

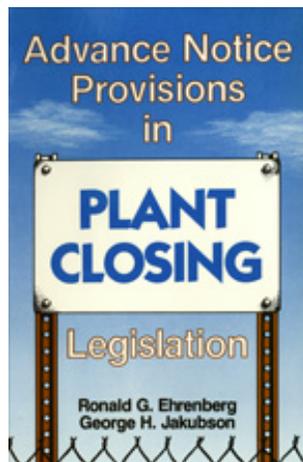
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## Introduction

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**Advance Notice Provisions in Plant Closing Legislation**

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# Introduction

## Background

Most European nations have some form of legislation relating to plant closings or large scale layoffs (table 1.1). Typically, the legislation calls for advance notice by employers, with the length of notice varying across countries, and for employer negotiations with employees and government over whether the closing can be averted. Often, legislation requires severance pay for displaced workers, and some countries, for example Sweden, have detailed programs of labor market services (retraining, placement, public works, wage subsidies) to facilitate adjustments.<sup>1</sup> In Canada, both federal and provincial legislation similarly require advance notice, and the notice required often depends on a worker's tenure with the establishment (table 1.2). In many of these countries, small establishments with less than 100 employees are exempt from the requirements, perhaps due to the greater failure rate of small businesses or the belief that a shutdown of a small business does not have a substantial effect on a community.

Plant closing legislation in the United States is much more modest. As of early 1988, there was no federal law and only a few state laws. Three states, Maine, Wisconsin and Hawaii, require advance notice of plant shutdowns (with size class exemptions), and Maine also requires one week's severance pay per year of service for workers with greater than three years of tenure. The penalties for noncompliance are low in Maine (\$500 per establishment) and Wisconsin (\$50 per employee), but high in Hawaii (three months' wages and benefits per laid-off worker). Connecticut does not require advance notice, but does require nonbankrupt firms to maintain health insurance and other benefits for workers unemployed because

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**Table 1.1**  
**Requirements for Advance Notice for Collective**  
**Dismissals in European Legislation, 1983<sup>a</sup>**

Country	Definition of collective dismissals	Notice requirements
Belgium	Within a 60-day period a) 6 workers in 20-59 employee firms b) 10% of workforce in larger firms	30 days
Denmark	Within a 30-day period a) 10 workers in 21-99 employee firms b) 10% of workforce in 100-299 employee firms c) 30 workers in $\geq 300$ employee firms	30 days
France	Within a 30-day period a) 2 workers in firms of $\geq 11$ employees	45 days and up
Germany	Within a 4-week period a) 6 workers in 21-49 employee firms b) 10% of workforce or greater than 25 workers in firms employing 50-499 workers c) 50 workers in $\geq 500$ employee firms	30 days
Greece	2-10% of the workforce in firms normally employing $\geq 50$ employees (percentage changes each year)	30 days
Ireland	Within a 30-day period a) 5 employees in 21-49 employee firms b) 10 employees in 50-99 employee firms c) 10% of workforce in 100-299 employee firms d) 30 employees in $\geq 300$ employee firms	30 days
Italy	On the same date 2 workers in any firm employing $\geq 10$ workers	22 to 32 days
Luxembourg	Within a 30-day period, 10 workers Within a 60-day period, 20 workers	60 to 75 days
Netherlands	Within a 3-month period 20 workers	30 days
Sweden	5 workers	2 to 6 months
United Kingdom	1 worker	30 to 90 days (if at least 10 workers are involved)

SOURCE: Authors' interpretation of material in "Collective Dismissals in 10 Countries," *European Industrial Relations Review* 76 (May 1980): 19-24; and "Collective Dismissals and Insolvencies," *European Industrial Relations Review* 109 (February 1983): 12-17.

