

# HOUSE BILL NO. 5251

July 01, 2021, Introduced by Reps. Hammoud and Brixie and referred to the Committee on Workforce, Trades, and Talent.

A bill to require certain employers that close or relocate an establishment or engage in a mass layoff to pay severance pay to certain employees; to require certain employers to display certain information at worksites; to provide for the powers and duties of certain state governmental officers and entities; to authorize the promulgation of rules; to provide for civil sanctions; and to provide remedies.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**           Sec. 1. This act shall be known and may be cited as the

1 "relocation, closing, and mass layoff severance pay act".

2 Sec. 3. As used in this act:

3 (a) "Closing" or "closes" means the permanent shutdown of a  
4 covered establishment. A closing may occur because of a relocation  
5 or a termination or consolidation of the covered employer's  
6 operations.

7 (b) "Covered employer" means an employer that directly or  
8 indirectly owns and operates a covered establishment. A parent  
9 corporation is considered an indirect owner and operator of any  
10 covered establishment that is directly owned and operated by its  
11 corporate subsidiary.

12 (c) "Covered establishment" means a facility or part of a  
13 facility at which in the 12-month period immediately preceding a  
14 closing, mass layoff, or relocation, 100 or more employees worked,  
15 regardless of whether the employees worked at the facility at the  
16 same time.

17 (d) "Department" means the department of labor and economic  
18 opportunity.

19 (e) "Director" means the director of the department, or his or  
20 her designee.

21 (f) "Eligible employee" means an employee who meets all of the  
22 following conditions:

23 (i) At the time of the closing or mass layoff, has been  
24 continuously employed at the covered establishment for at least 1  
25 year, including any period when the employee was on a leave of  
26 absence. The requirement that the employee be employed at the time  
27 of the closing or mass layoff does not apply to an employee who  
28 voluntarily quit employment at the covered establishment to take a  
29 new job 30 days or less before the date set by the covered employer

1 for a closing or mass layoff in an initial notice provided by the  
2 covered employer that is required under this act or federal law.

3 (ii) Has not been discharged for cause.

4 (iii) Has not accepted employment at another or relocated  
5 facility operated by the covered employer.

6 (g) "Employer" means a person that employs 100 or more  
7 employees.

8 (h) "Gross earnings" includes all pay for regular hours, shift  
9 differentials, premiums, overtime, floating holidays, holidays,  
10 funeral leave, jury duty pay, sick pay, and vacation pay earned  
11 within the 12-month period immediately preceding the closing or  
12 mass layoff. Gross earnings does not include payments made under a  
13 third-party benefit program, such as disability payments.

14 (i) "Mass layoff" means a reduction in a covered employer's  
15 workforce, not the result of a closing, that, for at least 6  
16 months, results in a loss of at least 50 employees at a covered  
17 establishment.

18 (j) "Physical calamity" means a calamity such as fire, flood,  
19 or other natural disaster.

20 (k) "Relocation" means the removal of all or substantially all  
21 operations in a covered establishment to a new location, within or  
22 outside this state, 100 or more miles distant from its original  
23 location.

24 (l) "Week's pay" means an amount equal to an employee's gross  
25 earnings during the 12-month period immediately preceding the month  
26 of the closing or mass layoff, as determined by the department,  
27 divided by the number of weeks in which the employee received gross  
28 earnings during that 12-month period.

29 Sec. 5. (1) Subject to subsection (2), a covered employer that

1 closes or engages in a mass layoff at a covered establishment shall  
2 pay to an eligible employee of the covered establishment severance  
3 pay at the rate of 1 week's pay for each year that the employee was  
4 employed at the covered establishment and partial pay for any  
5 partial year. The severance pay to an eligible employee under this  
6 section is in addition to any final wage payment to the employee  
7 and must be paid within 1 regular pay period after the employee's  
8 last full day of work.

9 (2) Subsection (1) does not apply if the closing of or a mass  
10 layoff at a covered establishment is necessitated by a physical  
11 calamity or the final order of a federal, state, or local  
12 government agency.

13 (3) A covered employer is not exempt from liability for  
14 severance pay under this act solely because it files a voluntary  
15 petition for bankruptcy protection under chapter 7 or chapter 11 of  
16 title 11 of the federal bankruptcy code, 11 USC 701 to 784 and 11  
17 USC 1101 to 1174, or because an involuntary petition is commenced  
18 against it pursuant to section 303 of the federal bankruptcy code,  
19 11 USC 303.

