

**HOUSE . . . . . No. 1640**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Daniel J. Hunt*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the notification of large job layoffs.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Daniel J. Hunt*

*13th Suffolk*

*Daniel R. Cullinane*

*12th Suffolk*

**HOUSE . . . . . No. 1640**

By Mr. Hunt of Boston, a petition (accompanied by bill, House, No. 1640) of Daniel J. Hunt and Daniel R. Cullinane for legislation to require certain notices prior to plant closings or layoffs. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3148 OF 2017-2018.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
In the One Hundred and Ninety-First General Court  
(2019-2020)  
\_\_\_\_\_

An Act relative to the notification of large job layoffs.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 71A of chapter 151A of the General Laws, as appearing in the  
2 2012 Official Edition, is hereby amended by striking out, in line 4, the word "voluntary."

3 SECTION 2. Section 71A of chapter 151A, as so appearing, is hereby further amended  
4 by inserting before the word "as," in line 13, the following words:- " , or mass layoff"

5 SECTION 3. Section 71A of chapter 151A, as so appearing, is hereby further amended  
6 by inserting before the word "as," in line 16, the following words: - " , or mass layoff"

7 SECTION 4. Section 71A of chapter 151A, as so appearing, is hereby further amended  
8 by

9 inserting after the thirteenth paragraph the following paragraph:- "Mass  
10 Layoff,' the reduction, during any 30 days, of an employer's workforce, within a single  
11 municipality or employment site, that is not the result of a plant closing or partial closing  
12 that  
13 affects either at least 25 workers and 25 percent of the workforce, or at least 200  
14 workers."

15 SECTION 5. Section 71A of chapter 151A, as so appearing, is hereby further amended  
16 by

17 striking out, in lines 48-49, the words "a significant number of employees of said facility"  
18 and inserting in place thereof the following words:- "at least 25 workers and 25 percent of the  
19 workforce, or at least 200 workers."

20 SECTION 6. Section 71A of chapter 151A, as so appearing, is hereby further amended  
21 by inserting after the word "employer," in line 81, the following words:- ", or employer  
22 performing a mass layoff."

23 SECTION 7. Subsection (a) of section 71B of chapter 151A, as so appearing, is hereby  
24 amended by striking out subsection (a) and inserting in place the following subsection:--

25 (a) An employer may not order a plant closing, partial closing, or mass layoff unless 60  
26 days

27 prior to such plant closing, partial closing, or mass layoff, the employer gives written  
28 notice of

29 the order to the commissioner, in such form and manner as the commissioner prescribes,  
30 such

31 information as may be necessary to determine an employee's reemployment assistance  
32 benefits rights under section 71A to 71G, inclusive. An employer giving such notice shall  
33 include in its notice the elements required by the Worker Adjustment and Notification Act (29  
34 U.S.C. Sec. 2101 et. Seq.). The commissioner, after making such inquiries and investigations as  
35 deemed necessary, shall certify whether a plant closing, partial closing, or mass layoff has  
36 occurred or will occur.

37 (1) The commissioner shall certify that a plant closing has or will occur if the  
38 commissioner determines that at least ninety per cent of the employees of a facility have been or  
39 will be

40 permanently separated within the six month period prior to the date of certification or  
41 within

42 such other period as the commissioner shall prescribe; provided that, such period shall  
43 fall within six month period prior to the date of certification. The commissioner shall give notice  
44 of the determination regarding certification to the employer and if the employees are represented  
45 by a labor union to such union and to any other person or organization that the commissioner  
46 determines is an interested party.

47 (2) The commissioner shall certify that a partial closing has or will occur if the  
48 commissioner

49 determines that at least 25 workers and 25 percent of the workforce; or at least 200  
50 workers have been or will be permanently separated within the six month period prior to the date  
51 of

52 certification or within such other period as the commissioner shall prescribe; provided  
53 that, such period shall fall within six month period prior to the date of certification. The  
54 commissioner shall give notice of the determination regarding certification to the employer and  
55 if the employees are represented by a labor union to such union and to any other person or  
56 organization that the commissioner determines is an interested party.

