

116TH CONGRESS
1ST SESSION

H. R. 5205

To amend the Worker Adjustment and Retraining Notification Act to support workers who are subject to an employment loss, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 2019

Mr. RYAN (for himself and Mr. TRONE) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Worker Adjustment and Retraining Notification Act to support workers who are subject to an employment loss, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Warning Act of
5 2019”.

6 **SEC. 2. DEFINITIONS; PROVISION OF NOTICE OF SITE CLOS-**
7 **INGS AND MASS LAYOFFS.**

8 (a) WARN ACT AMENDMENTS.—Sections 2 and 3 of
9 the Worker Adjustment and Retraining Notification Act
10 (29 U.S.C. 2101; 2102) are amended to read as follows:

1 **“SEC. 2. DEFINITIONS; EXCLUSIONS FROM DEFINITION OF**
2 **LOSS OF EMPLOYMENT.**

3 “(a) DEFINITIONS.—As used in this Act:

4 “(1) AFFECTED EMPLOYEE.—The term ‘af-
5 fected employee’ means a full-time or part-time em-
6 ployee who may reasonably be expected to experience
7 an employment loss as a consequence of a proposed
8 site closing or mass layoff by the employee’s em-
9 ployer.

10 “(2) EMPLOYER.—

11 “(A) IN GENERAL.—The term ‘employer’
12 means any business enterprise that—

13 “(i) employs 50 or more employees,
14 including part-time employees and includ-
15 ing employees of the nominal employer and
16 any entity that is the nominal employer’s
17 direct or indirect parent or is integrated
18 with the nominal employer; or

19 “(ii) has an annual payroll of at least
20 \$2,000,000.

21 “(B) DEFINITIONS.—For the purposes of
22 this paragraph:

23 “(i) INTEGRATED.—The term ‘inte-
24 grated’, when used with respect to a busi-
25 ness enterprise, means an entity whose re-

1 relationship with another business enterprise
2 include—

3 “(I) common ownership;

4 “(II) common directors or offi-
5 cers;

6 “(III) de facto exercise of con-
7 trol;

8 “(IV) unity of personnel policies
9 emanating from a common source; or

10 “(V) dependency of operations.

11 “(ii) PARENT.—The term ‘parent’
12 means an entity, regardless of its financial
13 interest in the nominal employer, that par-
14 ticipates directly or indirectly in making
15 decisions that affect the employees of the
16 nominal employer or of multiple entities
17 controlled by 1 person for a common busi-
18 ness purpose.

19 “(iii) CONSIDERATION.—In deter-
20 mining whether an entity is integrated
21 with or a direct or indirect parent of a
22 business enterprise that is the nominal em-
23 ployer, substantial weight shall be given to
24 any decision-making responsibility the enti-

1 ty had for the practice that gave rise to
2 the violation of this Act.

3 “(3) EMPLOYMENT LOSS.—Subject to sub-
4 section (b), the term ‘employment loss’ means—

5 “(A) an employment termination, other
6 than a discharge for cause, voluntary departure,
7 or retirement;

8 “(B) a layoff exceeding 3 months; or

9 “(C) a reduction in hours of work of more
10 than 50 percent during each month of any 3-
11 month period.

12 “(4) MASS LAYOFF.—

13 “(A) IN GENERAL.—The term ‘mass lay-
14 off’ means a reduction in force that results in
15 an employment loss during any 90-day period—

16 “(i) for 10 or more employees of an
17 employer at a single site of employment, as
18 calculated under subparagraph (B); or

19 “(ii) for 250 or more employees of an
20 employer, irrespective of employment site.

21 “(B) CALCULATION.—The number of em-
22 ployees at a single site who suffer an employ-
23 ment loss shall be calculated in a manner that
24 includes—

1 “(i) all such employees who work at
2 the physical location of the site; and

3 “(ii) all such employees who work re-
4 motely and—

5 “(I) are assigned to or otherwise
6 associated with the site;

7 “(II) receive assignments or
8 training from the site;

9 “(III) report to a manager asso-
10 ciated with the site; or

11 “(IV) whose job loss was a fore-
12 seeable consequence of a reduction in
13 force at the site.

14 “(5) REPRESENTATIVE.—The term ‘representa-
15 tive’ means an exclusive representative of employees
16 within the meaning of section 8(f) or 9(a) of the Na-
17 tional Labor Relations Act (29 U.S.C. 158(f);
18 159(a)) or section 2 of the Railway Labor Act (45
19 U.S.C. 152).

