

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1169

Short Title: Enact WARN-NC/Give 90-Day Layoff Notice. (Public)

Sponsors: Representatives Glazier, Lucas, Ross, Faison (Primary Sponsors); Harrison, Jones, Mackey, and Wray.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.

April 8, 2009

1 A BILL TO BE ENTITLED
2 AN ACT ENACTING THE WORKER ADJUSTMENT AND RETRAINING
3 NOTIFICATION ACT OF NORTH CAROLINA TO PROVIDE THAT NORTH
4 CAROLINA WORKERS RECEIVE NINETY DAYS' ADVANCE NOTICE OF MASS
5 LAYOFFS AND PLANT CLOSINGS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 24.

10 "Worker Adjustment and Retraining Notification.

11 **"§ 95-75. Short title and legislative purpose.**

12 (a) This Article shall be known as the "Worker Adjustment and Retraining Notification
13 Act of North Carolina" and may be abbreviated as "WARN-NC."

14 (b) The General Assembly finds that the burden on employers and employees of this
15 State in difficult economic times increasingly becomes too great with business closures and
16 layoffs becoming inevitable. Further, when there is advance notice of the loss of employment
17 affecting our communities, the advance notice assists greatly in providing effectively the State
18 and local resources that must be available to our citizens for a smooth transition.

19 (c) The General Assembly declares it to be its purpose and policy through the exercise
20 of its powers to ensure so far as possible that working men and women in this State have the
21 benefit of the earliest meaningful notice of business closures and layoffs to provide sufficient
22 time to prepare for the transition between the jobs they hold and new jobs.

23 **"§ 95-76. Definitions.**

24 (a) The following definitions apply in this Article:

25 (1) Affected employees. – Employees who may reasonably be expected to
26 experience an employment loss as a consequence of a proposed plant closing
27 or mass layoff by their employer. They include individually identifiable
28 employees who will likely lose their jobs because of bumping rights or other
29 factors, to the extent that such individual workers reasonably can be
30 identified at the time notice is required to be given. The category of affected
31 employees includes managerial and supervisory employees but does not
32 include business partners. Consultant or contract employees who have a
33 separate employment relationship with another employer and are paid by
34 that other employer, or who are self-employed, are not "affected employees"
35 of the business to which they are assigned.



- 1 (2) Bumping rights. – Those rights of an employee to displace another employee
2 due to a layoff or other employment action as (i) defined in a collective
3 bargaining agreement or other binding agreement, (ii) provided by employer
4 policy, or (iii) created through a seniority system.
- 5 (3) Constructive discharge. – When a worker's resignation or retirement may be
6 found to be involuntary because the employer has created a hostile or
7 intolerable work environment or has applied other forms of pressure or
8 coercion that forced the employee to quit or resign.
- 9 (4) Employer. – Any business enterprise that employs 100 or more full-time
10 workers or 100 or more full- and part-time workers who work at least a
11 combined 4,000 hours a week. Business enterprises include private for-profit
12 and not-for-profit entities as well as governmental or quasi-governmental
13 organizations that engage in business and are separately organized from the
14 regular government.
- 15 (5) Employment loss. –
16 a. An employment termination, other than a discharge for cause,
17 voluntary departure, or retirement; or
18 b. A layoff exceeding six months; or
19 c. A reduction in hours of work of individual employees of more than
20 fifty percent (50%) during each month of any six-month period.
- 21 (6) Facility. – A separate building or buildings.
- 22 (7) Operating unit. – An organizationally or operationally distinct product,
23 operation, or specific work function within or across facilities at the single
24 site. Whether a specific unit within an employer's organization is an
25 operating unit depends on such factors as collective bargaining agreements,
26 the employer's organizational structure, and industry understandings about
27 what constitutes separate work functions.
- 28 (8) Mass layoff. – A reduction in force that:
29 a. Does not result from a plant closing; and
30 b. Results in an employment loss at the single site of employment
31 during any 30-day period for:
32 1. At least 50-499 employees if they represent at least
33 thirty-three percent (33%) of the total active workforce,
34 excluding any part-time employees; or
35 2. 500 or more employees (excluding any part-time employees).
36 In this case, the thirty-three percent (33%) rule does not
37 apply.
- 38 (9) Part-time worker. – An employee who averages less than 20 hours per week
39 or has been employed for fewer than six of the last 12 months before the
40 notice is due.
- 41 (10) Plant closing. – The permanent or temporary shutdown of a single site of
42 employment, or one or more facilities or operating units within a single site
43 of employment, if the shutdown results in an employment loss at the single
44 site of employment during any 30-day period for 50 or more employees,
45 excluding part-time employees. All of the employment losses do not have to
46 occur within the unit that is shut down.
- 47 (11) Single site of employment. – Refers to any of the following:
48 a. A single location or a group of contiguous locations. Groups of
49 structures that form a campus or industrial park or separate facilities
50 across the street from one another may be considered a single site of
51 employment. Also, several single sites of employment may exist

1 within a single building if separate employers conduct activities
2 within the building.

