any voluntary and unconditional payment by the employer to the employee that is not required by any legal obligation; and

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

In addition, any liability incurred under paragraph (1) with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

(3) any employer who violates the provisions of section 3 with respect to a unit of local government shall be subject to a civil penalty of not more than \$ 5000 for each day of such violation, except that such penalty shall not apply if the employer pays to each aggrieved employee the amount for which the employer is liable within 3 weeks from the date the employer orders the shutdown or layoff.

(4) If an employer which has violated this Act proves to the satisfaction of the court that the act or omission that violated this Act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Act the court may, in its discretion, reduce the amount of the liability or penalty provided for in this section.

(5) A person seeking to enforce such liability, including a representative of employees or a unit of local government aggrieved under paragraph (1) or (3), may either sue for such person or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

(6) In any such suit, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as a part of its costs.

(7) For the purposes of this subsection, the term, "aggrieved employee" means an employee who has worked for the employer order the plant closing or mass layoff, and who, as a result of the failure by the employer to comply with section 3, did not receive timely notice either directly or through his or her representative as required by section 3.

(b) Exclusivity of remedies. The remedies provided for in this section shall be the exclusive remedies for any violation of this Act. Under this Act, a Federal Court shall not have the authority to enjoin a plant closing.

Section 2105. Procedures in addition to other rights of employees

The rights and remedies provided to employees by this Act are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect such rights and remedies, except that the period of notification required by this Act shall run concurrently with any period of notification required by contract or by any other statute.

Section 2106. Procedures encouraged where not required.

It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 3 [29 USC 2102] should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

Section 2107. Authority to prescribe regulations.

(a) The Secretary shall prescribe such regulations as may be necessary to carry out this Act. Such regulations, at a minimum, include interpretive regulations describing the methods by which employers may provide for appropriate service of notice as required by this Act.

Section 2008. Effect on other laws.

The giving of notice pursuant to this Act, if done in good faith compliance with this Act, shall not constitute a violation of the National Labor Relations Act or the Railway Labor Act.

Section 2109. Report on employment and international competitiveness.

Two years after the date of enactment of this Act [8/4/88] the Comptroller General shall submit to the Committee on Small Business of both the House and Senate, the Committee on Labor and Human Resources, and the Committee on Education and Labor a report containing a detailed and objective analysis of the effect of this Act on employers (especially small and medium-sized businesses), the economy (international competitiveness) and employees (in terms of levels and conditions of employment.)