20 “(6) SECRETARY.—The term ‘Secretary’ means
21 the Secretary of Labor.

22 “(7) SITE CLOSING.—The term ‘site closing’
23 means the permanent or temporary shutdown of a
24 single site of employment, or one or more facilities
25 or operating units within a single site of employ-

1 ment, that results in an employment loss at the sin-
2 gle site of employment during any 30-day period for
3 5 or more employees, calculated in the same manner
4 as described in paragraph (4)(B).

5 “(8) UNIT OF LOCAL GOVERNMENT.—The term
6 ‘unit of local government’ means any general pur-
7 pose political subdivision of a State which has the
8 power to levy taxes and spend funds, as well as gen-
9 eral corporate and police powers.

10 “(b) EXCLUSIONS FROM EMPLOYMENT LOSS DUE
11 TO A SITE CLOSING OR MASS LAYOFF.—An employee
12 shall not be considered to have experienced an employment
13 loss due to a site closing or mass layoff if the site closing
14 or mass layoff is the result of the relocation or consolida-
15 tion of part or all of the employer’s business and, prior
16 to the site closing or mass layoff—

17 “(1) the employer offers to transfer the em-
18 ployee to a different site of employment within a
19 reasonable commuting distance with no more than a
20 3-month break in employment; or

21 “(2) the employer offers to transfer the em-
22 ployee to any other site of employment regardless of
23 distance with no more than a 3-month break in em-
24 ployment, and the employee accepts within 30 days

1 of the offer or of the site closing or mass layoff,
2 whichever is later.

3 **“SEC. 3. NOTICE REQUIRED BEFORE SITE CLOSINGS AND**
4 **MASS LAYOFFS.**

5 “(a) NOTICE TO EMPLOYEES, STATE DISLOCATED
6 WORKER UNITS, AND LOCAL GOVERNMENTS.—An em-
7 ployer shall not order a site closing or mass layoff until
8 90 calendar days after the date on which the employer
9 has served written notice of such an order to—

10 “(1)(A) each representative of the affected em-
11 ployees as of the time of the notice; or

12 “(B) each affected employee;

13 “(2) the Secretary and the Governor of the
14 State where the site closing or mass layoff is to
15 occur; and

16 “(3) the State or entity designated by the State
17 to carry out rapid response activities under section
18 134(a)(2)(A) of the Workforce Innovation and Op-
19 portunity Act (29 U.S.C. 3174(a)(2)(A)).

20 “(b) DUTIES UPON RECEIPT OF NOTICE.—A State
21 or designated entity that receives a notice under sub-
22 section (a)(3) shall—

23 “(1) make the information in the notice publicly
24 available within the jurisdiction of the local govern-
25 ment involved;

1 “(2) transmit a copy of the notice to each af-
2 fected local area (as defined in section 3 of the
3 Workforce Innovation and Opportunity Act (29
4 U.S.C. 3102)), so that the information in the notice
5 can be distributed through activities under section
6 134(c)(2)(A)(iv)(I)(aa) of that Act (29 U.S.C.
7 3174(c)(2)(A)(iv)(I)(aa)); and

8 “(3) ensure that—

9 “(A) an appropriate labor-management
10 committee described in section 3(51)(C) of the
11 Workforce Innovation and Opportunity Act (29
12 U.S.C. 3102(51)(C)) has been established or is
13 established not later than 20 days after receipt
14 of the notice; and

15 “(B) an individual is designated, by not
16 later than 20 days after receipt of such notice,
17 to coordinate rapid response activities described
18 in section 134(a)(2)(A)(i) of such Act, in con-
19 sultation with the labor-management com-
20 mittee.

21 “(c) REDUCTION OF NOTIFICATION PERIOD.—

22 “(1) POTENTIAL NEW BUSINESS OR FINANC-
23 ING.—An employer may order the site closing of a
24 single site of employment before the conclusion of
25 the 90-day period described in subsection (a) if—

1 “(A) as of the date that notice would have
2 been required the employer had been offered, on
3 acceptable terms, new business or financing in
4 an amount which, if obtained, would have en-
5 abled the employer to avoid the site closing; and

6 “(B) the employer can demonstrate that,
7 had notice been given, the notice would have
8 precluded the new business or financing.

9 “(2) UNFORESEEN CIRCUMSTANCES.—

10 “(A) NATURAL DISASTERS.—No notice
11 under this Act shall be required if the site clos-
12 ing or mass layoff is due to any form of natural
13 disaster, such as a flood, earthquake, or a
14 drought ravaging the farmlands of the United
15 States.