57 (3) The commissioner shall certify that a mass layoff has or will occur if the  
58 commissioner

59 determines that at least 25 workers and 25 percent of the workforce; or at least 200  
60 workers have been or will be permanently separated within the six month period prior to the date  
61 of

62 certification or within such other period as the commissioner shall prescribe; provided  
63 that, such period shall fall within six month period prior to the date of certification. The  
64 commissioner shall give notice of the determination regarding certification to the employer and  
65 if the employees are represented by a labor union to such union and to any other person or  
66 organization that the commissioner determines is an interested party.

67 SECTION 8. Section 71B of chapter 151A, as so appearing, is hereby amended by  
68 inserting after subsection (c) the following subsections:--

69 (d) An employer who fails to give notice as required by this section before ordering a  
70 plant

71 closing, partial closing, or mass layoff, is liable to each employee entitled to notice who  
72 lost his

73 or her employment for:

74 (1) Back pay at the average regular rate of compensation received by the employee  
75 during the

76 last three years of his or her employment, or the employee's final rate of compensation,  
77 whichever is higher.

78 (2) The value of the cost of any benefits to which the employee would have been entitled  
79 had his or her employment not been lost, including the cost of any medical expenses incurred by  
80 the employee that would have been covered under an employee benefit plan.

81 (3) Liability under this section is calculated for the period of the employer's violation, up  
82 to a

83 maximum of 60 days, or one-half the number of days that the employee was employed by  
84 the

85 employer, whichever period is smaller.

86 (e) The amount of an employer's liability under subdivision (d) is reduced by the  
87 following:

88 (1) Any wages, except vacation moneys accrued prior to the period of the employer's  
89 violation,

90 paid by the employer to the employee during the period of the employer's violation.

91 (2) Any voluntary and unconditional payments made by the employer to the employee  
92 that were not required to satisfy any legal obligation.

93 (3) Any payments by the employer to a third party or trustee, such as premiums for health  
94 benefits or payments to a defined contribution pension plan, on behalf of and attributable  
95 to the employee for the period of the violation.

96 (f) Notwithstanding the requirements of subdivision (a), an employer is not required to  
97 provide

98 notice if a plant closing, partial closing, or mass layoff, is necessitated by a physical  
99 calamity or

100 act of war.

101 (g) An employer is not required to comply with the notice requirement contained in this  
102 section

103 if the commissioner determines that all of the following conditions exist:

104 (1) As of the time that notice would have been required, the employer was actively  
105 seeking

106 capital or business.

107 (2) The capital or business sought, if obtained, would have enabled the employer to avoid  
108 or  
109 postpone the plant closing, partial closing, or mass layoff.

110 (3) The employer reasonably and in good faith believed that giving the notice required by  
111 this  
112 section would have precluded the employer from obtaining the needed capital or  
113 business.

114 (h) The commissioner may not determine that the employer was actively seeking capital  
115 or  
116 business under paragraph (g) unless the employer provides the department with both of  
117 the  
118 following:

119 (1) A written record consisting of all documents relevant to the determination of whether  
120 the  
121 employer was actively seeking capital or business, as specified by the commissioner.

122 (2) An affidavit verifying the contents of the documents contained in the record.

123 (i) The affidavit provided to the commissioner pursuant to paragraph (h)(2) of this section  
124 shall



125 contain a declaration signed under penalty of perjury stating that the affidavit and the  
126 contents of the documents contained in the record submitted pursuant to paragraph (h)(1) of this  
127 section are true and correct.

128 SECTION 9. Chapter 151A, as so appearing, is hereby amended by striking out section  
129 71C, and inserting in place thereof the following section: --

130 "Any proposed regulations to be issued pursuant to section 71B shall be filed with the  
131 clerk of

132 the house and the clerk of the senate thirty days before publishing a notice of a public  
133 hearing,

134 pursuant to section 2 of chapter 30A.

135 SECTION 10. Section 71D of chapter 151A, as so appearing, is hereby amended by  
136 inserting after the words "partial closings," in line 5, the following words:-- "or mass layoff"

137 SECTION 11. Section 71F of chapter 151A, as so appearing, is hereby amended by  
138 inserting after the words "partial closing," in line 6, the following words:-- ", or mass  
139 layoff"

140 SECTION 12. This act shall take effect upon its passage.

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