

84C.4 Notice — exemptions, special circumstances, wages in lieu of notice.

1. *Strike or lockout.* If a business closing or mass layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this chapter, notice is not required to be given by the employer. This chapter does not require an employer to serve written notice when permanently replacing an employee who is deemed to be an economic striker under the federal National Labor Relations Act. This chapter shall not be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the federal National Labor Relations Act. If an employer hires temporary workers to replace employees during the course of a strike or lockout and later terminates these temporary workers at the conclusion of the strike or lockout, this chapter does not require an employer to serve written notice on the terminated temporary workers.

2. *Rolling layoffs.*

a. When affected employees will not be terminated on the same date, the date of the first individual employment loss within the thirty-day notice period triggers the notice requirement. An employee's last day of employment is considered the date of that employee's layoff. The first and subsequent groups of terminated employees are entitled to a full thirty days' notice.

b. An employer shall give notice if the number of employment losses of two or more actions in any ninety-day period triggers the notice requirements in section 84C.3 for a business closing or a mass layoff. An employer is not required to give notice if the number of employment losses from one action in a thirty-day period does not meet the requirements of section 84C.3. All employment losses in any ninety-day period shall be aggregated to trigger the notice requirement unless the employer demonstrates to the department that the employment losses during the ninety-day period are the result of separate and distinct actions and causes.

3. *Extended notice.* Additional notice is required if the date or schedule of dates of a planned business closing or mass layoff is extended beyond the date or the ending date of any period announced in the original notice.

a. If the postponement is for less than thirty days, the additional notice shall be given as soon as possible to the affected employees or their representatives and the department and shall include reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement. The notice shall be given in a manner which will provide the information to all affected employees.

b. If the postponement is for more than thirty days, the additional notice shall be treated as new notice subject to the provisions of section 84C.3.

4. *Faltering company.* An exception to the thirty-day notice applies to business closings but not to mass layoffs if the requirements of this subsection are met and the exception shall be narrowly construed.

a. An employer must have been actively seeking capital or business at the time that the thirty-day notice would have been required by seeking financing or refinancing through the arrangement of loans or the issuance of stocks, bonds, or other methods of internally generated financing, or by seeking additional money, credit, or business through any other commercially reasonable method. The employer must identify specific actions taken to obtain capital or business.

b. The employer must, at the time notice is actually given, provide a statement of explanation for reducing the notice period in addition to the other notice requirements in section 84C.3.

c. There must have been a realistic opportunity to obtain the financing or business sought.

d. The financing or business sought must have been sufficient, if obtained, to have enabled the employer to avoid or postpone the shutdown. The employer must be able to objectively demonstrate that the amount of capital or the volume of new business sought would have enabled the company to keep the facility, operating unit, or site open for a reasonable period of time.

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

The employer must be able to objectively demonstrate that the employer reasonably thought that a potential customer or source of financing would have been unwilling to provide the new business or capital if notice had been given. This condition may be satisfied if the employer can show that the financing or business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs.

5. *Unforeseeable business circumstance.* An exception to the thirty-day notice applies to business closings and to mass layoffs if the requirements of this subsection are met.

a. Business circumstances occurred that were not reasonably foreseeable at the time that the thirty-day notice would have been required.

b. The employer must, at the time notice is actually given, provide a statement of explanation for reducing the notice period in addition to the other notice requirements in section 84C.3.

c. An important indicator of a reasonably unforeseeable business circumstance is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control.

d. The employer must exercise commercially reasonable business judgment as would a similarly situated employer in predicting the demands of the employer's particular market. The employer is not required to accurately predict general economic conditions that also may affect demand for products or services.

6. *Natural disaster.* An exception to the thirty-day notice applies to business closings and to mass layoffs if the requirements of this subsection are met.

a. A natural disaster occurred at the time notice would have been required.

b. The employer must, at the time notice is actually given, provide a statement of explanation for reducing the notice period in addition to the other requirements to notice in section 84C.3.

c. Floods, earthquakes, droughts, storms, tornadoes, and similar effects of nature are natural disasters under this subsection.

d. An employer must be able to demonstrate that the business closing or mass layoff is a direct result of the natural disaster.

e. If a business closing or mass layoff occurs as an indirect result of a natural disaster, this exception does not apply but the unforeseeable business circumstance exception may be applicable.

7. *Wages in lieu of notice.* The thirty-day notice requirement in section 84C.3 may be reduced by the number of days for which severance payments or wages in lieu of notice are paid by the employer to the employee for work days occurring during the notice period. A severance payment or wages in lieu of notice shall be at least an amount equivalent to the regular pay the employee would earn for the work days occurring during the notice period.

2010 Acts, ch 1085, §4; 2010 Acts, ch 1188, §25

NEW section