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DEPARTMENT OF LABOR

NOTICE OF EMERGENCY RULES

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SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

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ILLINOIS WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

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AUTHORITY: Implementing the Illinois Worker Adjustment and Retraining Notification Act [820 ILCS 65].

SOURCE: Adopted at _____ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 230.100 Purpose and Scope
EMERGENCY

This Part shall apply to claims arising under the Illinois Worker Adjustment and Retraining Notification Act [820 ILCS 65].

Section 230.110 Definitions
EMERGENCY

"Act" means the Illinois Worker Adjustment and Retraining Notification Act (IWARN) [820 ILCS 65].

"Administrative hearing" means a formal administrative hearing.

"Affected employee" *means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer.*

"Complaint" means an allegation of a violation of the Act filed with the Department.

"Complainant" means a person who files a complaint.

"Department" means the Illinois Department of Labor or a duly authorized representative.

"Day" means calendar day.

"Director" means the Director of Labor or a duly authorized representative.

"Employer" *means any business enterprise that employs:*

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(1) 75 or more employees, excluding part-time employees; or

(2) 75 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime)

Employer does not include the federal or state government or any of their political subdivisions, including any unit of local government or any school district. Charitable or tax-exempt institutions and organizations are also not included. Further, independent contractors and wholly or partially owned subsidiaries that are independent from the parent corporation are considered separate employers for the purposes of this Act and Part. When determining whether an employer is an independent contractor or a wholly or partially owned subsidiary, the Director will consider: common ownership; common directors and/or officers; actual exercise of control; unity of personnel policies emanating from a common source; and the dependency of operations.

“Employment loss” *means*

(1) an employment termination, other than a discharge for cause, voluntary departure, or retirement;

(2) a layoff exceeding 6 months; or

(3) a reduction in hours of work of more than 50% during each month of any 6-month period.

Employment loss does not include instances when the plant closing or layoff is the result of the relocation or consolidation of part or all of the employer’s business and, before the closing or layoff, the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance, or the employer offers to transfer the employee to any other site of employment, regardless of distance, with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

“Mass layoff” *means a reduction in force which:*

(1) is not the result of a plant closing; and

(2) results in an employment loss at the single site of employment during any 30-day period for:

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(A) at least 33% of the employees (excluding any part-time employees) and at least 25 employees (excluding any part-time employees); or

(B) at least 250 employees (excluding any part-time employees).

“Part-time employee” for purposes of this Act and Part, means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.

“Plant closing” means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

“Respondent” means an employer against whom a complaint is filed.

“Representative” means an exclusive representative of employees within the meaning of Section 9(a) or 8(f) of the National Labor Relations Act [29 U.S.C. 159(a), 158(f), or as hereafter amended or Section 2 of the Railway Labor Act (45 U.S.C. 152), or as hereafter amended.

“WARN” means the federal Worker Adjustment and Retraining Notification Act (29 USC 2101 et seq.), or as hereafter amended.

Section 230.120 Determination of a Single Site of Employment
EMERGENCY

- a) A single site of employment refers to either a single location or a group of contiguous locations. Groups of structures which form a campus or industrial park, or separate facilities across the street from one another, may be considered a single site of employment.
- b) Several single sites of employment within a single building may exist if separate employers conduct activities within such a building. The offices of each employer will be a single site of employment.
- c) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable

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geographic proximity, used for the same purpose and share the same staff and equipment.

- d) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site.
- e) Contiguous buildings owned by the same employer which have separate management, produce different products and have separate workforces are considered separate single sites of employment.
- f) A single site of employment for workers whose primary duties require travel from point to point, who are outstationed or whose primary duties involve work outside any of the employer's regular employment sites, will be the site that workers are assigned to as home base or the site from which they report or receive assignments.
- g) A single site of employment may apply in truly unusual organizational situations where the above criteria do not reasonably apply. The application of this definition with the intent to evade the purposes of the Act to provide notice is not acceptable.

Section 230.130 Applicability
EMERGENCY

This Act applies to plant closings or mass layoffs occurring on or after January 1, 2005. Voluntary notice by an employer is encouraged even in situations which do not constitute a plant closing or mass layoff.

Section 230.140 Records and Confidentiality
EMERGENCY

Information obtained from any employer subject to the Act shall be held confidential pursuant to the terms and conditions contained in Section 30 of the Act.

SUBPART B: EMPLOYER NOTICE AND CONTENTS OF NOTICE

Section 230.200 Employer Notice
EMERGENCY

An employer subject to the provisions of the Act, shall determine whether notice is required under Section 10 of the Act and whether any exceptions apply pursuant to Section 15 of the Act.

