



General Assembly

January Session, 2021

Substitute Bill No. 658



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

