

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

BILL FILING TEMPLATE

Be It Enacted, by the Senate and House of Representatives, etc., as follows:

SECTION 1. Section 71A of chapter 151A of the General Laws , as appearing in the 2004 official edition, is hereby amended by striking the word “voluntary” from the definition of “Advance notification.”

SECTION 2. Section 71A of chapter 151A, as so appearing, is hereby further amended by replacing the definition of “Date of certification” with the following definition:--
“Date of certification,” the actual or anticipated date of plant closing, covered partial closing, or mass layoff as determined by the commissioner.”

SECTION 3. Section 71A of chapter 151A, as so appearing, is hereby further amended by replacing the definition of “Date of notification” with the following the following definition:-- “ ‘Date of notification’, the date of announcement by the employer or the commissioner, whichever is earlier, of a plant closing, covered partial closing, or mass layoff as determined by the commissioner.”

SECTION 4. Section 71A of chapter 151A, as so appearing, is hereby further amended by inserting after the definition of “Industrial advisory board”, the following definition:--
“Mass Layoff,’ the reduction, during any 30 days, of an employer’s workforce, within a single municipality or employment site, that is not the result of a plant closing or partial closing that affects either at least 25 workers and 25 percent of the workforce, or at least 200 workers.”

SECTION 5. Section 71A of chapter 151A, as so appearing, is hereby further amended by replacing the definition of “partial closing”, with the following definition:--““Partial closing’, a permanent cessation of a major discrete portion of the business conducted at a facility which results in the termination of at least 25 workers and 25 percent of the workforce, or at least 200 workers and which affects workers and communities in a manner similar to that of plant closings.”

SECTION 6. Section 71A of chapter 151A, as so appearing, is hereby further amended by replacing the definition of “Wages” with the following definition:-- ““Wages’, as defined in section one of this chapter and remuneration paid to an employee for employment by an employer during the previous four quarterly periods; provided, however, that for the purpose of determining eligibility for reemployment assistance benefits, remuneration shall include unemployment insurance benefits paid for weeks of unemployment occurring during said previous four quarterly periods; and provided further, that all or part of such benefits are attributable to service in the employ of the plant closing, partial plant closing employer, or employer performing a mass layoff.”

SECTION 7. Chapter 151A, as so appearing, is hereby amended by striking section 71B, in its entirety, and replacing it with the following section:

Section 71B. Closing of facility; report; certification; notice; hearing; appeal.

(a) An employer may not order a plant closing, partial closing, or mass layoff unless 60 days prior to such plant closing, partial closing, or mass layoff, the employer gives written notice of the order to the commissioner, in such form and manner as the

commissioner prescribes, such information as may be necessary to determine an employee's reemployment assistance benefits rights under section 71A to 71G, inclusive.

An employer giving such notice shall include in its notice the elements required by the Worker Adjustment and Notification Act (29 U.S.C. Sec. 2101 et. Seq.). The commissioner, after making such inquiries and investigations as deemed necessary, shall certify whether a plant closing, partial closing, or mass layoff has occurred or will occur.

(1) The commissioner shall certify that a plant closing has or will occur if the commissioner determines that at least ninety per cent of the employees of a facility have been or will be permanently separated within the six month period prior to the date of certification or within such other period as the commissioner shall prescribe; provided that, such period shall fall within six month period prior to the date of certification. The commissioner shall give notice of the determination regarding certification to the employer and if the employees are represented by a labor union to such union and to any other person or organization that the commissioner determines is an interested party.

(2) The commissioner shall certify that a partial closing has or will occur if the commissioner determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers have been or will be permanently separated within the six month period prior to the date of certification or within such other period as the commissioner shall prescribe; provided that, such period shall fall within six month period prior to the date of certification. The commissioner shall give notice of the determination regarding certification to the employer and if the employees are represented by a labor union to such union and to any other person or organization that the commissioner determines is an interested party.

(3) The commissioner shall certify that a mass layoff has or will occur if the commissioner determines that at least 25 workers and 25 percent of the workforce; or at least 200 workers have been or will be permanently separated within the six month period prior to the date of certification or within such other period as the commissioner shall prescribe; provided that, such period shall fall within six month period prior to the date of certification. The commissioner shall give notice of the determination regarding certification to the employer and if the employees are represented by a labor union to such union and to any other person or organization that the commissioner determines is an interested party.

(b) Any interested party notified of a determination under this section may request a hearing within ten days after mailing of the notice of the determination. If a hearing is requested, the commissioner or the commissioner's authorized representative shall afford all interested parties a reasonable opportunity for a fair hearing, except that the commissioner may refer the case to the board of review of hearing and decision in accordance with subsection (d) of section 41. The conduct of such hearings before the commissioner or the board of review, as the case may be, shall be in accordance with the procedures prescribed by and pursuant to subsection (b) of section 39. Any interested party aggrieved by any decision on certification may appeal such decision. Such appeal shall be in accordance with the procedures prescribed in sections 40 through 42 inclusive.

(c) The commissioner shall report, from time to time, to the secretary of economic affairs and the industrial advisory board any determination or decision made pursuant to this section and may provide such information to any other interested individual or organization.

(d) An employer who fails to give notice as required by this section before ordering a plant closing, partial closing, or mass layoff, is liable to each employee entitled to notice who lost his or her employment for:

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

(2) 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.

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

(e) The amount of an employer's liability under subdivision (d) is reduced by the following:

(1) Any wages, except vacation moneys accrued prior to the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

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

(3) 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.

(f) Notwithstanding the requirements of subdivision (a), an employer is not required to provide notice if a plant closing, partial closing, or mass layoff, is necessitated by a physical calamity or act of war.

(g) An employer is not required to comply with the notice requirement contained in this section if the commissioner determines that all of the following conditions exist:

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

(2) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the plant closing, partial closing, or mass layoff.

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

(h) The commissioner may not determine that the employer was actively seeking capital or business under paragraph (g) unless the employer provides the department with both of the following:

(1) A written record consisting of all documents relevant to the determination of whether the employer was actively seeking capital or business, as specified by the commissioner.

(2) An affidavit verifying the contents of the documents contained in the record.

(i) The affidavit provided to the commissioner pursuant to paragraph (h)(2) of this section shall contain a declaration signed under penalty of perjury stating that the affidavit and the contents of the documents contained in the record submitted pursuant to paragraph (h)(1) of this section are true and correct.

SECTION 8. Chapter 151A, as so appearing, is hereby amended by striking section 71C, in its entirety, and replacing it with the following section:

“Any proposed regulations to be issued pursuant to section 71B shall be filed with the clerk of the house and the clerk of the senate thirty days before publishing a notice of a public hearing, pursuant to section 2 of chapter 30A.

SECTION 9 Section 71D of chapter 151A, as so appearing, is hereby amended by striking the words “covered partial closing”, and inserting in place thereof the following words:- “,partial closing or mass layoff”.

SECTION 10. Section 71F (a)(1) of chapter 151A, as so appearing, is hereby amended by inserting after the after the words “partial closing”, the following words:- “, or mass layoff”.

SECTION 11. This act shall take effect upon its passage.