16 “(B) TERRORIST ATTACKS.—No notice
17 under this Act shall be required if the site clos-
18 ing or mass layoff is due directly to a terrorist
19 attack that affects the operation of the site.

20 “(3) PROVISION OF NOTICE.—An employer re-
21 lying on this subsection shall give as much notice as
22 is practicable and at that time shall give a brief
23 statement of the basis for reducing the notification
24 period.

1 “(d) EXTENSION OF TEMPORARY LAYOFF.—A tem-
2 porary layoff of more than 3 months that, at its outset,
3 was announced to be a temporary layoff of 3 months or
4 less, shall be treated as an employment loss under this
5 Act unless—

6 “(1) a written notice, as required under sub-
7 section (a), is provided at the commencement of the
8 temporary layoff stating the date on which the em-
9 ployer expects to recall the employees to work, and
10 such date is less than 3 months after the date of the
11 layoff; and

12 “(2) notice is given to all parties described in
13 subsection (a) at the time it becomes reasonable to
14 contemplate that the temporary layoff will be ex-
15 tended beyond the 90-day period.

16 “(e) DETERMINATIONS WITH RESPECT TO EMPLOY-
17 MENT LOSS.—

18 “(1) MULTIPLE GROUPS.—For purposes of this
19 section, in determining whether a site closing or
20 mass layoff at a single site of employment has oc-
21 curred or will occur, employment losses for 2 or
22 more groups at the single site of employment, each
23 of which is less than the minimum number of em-
24 ployees specified in paragraph (4) or (7) of section
25 2(a) but which in the aggregate exceed that min-

1 imum number, and which occur within any 90-day
2 period, shall be considered to be a site closing or
3 mass layoff unless the employer demonstrates that
4 the employment losses are the result of separate and
5 distinct actions and causes and are not an attempt
6 by the employer to evade the requirements of this
7 Act.

8 “(2) TREATMENT OF BUSINESS SALES.—

9 “(A) IN GENERAL.—In the case of a sale
10 of part or all of an employer’s business, the
11 seller shall be responsible for providing notice
12 for any site closing or mass layoff in accordance
13 with this section up to and including the effec-
14 tive date of the sale. After the effective date of
15 the sale of part or all of an employer’s business,
16 the purchaser shall be responsible for providing
17 notice for any site closing or mass layoff in ac-
18 cordance with this section.

19 “(B) TRANSFER OF EMPLOYEES.—In the
20 case of a sale of part or all of an employer’s
21 business, and notwithstanding any other provi-
22 sion of this Act, any person who is an employee
23 of the seller as of the effective date of the sale
24 shall be considered an employee of the pur-

1 chaser immediately after the effective date of
2 the sale.

3 “(f) CONTENT OF NOTICES.—An employer who is re-
4 quired to provide notice as required under subsection (a)
5 shall include—

6 “(1) in each notice required under such sub-
7 section—

8 “(A) a statement of the number of affected
9 employees;

10 “(B) the reason for the site closing or
11 mass layoff;

12 “(C) whether the layoff is permanent or
13 temporary and, if temporary, the date on which
14 the employer expects to recall the affected em-
15 ployees to work;

16 “(D) the availability of employment at
17 other establishments owned by the employer;

18 “(E) a statement of each employee’s rights
19 with respect to wages and severance and em-
20 ployee benefits; and

21 “(F) a statement of the available employ-
22 ment and training services provided by the De-
23 partment of Labor; and

24 “(2) in each notice required under such sub-
25 section (except for paragraph (1)(B) of such sub-

1 section), the names, addresses, and occupations of
2 the affected employees.

3 “(g) INFORMATION REGARDING BENEFITS AND
4 SERVICES AVAILABLE TO EMPLOYEES.—Concurrent with
5 or immediately after providing the notice required under
6 subsection (a)(1), an employer shall provide affected em-
7 ployees with information regarding the benefits and serv-
8 ices available to such employees, as described in the guide
9 compiled by the Secretary under section 13.

10 “(h) ACCESS OF RAPID RESPONSE TEAMS.—An em-
11 ployer who is required to provide notice under subsection
12 (a) shall permit, during work hours, reasonable on-site ac-
13 cess to any Federal, State, or local rapid response team
14 under section 134(a)(2)(A) of the Workforce Innovation
15 and Opportunity Act (29 U.S.C. 3174(a)(2)(A)) respon-
16 sible for providing reemployment, training services, and
17 related services to affected employees.