a. In all cases these are minimum notice provisions. Provisions are typically also found for consultations with employee representatives with a view towards avoiding or mitigating the consequences of the dismissals. Relevant public authorities must also be notified and often their authorization is required. Finally, provisions are also in effect often for severance payments. In the event of employer insolvency, these payments typically come from a state fund. The figures for Sweden are as of 1980.

of plant shutdowns for up to 120 days. Massachusetts, Maryland and Michigan all have voluntary programs in which firms are urged to provide advance notice and/or continue benefits. Finally, South Carolina “requires” employers to give workers two weeks, notice before shutting down, but *only* in situations where employees are required to give advance notice prior to quitting.<sup>2</sup>

Interest in plant closing legislation in the United States has grown since the deep recession of the mid-1970’s, and the relatively large number of plant closings and permanent layoffs in major manufacturing industries since then undoubtedly stimulated this interest. During the 1975-83 period, over 125 bills relating to plant closings were introduced in 30 states, the majority in the Northeast and Midwest.<sup>3</sup> More than 90 percent of these bills had provisions requiring advance notice of shutdowns, while substantially smaller percentages required severance pay or economic assistance to workers, employers, local governments, or potential buyers.

At the federal level, over 40 bills have been introduced into Congress since 1979. Some have called not only for advance notice, but also for severance pay, maintenance of benefits, and payments to communities to compensate them for lost revenues. In July of 1987, the Senate voted to attach an amendment to the Omnibus Trade Bill (S1420) that would require employers of 100 or more workers to give 60 days advance notice to workers and local government officials of a plant closing, or a layoff involving at least one-third of the employer’s workforce that was planned to last at least six months.<sup>4</sup> The notice period could be reduced for employers seeking ways to avoid the shutdown or if “unforeseeable circumstances” occurred. Numerous exemptions were included in this bill, including if the employer relocated the business within a reasonable commuting distance of the old plant, or if a planned layoff of less than 60 days was extended due to “unforeseeable circumstances.” Penalties for violations of the act would include pay to displaced employees for each day of violation and a fine of \$500 per day of violation for failing to notify local governments.

In June of 1987, the House Education and Labor Committee approved legislation (HR1122) distinct from its trade bill that had

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**Table 1.2**  
**Notice Requirements for Termination of Employment,**  
**Various Jurisdictions in Canada, 1986**

Jurisdiction	Individual termination		Mass terminations	
	Minimum length of service	Employer notice	Number of employees	Employer notice
Federal	3 months	2 weeks	≥50	16 weeks
Alberta	3 mos.-2 years	1 week	No special legislation	
	≥2 years	2 weeks		
British Columbia	6 mos.-2 years	2 weeks	No special legislation	
	≥3 years	No. of weeks equal to years of service to maximum of 8 weeks		
Manitoba	>2 weeks	1 pay period	50-100	10 weeks
			101-300	14 weeks
			>300	18 weeks
New Brunswick	6 mos.-5 years	2 weeks	≥25 if they represent at least 25% of employer's workforce	
	≥5 years	4 weeks		
Newfoundland	1 mo.-2 years	1 week	50-199	8 weeks
			200-499	12 weeks
			≥500	16 weeks
Nova Scotia	3 mos.-2 years	1 week	10-99	8 weeks
	2 years-5 years	2 weeks	100-299	12 weeks
	5 years-10 years	4 weeks	≥300	16 weeks
	≥10 years	8 weeks		
Ontario	3 mos.-2 years	1 week	50-199	8 weeks
	2 years-5 years	2 weeks	200-499	12 weeks
	5 years-10 years	4 weeks	≥500	16 weeks
	≥10 years	8 weeks		
Prince Edward Island	3 months	1 week	No special legislation	
Quebec	3 mos.-1 year	1 week	10-99	8 weeks
	1 year-5 years	2 weeks	100-299	12 weeks
	5 years-10 years	4 weeks	≥300	16 weeks
	≥10 years	8 weeks		
Saskatchewan	3 mos.-1 year	1 week	No special legislation	
	1 year-3 years	2 weeks		
	3 years-5 years	4 weeks		
	5 years-10 years	6 weeks		
	≥10 years	8 weeks		

