



General Assembly

January Session, 2021

Committee Bill No. 658

LCO No. 5913



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

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 his or her last known physical address and electronic mail
41 address, and in a text message to their mobile phone, all job positions
42 that become available at the employer for which the laid-off employee
43 is qualified. A laid-off employee is qualified for a position if the
44 employee: (1) Held the same or similar position at the enterprise at the
45 time of the employee's most recent separation from active service with

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

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

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

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

78 has regarding such new hire and the laid-off employee who was not
79 rehired.

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

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

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

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

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

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

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

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

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

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

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

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

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

To require employers to recall certain laid-off workers in order of seniority.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. LOONEY, 11th Dist.; SEN. CABRERA, 17th Dist.
REP. MICHEL, 146th Dist.; REP. RYAN, 139th Dist.
REP. LEMAR, 96th Dist.

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