18 “(i) DOL NOTICE TO CONGRESS.—As soon as prac-
19 ticable and not later than 15 days after receiving notice
20 under subsection (a)(2), the Secretary of Labor shall no-
21 tify the appropriate Senators and Members of the House
22 of Representatives who represent the area or areas where
23 the site closing or mass layoff is to occur.”.

24 (b) WIOA AMENDMENT REGARDING THE PROVISION
25 INFORMATION THROUGH LOCAL EMPLOYMENT AND

1 TRAINING ACTIVITIES.—Section 134(c)(2)(A)(iv)(I)(aa)
 2 of the Workforce Innovation and Opportunity Act (29
 3 U.S.C. 3174(c)(2)(A)(iv)(I)(aa)) is amended by inserting
 4 before the semicolon the following: “ and of information
 5 in notices described in section 3(a), and of access to the
 6 database established under section 5(e), of the Worker Ad-
 7 justment and Retraining Notification Act (29 U.S.C.
 8 2102(a); 2104(e))”.

9 **SEC. 3. EXEMPTIONS.**

10 Section 4 of the Worker Adjustment and Retraining
 11 Notification Act (29 U.S.C. 2103) is amended to read as
 12 follows:

13 **“SEC. 4. EXEMPTIONS.**

14 “This Act shall not apply to a plant closing or mass
 15 layoff if the closing is of a temporary facility or the closing
 16 or layoff is the result of the completion of a particular
 17 project or undertaking, and the affected employees were
 18 hired with the understanding that their employment was
 19 limited to the duration of the facility or the project or un-
 20 dertaking.”.

21 **SEC. 4. ADMINISTRATION AND ENFORCEMENT OF RE-**
 22 **QUIREMENTS.**

23 Section 5 of the Worker Adjustment and Retraining
 24 Notification Act (29 U.S.C. 2104) is amended—

25 (1) in subsection (a)—

1 (A) in paragraph (1)—

2 (i) in subparagraph (A)—

3 (I) in the matter preceding clause

4 (i), by striking “each day” and insert-
5 ing “each calendar day”; and

6 (II) in clause (ii), by striking
7 “and” after the semicolon;

8 (ii) in subparagraph (B), by striking
9 the period at the end and inserting “;
10 and”;

11 (iii) by inserting after subparagraph
12 (B) the following:

13 “(C) liquidated damages in an amount equal to
14 30 days of back pay, at the rate of compensation
15 calculated under subparagraph (A).”; and

16 (iv) in the flush text following sub-
17 paragraph (C) (as added by clause (iii)),
18 by striking “60 days” and inserting “90
19 days”;

20 (B) in paragraph (2)(A), by inserting “,
21 which begins on the date of the employment
22 loss” after “the violation”;

23 (C) in paragraph (3), by inserting “the
24 Secretary, a State, or” before “a unit of local
25 government”;

1 (D) in paragraph (4)—

2 (i) by striking “which has violated
3 this Act” and inserting “that has violated
4 the provisions of section 3 with respect to
5 the Secretary, a State, or a local govern-
6 ment”; and

7 (ii) by striking “reduce the amount of
8 the liability or penalty provided for in this
9 section” and inserting “reduce the amount
10 of the penalty under paragraph (3)”;
11

12 (E) by striking paragraph (5) and insert-
13 ing the following:

14 “(5) A person (including a representative of
15 employees or a unit of local government aggrieved
16 under paragraph (1) or (3)) seeking to enforce the
17 liability provided for in this section, may, either for
18 such person, for other persons similarly situated, or
19 for both, bring suit in any district court of the
20 United States for any district in which the violation
21 is alleged to have occurred or in which the employer
22 transacts business.”; and

23 (F) in paragraph (6), by striking “pre-
24 vailing party” and inserting “prevailing plain-
tiff”;

1 (2) by redesignating subsection (b) as sub-
2 section (c);

3 (3) by inserting after subsection (a) the fol-
4 lowing:

5 “(b) LIMITATIONS.—An action shall be brought
6 under this section not later than 4 years after the date
7 of the last event constituting the alleged violation for
8 which the action is brought.”;

9 (4) by adding at the end the following:

10 “(d) EXEMPTION FROM LIQUIDATED DAMAGES.—
11 Notwithstanding subsection (a)(1)(C), an employer is not
12 liable for the liquidated damages described in such sub-
13 section if—

14 “(1) the employee alleges a site closing and—

15 “(A) the employer can establish that cir-
16 cumstances described in section 3(c)(1) existed
17 on the 60th and 30th days before the site clos-
18 ing; or

19 “(B) the site closing is due to any form of
20 natural disaster or directly due to a terrorist at-
21 tack; or

22 “(2) the alleged site closing or mass layoff is
23 caused by business circumstances (other than a fin-
24 ancier’s decision) that were not contemplated nor

1 should reasonably have been contemplated as of the
2 30th day before the site closing or mass layoff.

