

1989 Assembly Bill 60

Date of enactment: **September 1, 1989**  
Date of publication\*: **September 11, 1989**

# 1989 WISCONSIN ACT 44

**AN ACT** to repeal 109.07 (2); to renumber and amend 109.07 (1); to amend 71.07 (2dj) (am) 1, 71.28 (1dj) (am) 1, 71.47 (1dj) (am) 1, 101.27 (3) (intro.), 109.01 (2) and 560.15 (1) (b) 1; and to create 20.445 (1) (jm), 109.07 (1), 109.07 (3) to (6), 109.12 and 893.97 of the statutes, **relating to:** remedies for failure to notify of business closings or mass layoffs, by employers, creating a business closing surcharge, granting rule-making authority, making an appropriation and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 20.445 (1) (jm) of the statutes is created to read:

20.445 (1) (jm) *Dislocated worker program grants.* All moneys received from the business closing surcharge under s. 109.07 (4m), for providing grants under s. 101.27.

**SECTION 2.** 71.07 (2dj) (am) 1 of the statutes is amended to read:

71.07 (2dj) (am) 1. Modify “member of a targeted group”, as defined in section 51 (d) of the internal revenue code, to include dislocated farmers, persons unemployed as a result of a business action subject to s. 109.07 (1) (1m) and persons whose unemployment benefits have expired.

**SECTION 3.** 71.28 (1dj) (am) 1 of the statutes is amended to read:

71.28 (1dj) (am) 1. Modify “member of a targeted group”, as defined in section 51 (d) of the internal revenue code, to include dislocated farmers, persons unemployed as a result of a business action subject to s. 109.07 (1) (1m) and persons whose unemployment benefits have expired.

**SECTION 4.** 71.47 (1dj) (am) 1 of the statutes is amended to read:

71.47 (1dj) (am) 1. Modify “member of a targeted group”, as defined in section 51 (d) of the internal revenue

code, to include dislocated farmers, persons unemployed as a result of a business action subject to s. 109.07 (1) (1m) and persons whose unemployment benefits have expired.

**SECTION 5.** 101.27 (3) (intro.) of the statutes is amended to read:

101.27 (3) GRANTS. (intro.) From the appropriation under s. 20.445 (1) (bc), (jm), (mb) and (mc), the department shall make grants to persons providing to dislocated workers programs offering training and related employment services including but not limited to the following:

**SECTION 6.** 109.01 (2) of the statutes is amended to read:

109.01 (2) “Employer” Except as provided in s. 109.07 (1) (d), “employer” means any person engaged in any activity, enterprise or business employing one or more persons within the state, including the state and its political subdivisions and charitable, nonprofit or tax-exempt organizations and institutions.

**SECTION 7.** 109.07 (1) of the statutes is renumbered 109.07 (1m) and amended to read:

109.07 (1m) Every Subject to sub. (5) or (6), an employer employing 100 or more persons in this state who has decided upon a merger, liquidation, disposition or relocation within or without the state, resulting in a cessation of business operations affecting 10 or more employees business closing or mass layoff in this state shall promptly notify the subunit of the department that administers s. 101.27, any affected employee, any collec-

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tive bargaining representative of any affected employe, and the ~~clerk~~ highest official of any town, village, city or county municipality in which the affected ~~place of~~ employment site is located, in writing of such action no later than 60 days prior to the date that ~~such merger, liquidation, disposition, relocation or cessation~~ the business closing or mass layoff takes place. The employer shall provide in writing all information concerning its payroll, affected employes and the wages and other remuneration owed to such employes as the department may require. The department may in addition require the employer to submit a plan setting forth the manner in which final payment in full shall be made to affected employes. The department shall promptly provide a copy of the notice required under this subsection to the department of development and shall cooperate with the department of development in the performance of its responsibilities under s. 560.15. This subsection does not apply to a business closing or mass layoff that is caused by a strike or lock-out.

**SECTION 8.** 109.07 (1) of the statutes is created to read:

109.07 (1) In this section:

(a) "Affected employe" means an employe who loses, or may reasonably be expected to lose, his or her employment with an employer who is required to give notice under sub. (1m) because of the business closing or mass layoff.