Table 1.2 (continued)

Jurisdiction	Individual termination		Mass terminations	
	Minimum length of service	Employer notice	Number of employees	Employer notice
Northwest Territories	No notice provisions		No special legislation	
Yukon	6 months	1 week	25-49	4 weeks
			50-99	8 weeks
			100-299	12 weeks
			≥300	16 weeks

SOURCE: Extracted from the *Canadian Labour Law Reporter* (1986)—Termination of Employment (§1650) and Group Termination of Employment (§1655).

a. In some cases, employee notice of intent to terminate employment is also required. The federal provisions apply to federal employees and employees in regulated industries. Provincial regulations apply to both public and private employees with certain exemptions. These exemptions are both for temporary layoffs of specified durations and also for certain industries. Some laws also require severance pay. Generally, the penalty for failure to provide the required notice is payment of the employees' regular wages for the specified period. More details on each of these provisions are found in the Bureau of National Affairs, *Daily Labor Reporter* 50 (March 17, 1987) pp. D-1 to D-6.

stricter notification requirements. The House bill would require 90 days notice if 50 or more workers were displaced and 180 days notice if 500 or more workers were displaced. This bill also contained a provision that employers must "consult in good faith" with employees, unions, and local government officials about the effects of plant closings or mass layoffs.<sup>5</sup>

In April of 1988, both the House and the Senate passed the Omnibus Trade Bill that included the Senate's advance notice amendment. President Reagan vetoed the entire bill, stressing among other factors his opposition to the advance notice provisions.

Political pressure for the passage of advance notice legislation continued to grow, however, as advance notice became an important issue during the early stages of the 1988 Presidential campaign. In July of 1988, Congress passed the *Worker Adjustment and Retraining Notification Act* which requires employers of 100 or more workers to give workers and local government officials 60 days' advance notice of a plant closing or a layoff that is planned to last at least six months and that involves at least 500 workers or one-third of an employer's workforce. Although philosophically opposed to the

bill, President Reagan bowed to political pressures and did not veto it.

Penalties for failure to provide the required advance notice again include back pay for each day of violation for displaced workers and a fine of \$500 per day of violation for failing to notify local governments. Numerous exemptions are included in the Act, including those employers actively seeking to attract new capital or to sell the business, and displacements due to “business circumstances that were not reasonably foreseen.” Whether an exemption applies to an employer who has failed to provide the required notice is to be determined by the relevant federal district court upon a suit being filed by employees or a local government.

### **Arguments For and Against Plant Closing Legislation**

Proponents of plant closing legislation argue that advance notice provisions would ease displaced workers’ shock and facilitate their search for alternative sources of employment or training. Such notice also would allow employers, workers and the community to see if ways exist to save the jobs, such as wage concessions, tax concessions, or seeking new ownership, including the possibility of employee ownership. If plants do shut, the maintenance of health insurance would be important for individuals during a period when stress leads to increased incidence of physical and mental ailments. Finally, payments by firms to the communities in which the plants were located would help alleviate the extra demands placed on these communities for social services that the shutdowns cause—demands that arise at the same time local property and sales tax revenue are being reduced.<sup>6</sup>

Opponents of the legislation argue that, in addition to restricting the free mobility of capital, advance notice legislation would have a number of other adverse effects on firms.<sup>7</sup> They claim it would increase worker turnover and decrease productivity, as those productive workers with the best opportunities elsewhere would leave and the morale of remaining workers would suffer. It also would de-

crease the likelihood that buyers of the plant's product would place new orders, that banks would supply new credit, that suppliers would continue to provide services, and that the firm could sell the plant to potential buyers. Finally, it would depress corporate stock prices. Such a provision, as well as others that directly increase the costs of plant shutdowns, effectively increase the cost of reducing employment and thus should encourage firms *not* to expand operation or to substitute overtime hours for additional employment in states where such laws are in effect.