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Section 230.210 Who Must Receive Notice
EMERGENCY

Once an employer determines that notice is required under the Act, notice shall be given to all affected employees, representatives of affected employees, the Department of Commerce and Economic Opportunity and the chief elected official of each municipal and county government within which the employment loss, relocation, or mass layoff occurs. Notice shall also be provided to the Illinois Department of Labor at its Springfield office.

Section 230.220 When Employer Notice Must Be Given
EMERGENCY

- a) An employer subject to the Act and required to give notice pursuant to Section 10 of the Act, must give notice 60 days before the order of a mass layoff or plant closing takes effect.
- b) An employer which is receiving State or local economic development incentives for doing or continuing to do business in this State may be required to provide additional notice pursuant to Section 15 of the Business Economic Support Act [30 ILCS 760/1 et seq.].
- c) A reduction in the notice period may be allowed if the employer can establish the elements set forth in Section 15 of the Act and provides a brief statement to the Department describing the basis for reducing the notification period.

Section 230.230 Contents of Employer Notice
EMERGENCY

- a) Employer notice to each affected employee shall contain:
 - 1) a statement as to whether the planned action is expected to be permanent or temporary and, a statement concerning whether the entire plant is to be closed; and
 - 2) the expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated; and
 - 3) an indication whether or not bumping rights exist; and

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- 4) the name and telephone number of a company official to contact for further information.
- b) Employer notice to representatives of affected employees shall contain:
- 1) the name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information; and
 - 2) a statement as to whether the planned action is expected to be permanent or temporary and a statement regarding whether the entire plant is to be closed; and
 - 3) the expected date of the first separation and the anticipated schedule for making separations; and
 - 4) the job titles of positions to be affected and the names of workers currently holding affected jobs.
- c) Employer notice to the Department of Commerce and Economic Opportunity, the Illinois Department of Labor and the chief elected official of each municipal and county government within which the mass layoff or plant closing occurs shall contain:
- 1) the name and address of the employment site where the plant closing or mass layoff will occur and the name and telephone number of a company official to contact for further information;
 - 2) a statement as to whether the planned action is expected to be permanent or temporary and a statement whether the entire plant is to be closed;
 - 3) the expected date of the first separation and the anticipated schedule for making separations;
 - 4) the job titles of positions to be affected and the number of affected employees in each job classification;
 - 5) an indication as to whether or not bumping rights exist; and

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- 6) the name of each union representing affected employees and the name and address of the chief elected officer of each union.
- d) An alternate employer notice may be given in lieu of the notice requirements set forth in paragraph (c) above. However, an employer shall maintain the other information that is required by paragraph (c) on site and be able to produce this information upon request. Failure to produce this information upon request is deemed a failure to give the required notice. An employer giving alternate notice under this paragraph (d) shall provide:
 - 1) the name and address of the employment site where the plant closing or mass layoff will occur and the name and telephone number of a company official to contact for further information; and
 - 2) the expected date of the first separation; and
 - 3) the number of affected employees.

Section 230.240 Exceptions to the Notice Requirement
EMERGENCY

- a) An employer is not required to give notice, if the Department determines that any of the following has been met:
 - 1) the employer establishes an exception as set forth in Section 15 or Section 20 of the Act; or
 - 2) the employer establishes that the mass layoff or plant closing was due to a physical calamity or an act of terrorism or war;
 - 3) the employer establishes that the plant closing or mass layoff is the result of relocation or consolidation of all or part of an employer's business and before the closing or layoff, the employer offers, either:
 - i) to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment; or
 - ii) to transfer the employee to any other site of employment, regardless of distance, with no more than a 6-month break in

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employment, and the employee accepts within 30 days of the offer or of the closing or layoff whichever is later.

- b) A reasonable commuting distance under this Section means a distance of less than 50 miles, unless an affected employee has already been commuting 50 miles or greater on a voluntary basis prior to the relocation or consolidation or indicates in writing that he or she is willing to commute 50 miles or more under a relocation or consolidation. The Department may determine that a commuting distance of less than 50 miles is not reasonable based upon industry practice or local conditions, such as climate, geographic accessibility, quality of roads, availability of transportation, including public transportation, and travel time.

SUBPART C: COMPLAINT

Section 230.300 Persons Who May File a Complaint EMERGENCY

An employee, representative of employees, the Department of Commerce and Economic Opportunity, or the chief elected official of each municipal and county government within which the mass layoff or plant closing occurs may file a complaint, including the Illinois Department of Labor in cases initiated by the Illinois Department of Labor.