(b) "Business closing" means a permanent or temporary shutdown of an employment site or of one or more facilities or operating units at an employment site or within a single municipality that affects 25 or more employes, not including new or low-hour employes.

(c) "Employe benefit plan" means a plan as defined in 29 USC 1002 (3).

(d) "Employer" means any business enterprise that employs 50 or more persons in this state.

(e) "Highest official" means the mayor of a city, town board chairperson or village president, except as follows:

1. For a city organized under subch. I of ch. 64, "highest official" means both the president of the city council and the city manager.

2. For a village organized under subch. I of ch. 64, "highest official" means both the president of the village board of trustees and the village manager.

(f) "Mass layoff" means a reduction in an employer's work force that is not the result of a business closing and that affects the following numbers of employes at an employment site or within a single municipality, not including new or low-hour employes:

1. At least 25% of the employer's work force or 25 employes, whichever is greater; or

2. At least 500 employes.

(g) "Municipality" means a city, village or town.

(h) "New or low-hour employe" means an employe who has been employed by an employer for fewer than

6 of the 12 months preceding the date on which a notice is required under sub. (1m) or who averages fewer than 20 hours of work per week.

**SECTION 9.** 109.07 (2) of the statutes is repealed.

**SECTION 10.** 109.07 (3) to (6) of the statutes are created to read:

109.07 (3) (a) If an employer fails to give timely notice to an affected employe as required under sub. (1m), the affected employe may recover, as provided under sub. (4), all of the following:

1. Pay, for the days during the recovery period described under par. (c) that the employe would have worked if the business closing or mass layoff had not occurred, based on the greater of the following:

a. The employe's regular rate of pay from the employer, averaged over the shorter of the 3-year period preceding the business closing or mass layoff or the entire period during which the employe was employed by the employer.

b. The employe's regular rate of pay from the employer at the time of the business closing or mass layoff.

2. The value of any benefit that the employe would have received under an employe benefit plan during the recovery period described under par. (c), but did not receive because of the business closing or mass layoff, including the cost of medical treatment incurred that would have been covered under the employe benefit plan.

(b) The amount that an employe may recover under par. (a) shall be reduced by any cost that the employer incurs by crediting the employe, under an employe benefit plan, for time not actually served because of a business closing or mass layoff.

(c) The recovery period under par. (a) begins on the day that the business closing or mass layoff occurs. The recovery period equals the number of days in the period beginning on the day on which an employer is required to give notice under sub. (1m) and ending on whichever of the following occurs first:

1. The day that the employer actually gave the notice to the employe.

2. The day that the business closing or mass layoff occurred.

(4) (a) An employe whose employer fails to notify timely the employe under sub. (1m) may file a claim with the department. If the employe files a claim with the department no later than 300 days after the business closing or mass layoff, the department shall, in the manner provided in s. 109.09, investigate the claim, determine the number of days that the employer was late in providing notice and, on behalf of the employe, attempt to recover from the employer the payment under sub. (3).

(b) If the department does not recover payment within 180 days after a claim is filed or within 30 days after it notifies the employe of its determination under

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par. (a), whichever is first, the department shall refer the claim to the department of justice. The department of justice may bring an action in circuit court on behalf of the employee to recover the payment under sub. (3).

(c) If the department of justice does not bring an action under par. (b) within 120 days after the claim is referred to it, the employee may bring an action in circuit court to recover the payment under sub. (3). If the employee prevails in the action, he or she shall also recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(d) An action under this section shall be begun within one year after the department refers the claim to the department of justice under par. (b), or be barred.

**(4m)** (a) If an employer fails to give timely notice to the highest official of a municipality as required under sub. (1m), the department shall assess a business closing surcharge against the employer of not more than \$500 for each day in the period beginning on the day that the employer was required to give notice to the highest official and ending on the earlier of the day that the employer actually gave notice to the highest official or the day that the business closing or mass layoff occurred.

