

By: Representative Fleming

To: Labor

HOUSE BILL NO. 177

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

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

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

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

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

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

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

23 (e) "Relocation" means the removal of all or  
24 substantially all of the industrial or commercial operations in a  
25 covered establishment to a different location one hundred (100)  
26 miles or more away.

27 (f) "Termination" means the cessation or substantial  
28 cessation of industrial or commercial operations in a covered  
29 establishment.

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

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

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

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

47 (b) The Mississippi Employment Security Commission;

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

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

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

56 (3) Notwithstanding the requirements of subsection (1) of  
57 this section, an employer is not required to provide notice if a  
58 mass layoff, relocation or termination is necessitated by a  
59 physical calamity or act of war.

60           **SECTION 3.** (1) An employer who fails to give notice as  
61 required by this act is liable to each employee who is entitled to  
62 notice and who lost his or her employment, for each of the  
63 following:

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

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

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

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

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

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

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

89           **SECTION 4.** An employer is not required to comply with the  
90 notice requirement contained in Section 2 of this act, if the  
91 Mississippi Employment Security Commission determines that all of  
92 the following conditions exist:

93 (a) As of the time that notice would have been  
94 required, the employer was actively seeking capital or business.

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

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

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

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

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

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

122 **SECTION 8.** In any investigation or proceeding under this  
123 act, the Mississippi Employment Security Commission is granted, in  
124 addition to all other powers granted by law, the authority to  
125 examine the books and records of an employer.

126           **SECTION 9.** Unemployment benefits may not be denied or  
127 reduced because of the receipt of payments related to an  
128 employer's violation of this act or the federal Worker Adjustment  
129 and Retraining Notification Act (29 USCS Section 2101 et seq.).

130           **SECTION 10.** This act shall take effect and be in force from  
131 and after July 1, 2004.