3 b. Separate buildings or areas within reasonable geographic proximity
4 and share staff and equipment.

5 c. For workers who primarily travel, a home base from which work is
6 assigned or a home base to which workers report when (i) a worker's
7 primary duties require travel from point to point, (ii) the worker's
8 duties are outstationed, and (iii) the worker's primary duties are
9 outside any of the employer's regular employment sites.

10 (12) State rapid response dislocated worker unit. – A unit that is designated by
11 the Governor under the federal Workforce Investment Act.

12 (b) The definition of "employment loss" does not include a situation where a worker is
13 reassigned or transferred to employer-sponsored programs, such as retaining or job search
14 activities, and the reassignment does not constitute an involuntary termination or a constructive
15 discharge, and the employee continues to be paid.

16 **"§ 95-77. WARN-NC notices required; State rapid response.**

17 (a) An employer must provide written notice at least 90 calendar days in advance of a
18 plant closing or a mass layoff in order to assure that assistance can be provided to affected
19 employees, their families, and the appropriate communities through the State's program of rapid
20 assistance for dislocated workers and to allow affected employees transition time to seek
21 alternative jobs or enter skills programs.

22 (b) A WARN-NC notice is required when an employer is laying off at least 50 people
23 in a single site of employment or employs 100 or more workers who work a combined 4,000
24 hours per workweek, and is a private for-profit business, a private nonprofit organization, or a
25 quasi-public entity separately organized from regular government.

26 (c) Upon receipt of a WARN-NC notice, the State's rapid response dislocated worker
27 unit, the local departments of social services, the local offices of the Employment Security
28 Commission, the community colleges, and other training and worker-related public educational
29 resources shall be mobilized immediately to assist affected employees.

30 **"§ 95-78. Penalties; no effect on other rights.**

31 (a) Any employer who violates this Article is liable to each affected employee for an
32 amount equal to back pay and benefits for the period of the violation, up to 90 days.

33 (b) An employer's WARN-NC liability may be reduced by any (i) wages the employer
34 pays over the notice period and (ii) voluntary and unconditional payment not reduced by a legal
35 obligation.

36 (c) Nothing in this Article shall be deemed to diminish the rights or remedies of any
37 affected employee under any collective bargaining agreement, employment contract, other
38 statutory rights or remedies, or at common law.

39 **"§ 95-79. Enforcement.**

40 (a) The Commissioner shall enforce this Article.

41 (b) The Attorney General shall represent the Department of Labor or designate some
42 member of his or her staff to represent them in all actions or proceedings in connection with
43 this Article.

44 **"§ 95-80. Civil action.**

45 Within 90 days of an employer's failure to provide an affected employee with the
46 WARN-NC notice required by this Article, the affected employee may bring against the
47 employer a civil action in the superior court of the county in which the affected employee is
48 employed to obtain monetary damages allowed under G.S. 95-78.

49 **"§ 95-81. Record keeping; reporting; statistics.**

50 (a) Each employer shall make available to the Commissioner copies of the same records
51 and reports regarding the employer's activities relating to this Article as are required to be

1 made, kept, or preserved by the federal Worker Adjustment and Retraining Notification Act
2 (P.L. 100-379) and regulations made pursuant thereto.

3 (b) Each employer shall maintain and make available to the Commissioner any records
4 regarding the employer's activities relating to this Article which the Commissioner may by rule
5 require as necessary and appropriate for the enforcement of this Article.

6 (c) The Commissioner shall adopt rules requiring that employers, through posting of
7 notices or other appropriate means, keep the employees informed of their rights under this
8 Article.

9 (d) Any information obtained by the Commissioner shall be obtained with a minimum
10 burden upon employers, especially those operating small businesses. Unnecessary duplication
11 of efforts in obtaining information shall be reduced to the maximum extent feasible."

12 **SECTION 3.** The Department of Labor shall adopt emergency rules in accordance
13 with G.S. 150B-21.1A to provide for the immediate implementation of this act.

14 **SECTION 4.** The following State agencies, departments, and institutions having
15 workforce development components, public assistance services, or educational programs, shall
16 work with the Commissioner of Labor cooperatively to enhance the State's response to plant
17 closings and mass layoffs under this act:

- 18 (1) Department of Administration.
- 19 (2) Department of Commerce.
- 20 (3) North Carolina Community College System.
- 21 (4) Employment Security Commission.
- 22 (5) Department of Health and Human Services.
- 23 (6) Department of Public Instruction.
- 24 (7) The University of North Carolina.

25 By April 1, 2010, the Commissioner of Labor shall report to the General Assembly
26 on the enhancement of the State's response to plant closings and mass layoffs.

27 **SECTION 5.** This act is effective when it becomes law and applies to plant
28 closings and mass layoffs on or after that date.