

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 801
Finance

(Senator Griffith)

Economic Matters

Labor and Employment – Economic Stabilization Act – Alterations

This bill alters definitions, thresholds, and notification requirements for employers under the Economic Stabilization Act. Specifically, the bill establishes that an employee may not be counted in the determination of a reduction in operations under specified circumstances. It further clarifies that (1) *permanent* closures occur when the employer has not agreed in a written contract to restore operations within three months after the time of the reduction in employment and (2) a *reduction in operations* includes a relocation from an initial workplace that may reduce the total number of employees at the initial workplace by at least 25% or 15 employees, whichever is greater. Additionally, contact information for a *company official* must be included in the notification, and the bill requires notification only for the chief elected official of the political subdivision instead of all elected officials in the jurisdiction. Finally, the bill creates exceptions to the required notification deadline in specified instances.

Fiscal Summary

State Effect: The Maryland Department of Labor (MDL) can absorb the bill's requirements with existing resources. No direct effect on revenues.

Local Effect: Revenues and expenditures are not affected. Other than the chief elected official in a political subdivision, all other elected officials no longer must receive notification of a reduction in operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Reductions in Operations

An employee may not be counted in the determination of a reduction in operations if the employee accepts an offer to transfer to any other site of employment within 30 days after being offered the transfer.

Elected Official Notification

The bill limits the scope of elected official notification from all elected officials in the jurisdiction to only the chief elected official of the political subdivision where the workplace is located. Additionally, the bill clarifies that, if a workplace is located in more than one political subdivision, only the chief elected official of the subdivision to which the employer paid the most taxes for the prior fiscal year must receive notification.

Exceptions to Notification

The bill establishes two exceptions to the requirement that an employer provide written notice of a reduction in operations at least 60 days before initiating the reduction. First, notice is not required if the employer was actively seeking capital or additional business to prevent the layoffs and believed that providing notice would preclude the employer from obtaining necessary capital or business. Second, notice is not required if the reduction in operations occurs due to any form of natural disaster.

If one of the above situations precludes written notice on normal deadlines, the employer must provide notice as soon as practicable with a brief statement of the basis for not providing written notice at least 60 days before initiating a reduction in operation.

In the Case of Sale/Purchase of a Business

The bill clarifies that in an instance when purchase or sale causes a reduction in operations, notice must be provided both by the seller on or before the effective date of sale and by the purchaser after the effective date of sale.

Current Law: The Economic Stabilization Act established a quick response program to provide both employers and employees with services to assist in mitigating the effects of a reduction in operations on employees. The Act, as altered by Chapters 406 and 407 of 2020, defines “employer” as any person, corporation, or other entity that employs at least 50 employees and operates an industrial, commercial, or business enterprise in the State,

but it does not include the State or its political subdivisions or any employer who has been in business in the State for less than one year. A “reduction in operations” includes (1) the relocation of a part of an employer’s operation from one workplace to another or (2) the shutting down of a workplace that reduces the number of employees by the greater of at least 25% or 15 employees over any three-month period. The Act also defines “employee” as an individual who works for an employer for an hourly or salaried wage or in a managerial or supervisory capacity. “Employee” does not include an individual who works less than an average of 20 hours per week or has worked for an employer for less than 6 months in the immediately preceding 12 months.

Under the Act, an employer must provide written notice at least 60 days before initiating a reduction in operations to (1) all employees subject to the reduction; (2) each exclusive representative or bargaining agency that represents the employees; (3) individuals who work less than 20 hours on average each week or have worked for the employer for less than 6 months in the preceding 12 months; (4) the Division of Workforce Development and Adult Learning’s (DWDAL) dislocated workers unit; and (5) all elected officials in the jurisdiction.

The quick response program does not apply to a reduction in operations resulting solely from labor disputes, seasonal factors customary in the industry, or an employer filing for bankruptcy. Nor does it apply to a reduction in operations occurring at construction sites or temporary workplaces or in a commercial, industrial, or agricultural enterprise operated by the State or its political subdivisions.

The Secretary of Labor, in cooperation with the Workforce Development Board, must develop voluntary guidelines for employers faced with a reduction in operations, which must include the appropriate length of time for advance notification to employees of termination (whenever possible and appropriate, at least 90 days’ notice), the appropriate continuation of benefits, or specific mechanisms that employers can utilize to ask for assistance from the program. The mandatory guidelines must include the continuation of benefits that an employer should provide and a written notice that an employer expects to terminate employees due to a reduction in operations. MDL must distribute the guidelines to all employers in the State every two years. MDL must maintain the capacity to provide employment and training services through the quick response program.

Employers must give notice to their local Office of Unemployment Insurance when laying off 25 or more employees for a common reason for periods in excess of seven days. The notice provided by employers must include specified information about the location and timing of the reduction in operations.

When the Secretary of Labor, or the Secretary’s designee, determines that the Economic Stabilization Act has been violated, the Secretary or designee must issue an order

compelling compliance and may assess a civil penalty of up to \$10,000 per day for each day that an employer violated the requirement for written notice. In determining the amount of any assessed penalty, the Secretary or designee must consider specified items, and the assessment of the penalty is subject to specified notice and hearing requirements.

The federal [Worker Adjustment and Retraining Notification Act \(WARN\)](#) requires employers with 100 or more employees (generally not counting those who have worked less than 6 months in the last 12 months and those who work an average of fewer than 20 hours a week) to provide at least 60 calendar days advance written notice of a plant closing and mass layoff affecting 50 or more employees at a single site of employment. WARN makes certain exceptions to the requirements when layoffs occur due to unforeseeable business circumstances, faltering companies, and natural disasters. Employees entitled to notice under WARN include managers and supervisors, as well as hourly and salaried workers. WARN requires that notice also be given to employees' representatives, the local chief elected official, and the state dislocated worker unit.

DWDAL's Dislocated Services Unit (DSU) is a federally funded unit that manages notifications of employment dislocations in Maryland. DSU provides oversight of [Rapid Response](#), the State's system to respond to layoffs, and to prevent or minimize their impacts on workers, businesses, and communities. As part of its regular operations, DSU oversees the issuance and sharing of information related to the federal WARN program.

Additional Comments: MDL notes that WARN notifications require similar information to items required by the Economic Stabilization Act, and the modifications proposed by this bill better align State activities to existing federal requirements in terms of permissible exemptions and local official notifications. However, to the extent that future activities fall out of alignment with federal WARN requirements, State expenditures may be needed to maintain those activities.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1154 (Delegate C. Jackson) - Economic Matters.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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