20 (4) A covered employer that violates this section may be  
21 ordered to pay a civil fine of not more than \$1,000.00 for each  
22 separate violation. A violation of this section may be prosecuted  
23 by the prosecutor of the county in which the violation occurred or  
24 by the attorney general. A civil fine must not be imposed under  
25 this subsection if doing so would prevent the violator from making  
26 all payments required under subsection (1).

27 Sec. 7. A covered employer that violates this act is liable to  
28 an affected employee in the amount of the severance pay required to  
29 be paid to the employee under this act that remains unpaid. One or

1 more employees may bring an action, for and on behalf of that  
2 employee or those employees and any other employees similarly  
3 situated, in any court of competent jurisdiction to recover the  
4 unpaid severance pay. A labor organization may bring an action on  
5 behalf of its members. A court, in an action brought under this  
6 section, in addition to any judgment awarded to the plaintiff,  
7 shall allow for a reasonable attorney fee and costs of the action  
8 to be recovered by the plaintiff.

9       Sec. 9. The department or attorney general may bring an action  
10 in any court of competent jurisdiction to recover unpaid severance  
11 pay under this act. The right of an employee to commence an action  
12 and of an employee to become a party plaintiff to any pending  
13 action brought under section 7 terminates upon the filing of a  
14 complaint by the department or attorney general in an action under  
15 this section, unless the action is dismissed without prejudice by  
16 the department or attorney general. Money from an award recovered  
17 by the department or attorney general on behalf of an employee  
18 under this section must be held in a special deposit account and  
19 must be paid, on order of the director or attorney general, to the  
20 employee. Money from an award in the special deposit account  
21 remaining 3 or more years after the final disposition of the  
22 action, if the money has remained in the special deposit account  
23 because of the inability to pay the employee, must be deposited  
24 into the general fund.

25       Sec. 11. (1) A covered employer shall notify the department in  
26 writing not less than 90 days before relocating or closing a  
27 covered establishment. A covered employer shall notify the  
28 department as far in advance as practicable, but no later than  
29 within 7 days before a mass layoff at a covered establishment, and

1 shall report to the department in writing the expected duration of  
2 the mass layoff and whether it is of indefinite or definite  
3 duration. The department shall periodically, but no less frequently  
4 than every 30 days, require the covered employer to report facts  
5 that the department considers relevant to determine whether the  
6 mass layoff constitutes a closing or whether there is a substantial  
7 reason to believe the affected employees will be recalled. A  
8 notification or report provided to the department under this  
9 section must include all relevant information in the possession of  
10 the covered employer regarding a potential recall, if applicable.

11 (2) To monitor compliance with the requirements of this act, a  
12 covered employer shall allow the department access to its  
13 employees' wage records, with appropriate notice and at a mutually  
14 agreeable time.

15 (3) The department shall create a poster for use by employers  
16 that includes statements that summarize an employee's rights under  
17 this act. An employer shall display the poster at each of its  
18 worksites in a conspicuous location that is accessible to its  
19 employees. An employer that violates this subsection may be ordered  
20 to pay a civil fine of not more than \$5,000.00 for each separate  
21 violation. A violation of this subsection may be prosecuted by the  
22 prosecutor of the county in which the violation occurred or by the  
23 attorney general.

24 Sec. 13. (1) An employer shall notify the employees of a  
25 covered establishment and the officers of the municipality where  
26 the covered establishment is located in writing not less than 90  
27 days before closing the covered establishment, unless this notice  
28 requirement is waived by the department. An employer that violates  
29 this section is responsible for a state civil infraction and may be

1 ordered to pay a civil fine of not more than \$1,000.00 unless  
2 either of the following applies:

3 (a) The closing is necessitated by a physical calamity or the  
4 final order of a federal, state, or local government agency.

5 (b) The failure to give notice is due to unforeseen  
6 circumstances.

7 (2) A civil fine imposed under this section must not be  
8 collected if collecting the civil fine would prevent the violator  
9 from making all payments required under section 5(1).

10 Sec. 15. Benefits paid or payable to an eligible employee  
11 under the Michigan employment security act, 1936 (Ex Sess) PA 1,  
12 MCL 421.1 to 421.75, do not reduce the amount of severance pay the  
13 eligible employee is entitled to receive under this act.

14 Sec. 17. The department may promulgate rules to implement this  
15 act pursuant to the administrative procedures act of 1969, 1969 PA  
16 306, MCL 24.201 to 24.328.

17 Sec. 19. This act applies to an employment agreement or  
18 collective bargaining agreement that is executed, extended, or  
19 renewed on or after the effective date of this act.

20 Enacting section 1. This act takes effect 90 days after the  
21 date it is enacted into law.