



Senate

General Assembly

File No. 445

January Session, 2021

Substitute Senate Bill No. 658

Senate, April 14, 2021

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT REQUIRING EMPLOYERS TO RECALL CERTAIN LAID-OFF WORKERS IN ORDER OF SENIORITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section:

2 (1) "Compensation" means an employee's average weekly earnings
3 for the twelve-month period immediately preceding the date of the
4 employee's last day of active employment with an employer, including
5 wages or salary, payments to an employee while on vacation or on
6 leave, allocated or declared tip income, bonuses or commissions,
7 contributions or premiums paid by the employer for fringe benefits,
8 overtime or other premium payments and allowances for expenses,
9 uniforms, travel or education;

10 (2) "Customary seasonal work" means work performed by an
11 employee for approximately the same portion of each calendar year;

12 (3) "Employer" means any person, including a corporate officer or

13 executive, who directly or indirectly or through an agent or any other
14 person, including through the services of a temporary service or staffing
15 agency or similar entity, conducts an enterprise and employs or
16 exercises control over the wages, hours or working conditions of any
17 employee;

18 (4) "Employment site" means the principal physical place where a
19 laid-off employee performed the predominance of the employee's duties
20 prior to being laid off, or, in the case of a laid-off employee in
21 construction, transportation, building services or other industries where
22 work is performed at locations other than the employer's administrative
23 headquarters from which such assignments were made, any location
24 served by such headquarters;

25 (5) "Enterprise" means any income-producing economic activity
26 carried on in this state that employs five or more employees;

27 (6) "Laid-off employee" means any employee who was employed by
28 the employer for six months or more in the twelve months preceding
29 March 10, 2020, and whose most recent separation from active service
30 or whose failure to be scheduled for customary seasonal work by that
31 employer occurred after March 10, 2020, and before December 31, 2024,
32 and was due to the lack of business or a reduction or furlough of the
33 employer's workforce, the public health and civil preparedness
34 emergencies declared by the Governor on March 10, 2020, or other
35 economic, nondisciplinary reasons; and

36 (7) "Length of service" means the total of all periods of time during
37 which an employee has been in active service, including periods of time
38 when the employee was on leave or on vacation.

39 (b) Each employer shall send to each of its laid-off employees, in
40 writing to such employee's last-known physical address and electronic
41 mail address, and in a text message to such employee's mobile phone,
42 notice of all job positions that become available at the employer for
43 which the laid-off employee is qualified. A laid-off employee is qualified
44 for a position if the employee: (1) Held the same or similar position at

45 the enterprise at the time of the employee's most recent separation from
46 active service with the employer; or (2) is or can be qualified for the
47 position with the same training that would be provided to a new
48 employee hired for such position. The employer shall offer such
49 positions to laid-off employees in the order of preference set forth under
50 subdivisions (1) and (2) of this subsection. Where more than one
51 employee is entitled to preference for a position, the employer shall offer
52 the position to the employee with the greatest length of service at the
53 employment site. An employer may make offers of employment for a
54 position to more than one laid-off employee with the final offer of
55 employment for such position conditioned upon the order of preference
56 described in this subsection.

57 (c) An offer of employment to a laid-off employee pursuant to this
58 section shall be in the same classification or job title at substantially the
59 same employment site, subject to relocation as provided in subdivision
60 (4) of subsection (g) of this section, and with substantially the same
61 duties, compensation, benefits and working conditions as applied to the
62 laid-off employee immediately prior to March 10, 2020.

63 (d) Any laid-off employee who is offered a position pursuant to this
64 section shall be given not less than ten days in which to accept or decline
65 the offer. A laid-off employee who declines an offer due to his or her
66 age, underlying health conditions of himself or herself or of a family
67 member or other person living in his or her household shall retain his
68 or her right to accept the position and shall retain all other rights under
69 this section until both (1) the expiration of the public health and civil
70 preparedness emergencies declared by the Governor on March 10, 2020,
71 and any extension of such emergency declarations, and (2) the laid-off
72 employee is reoffered the position.