(b) The department shall deposit business closing surcharges collected under par. (a) in the general fund.

**(5)** (a) An employer is not liable under this section for a failure to give notice to any person under sub. (1m), if the department determines all of the following:

1. When the notice under sub. (1m) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the business closing or mass layoff.

2. That the employer reasonably and in good faith believed that giving the notices to all parties required under sub. (1m) would have prevented the employer from obtaining the capital or business.

(b) The department may not determine that an employer was actively seeking capital or business under par. (a) 1. unless the employer has a written record, made while the employer was seeking capital or business, of those activities. The record shall consist of the documents and other material specified by the department by rule under s. 109.12 (1) (b). The employer shall have individual documents in the record notarized, as required by the department's rules. The employer shall provide the department with an affidavit verifying the content of the notarized documents.

**(6)** An employer is not liable under this section for a failure to give notice to any person under sub. (1m), if the department determines that the business closing or mass layoff is the result of any of the following:

(a) The sale of part or all of the employer's business, if the purchaser agrees in writing, as part of the purchase agreement, to hire substantially all of the affected employees with not more than a 6-month break in employment.

(b) The relocation of part or all of an employer's business within a reasonable commuting distance, if the employer offers to transfer substantially all of the affected employees with not more than a 6-month break in employment.

(c) The completion of a particular project or work of a specific duration, including seasonal work, if the affected employees were hired with the understanding that their employment was limited to the duration of such work or project.

(d) Business circumstances that were not foreseeable when the notice would have been timely given.

(e) A natural or man-made disaster beyond the control of the employer.

(f) A temporary cessation in business operations, if the employer recalls the affected employees on or before the 60th day beginning after the cessation.

**(7)** Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any employer who violates this subsection shall forfeit not more than \$100.

**SECTION 11.** 109.12 of the statutes is created to read:  
**109.12 Rules and report.** The department shall do all of the following:

**(1)** Promulgate rules to do all of the following:

(a) Aid the administration of this chapter, including the enforcement of s. 109.07 and criteria for exceptions under s. 109.07 (5) and (6.)

(b) Establish the form and content of the record required under s. 109.07 (5) (b) and specify the documents that must contain notarized signatures.

**(2)** Not later than March 1 annually, beginning with 1990, submit a written report on its activities in the preceding 12 months related to the enforcement and administration of s. 109.07 to the chief clerk of each house of the legislature for distribution under s. 13.172 (3) to the standing committees with jurisdiction over labor.

**(3)** Include, in the report required under sub. (2), the number, type and disposition of all determinations made by the department under s. 109.07 (5) and (6).

**SECTION 12.** 560.15 (1) (b) 1. of the statutes is amended to read:

560.15 **(1)** (b) 1. The department of industry, labor and human relations under s. 109.07 ~~(4)~~ (1m).

**SECTION 13.** 893.97 of the statutes is created to read:  
**893.97 Business closing notification.** An action arising under s. 109.07 (3) is subject to the limitations under s. 109.07 (4) (d).

**SECTION 14. Nonstatutory provisions.** (1) The department of industry, labor and human relations shall do all of the following:

(a) Submit the proposed rules required under section 109.12 (1) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the stat-

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utes no later than the first day of the 10th month beginning after the effective date of this paragraph.

(b) Establish the form for the notice required under section 109.07 (7) of the statutes, as created by this act, no later than the first day of the 5th month beginning after publication.

**SECTION 15. Initial applicability.** (1) In this section:

(a) “Business closing” has the meaning given in section 109.07 (1) (b) of the statutes, as created by this act.

(b) “Employer” has the meaning given in section

109.07 (1) (d) of the statutes, as created by this act.

(c) “Mass layoff” has the meaning given in section 109.07 (1) (f) of the statutes, as created by this act.

(2) This act first applies to a business closing or mass layoff, by an employer that employs 100 or more persons, that occurs on the effective date of this subsection.

(3) This act first applies to a business closing or mass layoff, by an employer that employs fewer than 100 persons, that occurs on the 60th day beginning after the effective date of this subsection.

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