Section 230.310 Contents and Time Limit for Filing EMERGENCY

- a) A complaint shall be filed on a form to be supplied by the Department. Such form shall name the respondent, shall be signed by the complainant and shall be accurately completed alleging the violation of the Act requesting to be reviewed. The form may have attached copies of all supporting documentation.
- b) All complaints shall be delivered, by U.S. mail or personal delivery, to the Department's Springfield office within six months after the alleged violation of the Act occurs. The complaint shall be deemed filed as of the date it is postmarked on the envelope or date stamped as received by the Department.

Section 230.320 Withdrawal, Settlement, and Consent Findings EMERGENCY

- a) A complaint may be voluntarily withdrawn at any time.

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- b) Complainant and respondent may settle at any time.
- c) At any time, the parties may enter into consent findings, rules and orders under 56 Ill. Adm. Code 120.540.

Section 230.330 Employer Threshold
EMERGENCY

The Director will determine if an employer is covered under the Act and this Part, by calculating the number of employees in the calendar quarter that immediately precedes the date of the required notice.

Section 230.340 Application and Jurisdiction
EMERGENCY

- a) The Director will determine if the requisite number of employees are affected to trigger notice by:
 - 1) looking ahead 30 days and behind 30 days to determine whether employment actions in the aggregate for any 30-day period reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement; and
 - 2) looking ahead 90 days and behind 90 days to determine whether employment actions each of which separately is not of sufficient size to trigger coverage will, in the aggregate for any 90-day period, reach the minimum numbers for a plant closing or mass layoff and thus trigger the notice requirement. An employer is not, however, required to give notice if the employer demonstrates that the separate employment losses are the result of separate and distinct actions and causes and are not an attempt to evade the requirements of the Act.
- b) At the time of filing of the complaint, the Department may determine initially whether the allegations in the complaint sufficiently state a claim under the Act so that the Department can proceed with the investigation.
- c) If, at the time of filing, or at any subsequent time, it is determined that there is a lack of jurisdiction or failure to sufficiently state a claim, the complaint shall be dismissed. All parties shall be notified of the dismissal by U.S. mail.

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Section 230.350 Consolidation
EMERGENCY

Similar complaints related to the same respondent for the same alleged violation may be consolidated before the Department.

SUBPART D: ANSWER, RESPONSE AND RECORD

Section 230.400 Answer, Response and Record
EMERGENCY

- a) Each respondent must remit to the Department a written response to the complaint within 21 calendar days after the date the Department forwarded the complaint. The response shall be signed by a duly authorized individual representative and shall include a complete, accurate and responsive explanation to the claim necessary and appropriate to the Department's investigation, specifying any exceptions asserted and any disputed and undisputed facts. If the respondent is asserting an exception, the respondent shall submit a written record consisting of those documents relied upon and an affidavit verifying the contents of the documents contained in the record as required by Section 15 of the Act.
- b) Upon receipt of a respondent's response, the Department will forward the response to the complainant, except for any records to remain confidential pursuant to Section 30(c) of the Act. Complainant shall submit a rebuttal to the Department within 21 calendar days after the date the Department forwarded the non confidential portion of respondent's response.

SUBPART E: INVESTIGATION PROCEDURE

Section 230.500 Investigation
EMERGENCY

- a) After reviewing the information gathered as set forth in Subpart D of this Part, the Department shall determine whether a violation of the Act has occurred. If the Department needs additional information to determine if a violation of the Act has occurred, a conciliator may institute an investigation pursuant to Section 30 of the Act to gather further information.

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- b) A conciliator may examine the employer's books and records as well as any other documents reasonably related to the allegation, to determine whether a violation of the Act has occurred.
- c) The Director shall notify the parties or the parties representative of the results of the investigation.
- d) The Director shall issue a written determination on whether a violation of the Act has occurred and shall determine the amount of back pay, civil penalties or other relief due, if applicable.
- e) The Director shall provide the parties with an opportunity to review any determination made pursuant to this Section. Such review will be conducted pursuant to the procedures set forth in Section F of this Part.

Section 230.510 Enforcement Procedures
EMERGENCY

- a) The payment of any back pay or other relief as provided in Section 35 of the Act will be evidence of compliance with the provisions of the Act. Payment shall be supervised, when possible, by the Director.
- b) Director may require proof that the employees or former employees received all the back pay and other relief due pursuant to Section 35 of the Act and the Director may require the respondent to send certified checks, cashier's checks or money orders, made payable to the individual employee(s) or the Department of Labor, to the Department for disbursement.
- c) If the respondent does not comply within 15 calendar days after the Director's notice of noncompliance, or the respondent fails to request review of a completed investigation as set forth in Subpart F, the Director may bring an action against the respondent as provided in Subpart G of this Part.

Section 230.520 Procedure for Assessment of Civil Penalties
EMERGENCY

- a) The Department shall conduct investigations, conferences or hearings for the purpose of assessing penalties as provided under Section 40 of the Act.