In evaluating the case for plant closing legislation, it is useful to stress the divergence between private and social costs. Employers currently do not bear the full social costs of plant shutdowns, both because unemployment insurance is imperfectly experience rated and because the costs shutdowns impose on communities are not taken into account by them. As such, imposing a "tax" on plant closings, either in the form of advance notice provisions, severance pay requirements, or maintenance of benefits requirements may make sense; it would have the effect of discouraging the action. These efficiency considerations suggest the need for federal, rather than state-by-state rules, to reduce the possibility that locational decisions by firms would be influenced by "tax price" differences. Critics, however, would stress that such legislation might encourage the flight of jobs overseas.

### **Outline of This Study**

In spite of the growth of legislative efforts, there has been surprisingly little empirical effort devoted to analyzing the effects of advance notice; our study seeks to increase our empirical knowledge in this area. We begin the next section by describing the extent to which advance notice was provided to displaced workers in the United States prior to the passage of the *Worker Adjustment and Retraining Notification Act* through existing state legislation, provisions in privately negotiated collective bargaining agreements, or voluntary employer actions. The majority of displaced workers in the

United States are seen not to have received advance notice of any meaningful length.

Chapter 2 presents a summary of prior empirical research on the effects of legislated, privately bargained, and voluntarily provided advance notice of displacement in the United States and Europe. The weaknesses of the previous research are highlighted and the contributions of our subsequent empirical analyses stressed.

The next three chapters summarize our empirical analyses of advance notice provisions. After describing the data used in chapter 3, chapter 4 presents analyses of the determinants of which displaced workers in the United States report receiving advance notice and of whether those workers who do receive notice implicitly “pay” for it in the form of lower predisplacement wages. Chapters 5 and 6 then analyze respectively what the effects of advance notice appear to be on displaced workers’ durations of time out of work and, for those who find new employment, on their postdisplacement wages. Chapter 5 also addresses a concern of critics of advance notice requirements, namely, whether such requirements lead firms’ most productive workers to quit (once notified) prior to their scheduled displacement dates.

Finally, chapter 7 discusses the implications of our findings for public policy towards displaced workers. This chapter also indicates the directions in which future research might profitably go.

### **Advance Notice of Displaced Workers in the United States**

Two employee-based and two employer-based surveys have recently collected information on the extent to which displaced workers in the United States received advance notice of their displacement. The employee-based surveys were the *Survey of Displaced Workers (SDW)* supplements to the January 1984 and January 1986 *Current Population Surveys*; these covered workers who were displaced during the 1979-83 and 1981-85 periods respectively.<sup>8</sup> The 1984 *SDW* data is used in our analyses in chapters 4 through 6 and is described in some detail in chapter 3.

Table 1.3 presents data on the proportion of displaced workers in these surveys who received advance notice *or* expected layoffs. For the purpose of this table, displaced workers are defined as persons with tenure of at least three years who permanently lost or involuntarily left a full-time wage and salary job. These data suggest that over half of the displaced workers covered by these surveys received advance notice, with displaced females more likely to have received notice than displaced males, and workers displaced due to a plant closing more likely to have received notice than workers displaced

**Table 1.3**  
**Proportion of Displaced Workers Who Received Advance Notice**  
**or Expected Layoff in the January 1984 and January**  
**1986 CPS Displaced Worker Supplements**

	All displaced workers	Displaced due to plant closing	Displaced for other reasons
<b>January 1984 survey</b>			
<b>(workers displaced in 1979-83)</b>			
Persons 20 and over	.56	.61	.52
Persons 20 to 34	.57	.62	.53
Persons 35 to 54	.56	.60	.52
Persons 55 and over	.56	.61	.48
Males 20 and over	.55	.58	.52
Females 20 and over	.60	.66	.51
<b>January 1986 survey</b>			
<b>(workers displaced in 1981-85)</b>			
Persons 20 and over	.55	.59	.49
Persons 20 to 34	.58	.63	.53
Persons 35 to 54	.53	.57	.49
Persons 55 and over	.52	.57	.41
Males 20 and over	.53	.57	.47
Females 20 and over	.59	.63	.54