73 (e) Each employer that declines to rehire a laid-off employee on the
74 grounds of lack of qualifications and instead hires a person other than a
75 laid-off employee shall provide to the laid-off employee a written notice
76 not later than thirty days after the date such other person is hired. Such
77 notice shall identify the person hired in lieu of rehiring the laid-off

78 employee, the reasons for such decision and all demographic data the
79 employer has regarding such new hire and the laid-off employee who
80 was not rehired.

81 (f) A laid-off employee rehired pursuant to this section shall be
82 permitted to work for not less than thirty work days, unless there is just
83 cause for the employee's termination.

84 (g) The requirements of this section shall apply under any of the
85 following circumstances:

86 (1) The ownership of the employer changed after a laid-off employee
87 was laid off, but the enterprise continues to conduct the same or similar
88 operations it did prior to March 10, 2020;

89 (2) The form of organization of the employer changed after March 10,
90 2020;

91 (3) Substantially all of the assets of the employer were acquired by
92 another entity that conducts the same or similar operations using
93 substantially the same assets; or

94 (4) The employer relocates the operations at which a laid-off
95 employee was employed prior to March 10, 2020, to a different
96 employment site not greater than twenty-five miles away from the
97 original employment site.

98 (h) No employer shall terminate, refuse to reemploy, reduce
99 compensation or otherwise take any adverse action against any person
100 seeking to enforce his or her rights under this section or for participating
101 in proceedings related to this section, opposing the violation of any
102 provision of this section or otherwise asserting rights under this section.

103 (i) An employer that terminates, refuses to reemploy or takes any
104 other adverse action against any laid-off employee shall provide to the
105 employee, at or before the time of the termination, refusal to reemploy
106 or other adverse action, a detailed written statement of the reason or
107 reasons for the termination, refusal to reemploy or other adverse action,

108 including all the facts substantiating the reason or reasons and all facts
109 known to the employer that contradict the substantiating facts.

110 (j) (1) A laid-off employee aggrieved by a violation of any provision
111 of this section may bring a civil action in the Superior Court or may
112 designate an agent or representative to maintain the action on behalf of
113 the employee.

114 (2) If the court finds that the employer has violated any provision of
115 this section, the court may enjoin the employer from engaging in such
116 violation and may order such affirmative action as the court deems
117 appropriate, including, but not limited to, the reinstatement or rehiring
118 of the laid-off employee, with or without back pay and fringe benefits,
119 or other equitable relief as the court deems appropriate. Interim
120 earnings or amounts earnable with reasonable diligence by the laid-off
121 employee who was subjected to the violation shall be deducted from the
122 back pay permitted under this subdivision and any reasonable amounts
123 expended by the laid-off employee in searching for, obtaining or
124 relocating to new employment shall be deducted from the interim
125 earnings before such earnings are deducted from such back pay. The
126 court may order (A) compensatory and punitive damages if the court
127 finds that the employer committed the violation with malice or with
128 reckless indifference to the provisions of this section, and (B) treble
129 damages if the court finds that the employer terminated the laid-off
130 employee in violation of the provisions of subsection (h) of this section.
131 Any laid-off employee who prevails in a civil action shall be awarded
132 reasonable attorney's fees and costs to be taxed by the court.

133 (k) The provisions of this section shall apply to each laid-off
134 employee, whether or not such laid-off employee is represented for
135 purposes of collective bargaining or is covered by a collective
136 bargaining agreement, and may be waived in a bona fide collective
137 bargaining agreement but only if the waiver is explicitly set forth in the
138 agreement in clear and unambiguous terms. Unilateral implementation
139 of terms and conditions of employment by either party to a collective
140 bargaining relationship shall not constitute or be permitted as a waiver

141 of all or any part of the provisions of this section. Nothing in this section
 142 shall be construed to invalidate or limit the rights, remedies and
 143 procedures of any contract or agreement that provides equal or greater
 144 protection for laid-off employees than provided by this section and it
 145 shall not be a violation of this section for an employer to follow an order
 146 of preference for rehiring laid-off employees required by a collective
 147 bargaining agreement that is different from the order of preference
 148 required by this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In Subsec. (b), "notice of" was added before "all" for accuracy; in Subsec. (c), "subdivision (4) of" was added before "subsection" for accuracy; Subsec. (j)(2) was rewritten for clarity; and in Subsec. (k), "recall" was changed to "rehiring laid-off employees" for consistency and accuracy.

