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## **An Act To Conform Maine Law to Federal Law Regarding Closings and Mass Layoffs and To Strengthen Employee Severance Pay Protections**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 26 MRSA §625-B**, as amended by PL 2009, c. 305, §§1 to 4 and affected by §5, is further amended to read:

### **§ 625-B. Severance pay due to closing, substantial shutdown or relocation of a covered establishment**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

A. "Covered establishment" means any industrial or commercial facility or part thereof ~~which~~that employs or has employed at any time in the preceding 12-month period 100 or more persons.

A-1. "Closing" means the permanent or temporary substantial shutdown of industrial or commercial operations if the shutdown results in an employment loss at a covered establishment for a 30-consecutive-day period for 50 or more employees, excluding any part-time employees. A closing may occur due to relocation.

B. "Director" means the Director of the Bureau of Labor Standards.

C. "Employer" means any person who directly or indirectly owns and operates a covered establishment. For purposes of this definition, a parent corporation is considered the indirect owner and operator of any covered establishment that is directly owned and operated by its corporate subsidiary.

C-1. "Employment loss" means an employment termination, other than a discharge for cause, voluntary departure or retirement, when there is no definite recall date. Employment loss can occur due to a layoff exceeding 6 consecutive months or a reduction in employees' hours of work of more than 50% for each month of a 6-consecutive-month period. Ambiguous language of an employer regarding the duration and nature of an employment loss may not be construed to prevent potential liability for payment of severance under this section.

C-2. "Gross earnings" includes all pay for regular hours, shift differentials, premiums, overtime, floating holidays, holidays, funeral leave, jury duty pay, sick pay and vacation pay. "Gross earnings" does not include payments made under a 3rd-party benefit program, such as disability payments.

C-3. "Mass layoff" means a reduction in workforce, not the result of a closing, that results in an employment loss at a covered establishment for a 30-consecutive-day period. A layoff is considered a mass layoff when the following numbers of employees are affected, excluding part-time employees:

(1) At least 33% of the employees and at least 50 employees; or

(2) At least 500 employees.

C-4. "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 notice is required under this section.

D. "Person" means any individual, group of individuals, partnership, corporation, association or any other entity.

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster.

F. "Relocation" means the removal of all or substantially all of industrial or commercial operations in a covered establishment to a new location, within or without the State of Maine, 100 or more miles distant from its original location.

G. "Termination" means the substantial cessation of industrial or commercial operations in a covered establishment.

H. "Week's pay" means an amount equal to the employee's gross earnings during the 12 months previous to the date of ~~termination or relocation~~closing as established by the director or the date of the termination or layoff of the employee, should it occur earlier, divided by the number of weeks in which the employee worked during that period.

**2. Severance pay.** Any employer who ~~relocates or terminates~~closes a covered establishment ~~shall be~~ liable to ~~his~~that employer's employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. The severance pay to eligible employees ~~shall be~~ in addition to any final wage payment to the employee and ~~shall~~must be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

**3. Mitigation of severance pay liability.** There is no liability under this section for severance pay to an eligible employee if:

A. ~~Relocation or termination~~Closing of a covered establishment is necessitated by a physical calamity or the final order of a federal, state or local government agency, including an adjudication of bankruptcy;

B. The employee is covered by, and has been paid under the terms of, an express contract providing for severance pay that is ~~equal to~~ or greater than the severance pay required by this section. An employer must demonstrate, to the satisfaction of the director, that the severance pay provided under the terms of an express contract provides a greater benefit to the employee;

C. ~~That~~The employer relocates and the employee accepts employment at the new location; or

D. That employee has been employed by the employer for less than 3 years; ~~or.~~

E. ~~A covered establishment files for protection under 11 United States Code, Chapter 11 unless the filing is later converted to a filing under 11 United States Code, Chapter 7.~~

**4. Suits by, or on behalf of, employees.** Any employer who violates the provisions of this section ~~shall be~~ liable to the employee or employees affected in the amount of their unpaid severance pay. Action to recover the liability may be maintained against any employer in any state or federal court of competent jurisdiction by any one or more employees for and on behalf of ~~himself~~ ~~that employee or themselves~~ those employees and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action.

**5. Suits by the director.** The director is authorized to supervise the payment of the unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any such action, ~~shall terminate~~ terminates upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection ~~shall~~ must be held in a special deposit account and ~~shall~~ must be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee because of inability to do so within a period of 3 years ~~shall~~ must be paid over to the State of Maine.

**6. Notice of director.** Any person proposing to ~~relocate or terminate~~ close a covered establishment shall notify the director in writing not less than 60 days prior to the ~~relocation~~ closing. A person initiating a mass layoff at a covered establishment shall notify the director as far in advance as practicable, and no later than within 7 days of the layoff, and shall report to the director the expected duration of the layoff and whether it is of indefinite or definite duration. The director shall, from time to time, but no less frequently than every 30 days, require the employer to report such facts as the director considers relevant to determine whether the mass layoff constitutes a closing under this section or whether there is a substantial reason to believe the affected employees will be recalled. A notification or report provided to the director pursuant to this subsection must contain all relevant information in the possession of the employer regarding a potential recall, if applicable.

**6-A. Notice to employees and municipality.** A person proposing to ~~terminate or to relocate~~ close a covered establishment ~~outside the State~~ shall notify employees and the municipal officers of the municipality where the ~~plant~~ covered establishment is located in writing not less than 60 days prior to the ~~termination or relocation~~ closing, unless this notice requirement is waived by the director. A person that violates this provision commits a civil violation for which a fine of not more than \$500 may be adjudged, except that a fine may not be adjudged if the ~~relocation~~ closing is necessitated by a physical calamity or the final order of a federal, state or local government agency, including an adjudication of

bankruptcy, or if the failure to give notice is due to unforeseen circumstances. A fine imposed pursuant to this subsection may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

**7. Powers of director.** In any investigation or proceeding under this section, the director shall ~~have~~has, in addition to all other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1.

**8. Rules.** The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are ~~major substantive~~routine technical rules as defined in Title 5, chapter 375, subchapter H-A2-A. ~~Initial rules must be provisionally adopted and submitted to the Legislature not later than January 15, 2003.~~

**9. Penalties.** A person that violates subsection 2 commits a civil violation for which a fine of not more than \$1,000 per violation may be adjudged. Each employee affected constitutes a separate violation. Any such fine may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

**10. Mass layoff.** ~~Whenever an employer lays off 100 or more employees at a covered establishment, the employer within 7 days of such a layoff shall report to the director the expected duration of the layoff and whether it is of indefinite or definite duration. The director shall, from time to time, but no less frequently than every 30 days, require the employer to report such facts as the director considers relevant to a determination as to whether the layoff constitutes a termination or relocation under this section or whether there is a substantial reason to believe the affected employees will be recalled within a reasonable time.~~

## SUMMARY

This bill clarifies and strengthens the laws governing severance pay. It adds definitions for "closing," "mass layoff," "part-time employee," "employment loss" and "gross earnings." It provides that ambiguous language of an employer regarding the duration and nature of an employment loss may not be construed to prevent potential liability for payment of severance. The bill changes the circumstances that mitigate liability for severance pay by adding the closing of a covered establishment that is necessitated by the final order of a federal, state or local government agency, including an adjudication of bankruptcy. It amends the laws governing advance notice of a closing so they conform to the federal Worker Adjustment and Retraining Notification Act, also known as the WARN Act, 29 United States Code, Sections 2101 to 2109 (2014) and changes the designation of rules from major substantive to routine technical.