HOUSE BILL NO. 798

AN ACT TO CREATE THE MASS LAYOFF ACT, WHICH REQUIRES
EMPLOYERS WHO LAY OFF 50 OR MORE EMPLOYEES DURING A SIXTY-DAY
PERIOD TO GIVE THE EMPLOYEES AND CERTAIN GOVERNMENT OFFICIALS
NOTICE OF THE LAYOFF; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The following definitions shall govern the
construction and meaning of the terms used in this act:

(a) "Covered establishment" means any industrial or
commercial facility or part thereof that employs, or has employed
within the preceding twelve (12) months, seventy-five (75) or more
persons.

(b) "Employer" means any person, partnership,
association, corporation and the legal representatives of a
deceased employer, or the receiver or trustee of a person,
partnership, association or corporation that directly or
indirectly owns and operates a covered establishment. A parent
corporation is an employer as to any covered establishment
directly owned and operated by its corporate subsidiary.

(c) "Layoff" means a separation from a position for
lack of funds or lack of work.

(d) "Mass layoff" means a layoff during any thirty-day
period of fifty (50) or more employees at a covered establishment.

(e) "Relocation" means the removal of all or
substantially all of the industrial or commercial operations in a
covered establishment to a different location one hundred (100)
miles or more away.
(f) "Termination" means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.

(g) "Employee" means any person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied, employed by an employer for at least six (6) months of the twelve (12) months preceding the date on which notice is required. This term does not include independent contractors.

(2) This act does not apply to seasonal employees who are employed in a seasonal industry where the employees were hired with the understanding that their employment was seasonal and temporary.

SECTION 2. (1) An employer may not order a mass layoff, relocation or termination at a covered establishment unless, sixty (60) days before the order takes effect, the employer gives written notice of the order to:

(a) The employees of the covered establishment affected by the order;

(b) The Mississippi Employment Security Commission;

(c) The mayor of each city where the termination, relocation or mass layoff occurs; and

(d) The county board of supervisors of each county where the termination, relocation or mass layoff occurs.

(2) An employer required to give notice of any mass layoff, relocation or termination under this act shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 USCS Section 2101 et seq.).

(3) Notwithstanding the requirements of subsection (1) of this section, an employer is not required to provide notice if a mass layoff, relocation or termination is necessitated by a physical calamity or act of war.
SECTION 3. (1) An employer who fails to give notice as required by this act is liable to each employee who is entitled to notice and who lost his or her employment, for each of the following:

(a) Back pay at the average regular rate of compensation received by the employee during the last three (3) years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(b) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

(2) Liability under this section is calculated for the period of the employer's violation, up to a maximum of sixty (60) days, or one-half (1/2) the number of days that the employee was employed by the employer, whichever period is smaller.

(3) The amount of an employer's liability shall be reduced by the following:

(a) Any wages, except vacation monies accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(b) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

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

SECTION 4. An employer is not required to comply with the notice requirement contained in Section 2 of this act, if the Mississippi Employment Security Commission determines that all of the following conditions exist:
(a) As of the time that notice would have been required, the employer was actively seeking capital or business.

(b) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination.

(c) The employer reasonably and in good faith believed that giving the required notice would have precluded the employer from obtaining the needed capital or business.

SECTION 5. An employer who fails to give notice as required by this act is subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each day of the employer's violation. However, the employer is not subject to a civil penalty under this section if the employer pays to all applicable employees the amounts for which the employer is liable under Section 3 of this act within three (3) weeks from the date the employer orders the mass layoff, relocation or termination.

SECTION 6. A person, including a local government or an employee representative, seeking to establish liability against an employer may bring a civil action on behalf of the person, other persons similarly situated, or both, in any court of competent jurisdiction.

The court may award reasonable attorney's fees as part of costs to any plaintiff who prevails in a civil action brought under this act.

SECTION 7. If the court determines that an employer conducted a reasonable investigation in good faith, and had reasonable grounds to believe that its conduct was not a violation of this act, the court may reduce the amount of any penalty imposed against the employer under this act.

SECTION 8. In any investigation or proceeding under this act, the Mississippi Employment Security Commission is granted, in addition to all other powers granted by law, the authority to examine the books and records of an employer.
SECTION 9. Unemployment benefits may not be denied or reduced because of the receipt of payments related to an employer's violation of this act or the federal Worker Adjustment and Retraining Notification Act (29 USCS Section 2101 et seq.).

SECTION 10. This act shall take effect and be in force from and after July 1, 2003.