LAB *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which requires private-sector employers with at least five employees to meet certain requirements related to recalling certain employees laid off between March 10, 2020, and December 31, 2024, does not result in any fiscal impact to the state or municipalities.

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any fiscal impact to the Judicial Department. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to require additional resources.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 658*****AN ACT REQUIRING EMPLOYERS TO RECALL CERTAIN LAID-OFF WORKERS IN ORDER OF SENIORITY.*****SUMMARY**

This bill requires private-sector employers with at least five employees to meet certain requirements related to recalling certain employees laid off between March 10, 2020, and December 31, 2024. Among other things, these employers must notify laid-off employees about available positions for which a laid-off employee is qualified and offer the positions first to those who previously held the same or a similar position, then to those who can qualify for the position with the same training as a new employee. If more than one is entitled to preference for a position, the employer must offer it to the employee with the most seniority at the employment site.

If the laid-off employee declines an employer's offer job due to certain reasons (e.g., an underlying health condition), the bill gives the laid-off employee the right to accept the position until the end of the public health and civil preparedness emergencies declared by the governor on March 10, 2020, in response to COVID-19. If an employer hires someone else instead of a laid-off employee, the bill requires the employer to give the laid-off employee a written notice that identifies the other person, including their demographic data, and the reasons for the decision.

The bill prohibits employers from retaliating against laid-off employees for exercising their rights under the bill, and it allows a laid-off employee aggrieved by a violation of the bill to bring a civil action in Superior Court.

EFFECTIVE DATE: Upon passage

COVERED EMPLOYERS AND LAID-OFF EMPLOYEES

An “employer” covered by the bill is any person who conducts an “enterprise” and employs or exercises control over the wages, hours, or working conditions of any employee. It includes corporate officers or executives, acting directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity. An “enterprise” is any income-producing economic activity conducted in the state that employs five or more employees.

A “laid-off employee” covered by the bill is an employee (1) employed by an employer for at least six of the twelve months preceding March 10, 2020, and (2) whose most recent separation from active service with, or whose failure to be scheduled for customary seasonal work by, that employer occurred between March 10, 2020, and December 31, 2024, due to a lack of business or a reduction or furlough of the employer’s workforce; the current COVID-19 public health and civil preparedness emergencies; or other economic, non-disciplinary reasons. “Customary seasonal work” is work performed by an employee for approximately the same portion of each calendar year.

RECALL NOTICE AND PREFERENCE

Notice

The bill requires an employer to send each of its laid-off employees a notice about its available job positions for which the laid-off employee is qualified. Under the bill, laid-off employees are qualified if they (1) held the same or a similar position at the enterprise when they were most recently separated from service with the employer or (2) are or can be qualified for the position with the same training as a new employee hired for the position. The notice must be sent in writing to the laid-off employee’s last known physical address and e-mail address, and by text message to his or her mobile phone. (The bill does not specify when an employer must send the notices or how often it must do so.)

Recall Order of Preference

The bill requires employers to offer positions to laid-off employees in

the same order of preference that they are deemed qualified above: first to those who held the same or a similar position before their separation, then to those who can qualify for the position with the same training as a new employee. If more than one (presumably, laid-off) employee is entitled to preference for a position, the bill requires the employer to offer the position to the (presumably, laid-off) employee with the greatest length of service at the employment site. An employer may offer a position to more than one laid-off employee, with the final offer for the position conditioned upon the same order of preference as described above.

An “employment site” under the bill is the principal physical place where the laid-off employee performed the predominance of his or her duties before being laid off. But for a laid-off employee in construction, transportation, building services, or other industries where work is performed at locations other than the employer’s administrative headquarters, it is any location served by the headquarters. An employee’s “length of service” is the total amount of time that the employee was in active service, including the employee’s time on leave or vacation.