SOURCE: Authors' calculations from U.S. Bureau of Labor Statistics, Bulletin 2240, *Displaced Workers, 1979-83* (Washington, DC: July 1985), tables 6 and B6, and U.S. Bureau of Labor Statistics, Bulletin 2289, *Displaced Workers, 1981-85* (Washington, DC: September 1987), tables 6 and B6.

for other reasons (e.g., layoffs). Younger workers also appear more likely to have received notice than older workers.

While at first glance these data suggest that prior to the passage of federal legislation, advance notice was widespread in the United States, we must caution that the question asked respondents in this survey did *not* distinguish between receipt of formal notice and simply expectation of displacement.<sup>9</sup> The survey also provided *no* information on the duration of the advance notice. This was a second crucial shortcoming, since the effectiveness of advance notice policies presumably depend at least partially on how far in advance notice is given.<sup>10</sup>

The two employer-based surveys suffer from neither of these shortcomings. The first, a September 1986 survey of establishments in seven states that, during the last half of 1985, reported “layoff events” of 30 days or more in which 50 or more initial unemployment insurance claims were filed in a three-week period by former employees, was conducted by the U.S. Bureau of Labor Statistics (BLS).<sup>11</sup> The second, a nationwide random sample of establishments in which layoffs of 100 or more workers occurred in 1983 or 1984, was conducted by the U.S. General Accounting Office (GAO).<sup>12</sup>

Table 1.4 summarizes information from the two employer-based surveys on the frequency and duration of advance notice. The precise definitions of advance notice differ between the two surveys (see table 1.4), however in this table “general notice” relates to notice that a layoff would occur sometime in the future, while “specific notice” relates to individual employees being given specific termination dates.

These data present a much different picture from the employee-based data about the prevalence of advance notice for displaced workers in the United States. While the results differ across the two surveys (which differ in coverage and time frame), it is clear that only a small fraction of employers provide workers about to be displaced with either general or specific advance notice of at least one month. Indeed, over 80 percent of the establishments in the BLS survey provided either no notice or notice of less than two weeks,

**Table 1.4**  
**Comparison of the Distribution of Advance Notice Provided**  
**by Establishments in the BLS and GAO Surveys<sup>a</sup>**

Length of notice	General notice <sup>b</sup>		Specific notice <sup>c</sup>	
	BLS	GAO	BLS	GAO
No notice	64	24	5	31
1-14 days	16	25	78	34
15-30 days	6	17	9	15
31-90 days	10	17	8	15
91 days and over	4	17	d	5

SOURCE: Sharon Brown, "How Often Do Workers Receive Advance Notice of Layoffs?" *Monthly Labor Review* (June 1987), pp. 13-17 and table 6.

a. *BLS*—Bureau of Labor Statistics September 1986 survey of establishments in seven states that, during the last half of 1985 reported "layoff events" of 30 days or more in which 50 or more initial unemployment insurance claims were filed in a 3-week period by former employees. *GAO*—Government Accounting Office nationwide random sample of establishments that focused on those in which layoffs of 100 or more workers occurred in 1983 and 1984.

b. *General Notice*—In the BLS study, defined as informing individual employees that they will be laid off without specifying the exact date. In the GAO study, defined as informing groups of workers that some or all of them may be laid off.

c. *Specific Notice*—In the BLS study, defined as informing individual employees the specific date on which they will be laid off. In the GAO study, a similar definition was used.

d. Less than .5 percent.

while about 50 (65) percent of the establishments in the GAO survey provided either no general (specific) notice or general (specific) notice of less than two weeks.