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- b) When the Department finds, upon evidence resulting from an investigation that an employer has violated the Act or regulations, the Director may issue a notice to the employer of a civil penalty, if any, to be assessed for the violation.
- b) The Department may convene an informal investigative conference for the purpose of obtaining evidence, identifying the issues in dispute and exploring the possibility of a negotiated settlement. Notice of the conference shall be given to the employer at least 10 days prior thereto and shall identify the individuals requested to attend, along with any books, records or documents the employer must produce at the conference. The Department shall consider the matter resolved in the event a settlement has been reached prior to the conference date.
- c) An employer may be accompanied at the informal conference by an attorney and by a translator if necessary. The employer may bring witnesses to the conference in addition to those whose attendance may be specifically requested by the Department, but the Department employee conducting the conference shall decide which witnesses shall be heard and the order in which they will be heard. The Department employee conducting the conference may exclude witnesses and other persons from the conference when they are not giving evidence, except that the employer's counsel and translator if necessary, may be permitted to remain throughout. The Department employee shall conduct and control the proceedings. No tape recording, stenographic report or other verbatim record of the conference shall be made.
- d) If any person becomes disruptive or abusive, the Department employee shall exclude the person from the conference and shall continue the conference without the excluded individual.
- e) If the informal conference is held but did not resolve the dispute, a final determination on the amount of civil penalties may be made in an administrative hearing pursuant to Section 230.710.

SUBPART F: INFORMAL INVESTIGATIVE HEARING ON INVESTIGATION RESULTS

Section 230.600 Request for Informal Investigative Hearing
EMERGENCY

- a) After receiving a written determination under Section 230.500 or Section 230.520, either party subject to the determination may request an informal investigative hearing to review the determination. The informal investigative

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hearing is conducted to obtain evidence, identify the issues in dispute, ascertain the positions of the parties, explore the possibility of settlement and to decide whether there is sufficient evidence to recommend Department action pursuant to Subpart G.

- b) All requests for an informal investigative hearing must be in writing and must be mailed to the Department's Chicago office within 15 days of the determination. A request for an informal investigative hearing shall specify the reasons why the party believes the determination is incorrect as a matter of law or fact, or, if applicable, any newly discovered evidence the party could not have discovered during the investigation. Late submissions need not be considered by the Director.

Section 230.610 Informal Investigative Hearing
EMERGENCY

- a) At an informal investigative hearing, a party may be represented by himself or herself or by an attorney at law. The Department may permit a party to have available witnesses, a translator and/or a representative of a union.
- b) Parties shall be prepared to proceed at the informal investigative hearing. A request by one party for a continuance will be granted prior to the hearing only if the other party agrees and the Department employee grants permission. Otherwise, a request for a continuance shall be made in person to the Department employee at the time of the hearing and will be granted only upon a showing of good cause. Good cause may be shown by, without limitation, the failure of a party to receive notice of the hearing, the inability of a party to produce a material witness or relevant evidence, the illness or death of a party or counsel, the sudden and unexpected unavailability of counsel and substitution of counsel.
- c) The Department employee shall conduct the informal investigative hearing and control the proceedings. No tape recordings, stenographic report or other verbatim record of the hearing shall be made.
- d) If any person becomes so disruptive or abusive that a full and fair hearing cannot be conducted, the Department shall exclude the person from the hearing. The Department may take any of the following actions: continue the hearing without participation of the excluded individual; render a decision based upon the evidence previously presented; dismiss the complaint, or strike the employer's response.

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- e) Telephone Hearing
 - 1) Written requests to participate in an informal investigative hearing by telephone must be received by the Department's Chicago office no later than seven calendar days prior to the hearing date. The request shall be in writing and state a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.
 - 2) A party shall not consider its request granted unless the party receives written notice of the Department's approval prior to the hearing date.

Section 230.620 Request for Review
EMERGENCY

Upon the issuance of a decision under Subpart F, a party has 15 days from the date of the decision to request a review of the decision. The request must set forth the reasons why the party believes the Director's duly authorized representative misconstrued the evidence or misapplied the law to the facts. Late submissions need not be considered by the Director.

SUBPART G: FORMAL ADMINISTRATIVE HEARING

Section 230.700 Department Action
EMERGENCY

Any liabilities and/or civil penalties found due under Section 35 and Section 40 of this Act and not paid may be subject to a formal administrative hearing to recover the amounts found due and owing.

Section 230.710 Procedures in Formal Administrative Hearing
EMERGENCY

Upon referral of a matter for formal administrative hearing, the parties and the Department shall comply with this Part, all provisions of Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10], and the Department's Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120).