Job Offers

The bill requires that a job offer to a laid-off employee be in the same classification or job title at substantially the same employment site (which may be relocated within 25 miles), and with substantially the same duties, compensation (including fringe benefits), and working conditions that the employee had immediately before March 10, 2020. (It is unclear how this requirement could apply to a former senior employee (e.g., a manager) who, under the bill, must be offered a position for which he or she could qualify with the same training as a new employee (e.g., a cashier).)

Under the bill, an employer must give a laid-off employee who is offered a position at least 10 days to accept or decline the offer. (The bill does not specify what happens if the employee does not respond within 10 days.) If the employee declines due to his or her age, or due to his or

her underlying health conditions (or those of a family member or other person living in his or her household), the employee retains the right to accept the position and all other rights under the bill until the current COVID-19 public health and civil preparedness emergencies, and any extensions of them, expire and the laid-off employee is reoffered the position. The bill requires that a rehired employee be allowed to work for at least 30 days, unless there is just cause for their termination.

Hiring Another Person. If an employer does not rehire a laid-off employee due to a lack of qualifications and instead hires someone else, the bill requires the employer to give the laid-off employee a written notice within 30 days after hiring the other person. The notice must identify the other person, the reasons for the decision, and all demographic data the employer has about the other person and the laid-off employee who was not rehired.

Application of Bill Provisions

The bill specifies that its provisions apply if:

1. the employer's owner changed after the laid-off employee was laid off, but the enterprise continues to conduct the same or similar operations as it did before March 10, 2020;
2. the employer's form of organization changed after March 10, 2020;
3. another entity acquired substantially all of the employer's assets, and conducts the same or similar operations using substantially the same assets; or
4. the employer relocates the operations where the laid-off employee worked before March 10, 2020, to a different employment site within 25 miles of the original employment site.

Collective Bargaining Agreements. The bill also requires that its provisions apply to each laid-off employee, regardless of whether he or she is represented for collective bargaining or covered by a collective

bargaining agreement. But it specifies that it (1) is not a violation for an employer to follow a recall order of preference required by a collective bargaining agreement that is different from the order of preference required by the bill and (2) does not invalidate or limit the rights, remedies, and procedures of any contract or agreement that provides equal or greater protection for laid-off employees.

The bill also allows its provisions to be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. It specifies that unilateral implementation of terms and conditions of employment by either party to an agreement does not constitute and must not be allowed as a waiver.

EMPLOYEE PROTECTIONS AND ENFORCEMENT

The bill prohibits employers from terminating, refusing to reemploy, reducing compensation, or taking any adverse action against anyone seeking to enforce their rights under the bill or for (1) participating in proceedings related to the bill, (2) opposing a violation of it, or (3) otherwise asserting their rights under it. It requires an employer that does so to give the laid-off employee a detailed written statement of the reason why when it takes these prohibited actions. The statement must include all the facts substantiating the employer's reason or reasons for taking the prohibited action, and all facts known to the employer that contradict the substantiating facts.

The bill allows a laid-off employee aggrieved by a violation to bring a civil action in Superior Court. He or she may also designate an agent or representative to maintain the action on his or her behalf. If the court finds that the employer violated the bill, it may enjoin the employer from engaging in the violation and order appropriate affirmative action (e.g., reinstatement or rehiring, back pay, and benefits) and any other relief it deems appropriate.

If a court orders back pay, the bill requires that the laid-off employee's interim earnings or amounts earnable with reasonable

diligence be deducted from the back pay. However, any reasonable amounts that the laid-off employee spent searching for, obtaining, or relocating to new employment must be deducted from the interim earnings before their deduction from the back pay.

Under the bill, the court may also order (1) compensatory and punitive damages if it finds that the employer committed the violation with malice or with reckless indifference to the bill’s requirements and (2) treble damages if it finds that the employer terminated the laid-off employee in violation of the bill. It also requires courts to award attorney’s fees and costs to a laid-off employee who prevails in a civil action.

BACKGROUND

Related Bills

sHB 6595 (§ 7) and sSB 1002 (§ 7), both reported favorably by the Labor and Public Employees Committee, contain provisions identical to this bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/25/2021)