



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

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

**LAB**      *Joint Favorable Subst. -LCO*

**JUD**      *Joint Favorable*