

or less, shall be treated as an employment loss under this chapter unless—

(1) the extension beyond 6 months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial lay-off; and

(2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

**(d) Determinations with respect to employment loss**

For purposes of this section, in determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in section 2101(a)(2) or (3) of this title but which in the aggregate exceed that minimum number, and which occur within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this chapter.

(Pub. L. 100-379, § 3, Aug. 4, 1988, 102 Stat. 891; Pub. L. 105-277, div. A, § 101(f) [title VIII, § 405(d)(26), (f)(18)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-424, 2681-432; Pub. L. 113-128, title V, § 512(kk), July 22, 2014, 128 Stat. 1722.)

**Editorial Notes**

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113-128 substituted “the State or entity designated by the State to carry out rapid response activities under section 3174(a)(2)(A) of this title,” for “the State or entity designated by the State to carry out rapid response activities under section 2864(a)(2)(A) of this title.”

1998—Subsec. (a)(2). Pub. L. 105-277, § 101(f) [title VIII, § 405(f)(18)], struck out “the State dislocated worker unit or office (referred to in section 1661(b)(2) of this title), or” before “the State or entity”.

Pub. L. 105-277, § 101(f) [title VIII, § 405(d)(26)], substituted “to the State dislocated worker unit or office (referred to in section 1661(b)(2) of this title), or the State or entity designated by the State to carry out rapid response activities under section 2864(a)(2)(A) of this title, and the chief” for “to the State dislocated worker unit (designated or created under title III of the Job Training Partnership Act) and the chief”.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113-128, set out as an Effective Date note under section 3101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(26)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(18)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 6 months after Aug. 4, 1988, see section 11 of Pub. L. 100-379, set out as a note under section 2101 of this title.

**§ 2103. Exemptions**

This chapter shall not apply to a plant closing or mass layoff if—

(1) the closing is of a temporary facility or the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking; or

(2) the closing or layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this chapter. Nothing in this chapter shall require an employer to serve written notice pursuant to section 2102(a) of this title when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act [29 U.S.C. 151 et seq.]: *Provided*, That nothing in this chapter shall be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

(Pub. L. 100-379, § 4, Aug. 4, 1988, 102 Stat. 892.)

**Editorial Notes**

REFERENCES IN TEXT

The National Labor Relations Act, referred to in par. (2), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 167 of this title and Tables.

EFFECTIVE DATE

Section effective 6 months after Aug. 4, 1988, see section 11 of Pub. L. 100-379, set out as a note under section 2101 of this title.

**§ 2104. Administration and enforcement of requirements**

**(a) Civil actions against employers**

(1) Any employer who orders a plant closing or mass layoff in violation of section 2102 of this title shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—

(A) back pay for each day of violation at a rate of compensation not less than the higher of—

(i) the average regular rate received by such employee during the last 3 years of the employee’s employment; or

(ii) the final regular rate received by such employee; and

(B) benefits under an employee benefit plan described in section 1002(3) of this title, including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.

Such liability shall be calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer.

(2) The amount for which an employer is liable under paragraph (1) shall be reduced by—