3 “(e) DATABASE.—

4 “(1) TRANSMITTALS.—A State or designated
5 entity that receives a notice under section 3(a) shall
6 transmit a copy of the notice to the Secretary.

7 “(2) DATABASE.—The Secretary shall create
8 and maintain a publicly available database that pro-
9 vides information from notices transmitted under
10 paragraph (1).

11 “(3) CONTENTS OF DATABASE.—The database
12 under paragraph (2) shall include—

13 “(A) for each notice transmitted under
14 paragraph (1), a copy of the notice, the date of
15 the notice, the name of the employer involved,
16 the unit of local government affected by the
17 closing or layoff involved, the number of em-
18 ployees so affected, the sector in which the lay-
19 off occurred (as identified by the North Amer-
20 ican Industry Classification System code), and
21 the type of the closing or layoff;

22 “(B) a search function that allows users to
23 identify the geographic, annual, and sectoral
24 breakdown of the notices; and

1 “(C) a function that allows the data to be
2 downloaded in a user-friendly format.

3 “(4) ACCESS THROUGH WEBSITE.—The Sec-
4 retary shall provide a link to the database through
5 the internet website of the Department of Labor.”.

6 **SEC. 5. POSTING OF NOTICES.**

7 Section 11 of the Worker Adjustment and Retraining
8 Notification Act (29 U.S.C. 2101 note) is amended to read
9 as follows:

10 **“SEC. 11. POSTING OF NOTICES.**

11 “(a) POSTING OF NOTICES.—Each employer shall
12 post and keep posted, in conspicuous places upon its prem-
13 ises where notices to employees are customarily posted, a
14 notice to be prepared or approved by the Secretary setting
15 forth excerpts from, or summaries of, the pertinent provi-
16 sions of this Act and information pertinent to the filing
17 of a complaint under this Act.

18 “(b) PENALTIES.—The Secretary may impose a civil
19 penalty on any person who willfully violates this section
20 of not more than \$500 for each separate offense.”.

1 **SEC. 6. NON-WAIVER OF RIGHTS AND REMEDIES; INFORMA-**
2 **TION REGARDING BENEFITS AND SERVICES**
3 **AVAILABLE TO EMPLOYEES.**

4 The Worker Adjustment and Retraining Notification
5 Act (29 U.S.C. 2101 et seq.) is further amended by adding
6 at the end the following:

7 **“SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIV-**
8 **ER.**

9 “(a) IN GENERAL.—The rights and remedies pro-
10 vided under this Act (including the right to file or partici-
11 pate in a class action under rule 23 of the Federal Rules
12 of Civil Procedure in Federal court) are substantive and
13 may not be waived, deferred, or lost pursuant to any
14 agreement or settlement other than an agreement or set-
15 tlement described in subsection (b).

16 “(b) AGREEMENT OR SETTLEMENT.—An agreement
17 or settlement referred to in subsection (a) is an agreement
18 or settlement negotiated by—

19 “(1) a private attorney on behalf of affected
20 employees; or

21 “(2) a designated representative of affected em-
22 ployees under the National Labor Relations Act (29
23 U.S.C. 151 et seq.) or the Railway Labor Act (45
24 U.S.C. 151 et seq.).

1 **“SEC. 13. INFORMATION REGARDING BENEFITS AND SERV-**
2 **ICES AVAILABLE TO WORKERS.**

3 “(a) IN GENERAL.—The Secretary of Labor shall
4 maintain a guide of benefits and services that may be
5 available to affected employees, including unemployment
6 compensation, trade adjustment assistance, COBRA con-
7 tinuation coverage, and early access to training services
8 and other services, including counseling services, available
9 under title I of the Workforce Innovation and Opportunity
10 Act (29 U.S.C. 3111 et seq.).

11 “(b) AVAILABILITY OF GUIDE.—The guide main-
12 tained under subsection (a) shall be available on the inter-
13 net website of the Department of Labor and shall include
14 a description of the benefits and services, the eligibility
15 requirements, and the means of obtaining such benefits
16 and services.

17 “(c) TRANSMISSION TO EMPLOYERS.—Upon receiv-
18 ing notice from an employer under section 3(a)(2), the
19 Secretary shall immediately transmit such guide to such
20 employer.”.

○