Some data on the prevalence of advance notice broken down by industry, establishment size, occupational category, and union status, are reported in tables 1.5 and 1.6 for the BLS and GAO surveys, respectively. What emerges from these tables is that differences in the frequency and length of advance notice appear to have existed along some of these dimensions. For example, employees at unionized establishments were more likely to have notice than employees at nonunion ones and employees at large establishments were more likely to have notice than employees at small establishments. We will discuss in chapter 4 why such differences might occur.

The conclusion one draws from these data is that many displaced workers in the United States have received either no advance notice

**Table 1.5**  
**Percentage of Establishments with Mass Layoffs Providing**  
**Advance Notice in the BLS Survey: By Industry and Union Status<sup>a</sup>**

	With advance general notice			With specific notice of more than 1 day		
	(A)	(U)	(N)	(A)	(U)	(N)
Total, all industries	35	38	37	52	53	50
	[46]	[51]	[42]	[18]	[13]	[24]
Agriculture	0	—	0	37	—	37
				[40]		
Nonagriculture	37	38	41	58	53	51
	[46]	[51]	[43]	[18]	[13]	[23]
Manufacturing	42	44	48	63	60	56
	[45]	[50]	[43]	[18]	[13]	[22]
Durable	41	38	49	60	60	53
	[54]	[63]	[53]	[19]	[14]	[26]
Nondurable	46	59	45	69	59	65
	[25]	[27]	[13]	[15]	[11]	[12]
Nonmanufacturing	19	17	21	42	35	39
	[54]	[59]	[43]	[18]	[10]	[27]
Wholesale and retail trade	37			37		
	[84]			[18]		
Services	23			50		
	[23]			[19]		
Other Nonmanufacturing	14			41		
	[54]			[18]		

a. Authors' calculations from Sharon P. Brown, "How Often Do Workers Receive Advance Notice of Layoff?" *Monthly Labor Review* (June 1987) tables 1 and 2.

where

(A) all establishments	}	Union status was reported by establishments in only six of the seven states. Thus, the numbers in (U) and (N) do not necessarily add up to those in (A).
(U) union establishments		
(N) nonunion establishments		

[ ] mean duration of notice (in days)

of their displacement or notice of only very short duration. Thus, federal advance notice legislation does have the potential to substantially increase both the frequency *and* duration of notice that displaced workers receive.

**Table 1.6**  
**Length of Specific Advance Notice Provided By**  
**Establishments in the GAO Survey**

Category	Percent of establishments that provided				
	No notice	1 to 14 days	15 to 30 days	30 to 90 days	91 days or more
<b>All establishments</b>	<b>32</b>	<b>34</b>	<b>15</b>	<b>14</b>	<b>5</b>
Blue-collar workers	31	36	14	14	5
Union	19	40	18	18	5
Nonunion	42	31	13	10	4
Plant closures	29	24	14	22	11
Permanent layoffs	32	39	14	12	3
Manufacturing	34	36	14	12	4
Nonmanufacturing	26	35	16	18	5
Less than 250 employees	35	32	13	15	5
More than 250 employees	23	44	17	11	5
White-collar workers	28	31	19	16	6
Union	21	37	19	17	6
Nonunion	31	26	20	16	7
Plant closures	25	17	21	28	0
Permanent layoffs	29	36	18	12	5
Manufacturing	31	34	17	13	5
Nonmanufacturing	23	26	21	21	9
Less than 250 employees	31	29	17	17	6
More than 250 employees	21	35	21	15	8

SOURCE: United States General Accounting Office, *Plant Closings, Limited Advance Notice and Assistance Provided Dislocated Workers* (Washington, DC: Superintendent of Documents, July 1987), appendix tables VII-6 through VII-19.

## NOTES

1. Bjorklund and Holmlund (1987) present a discussion of Swedish policies.
2. See Cline (1984).
3. See Burchell et al. (forthcoming).
4. See Bureau of National Affairs (1987a).
5. See Bureau of National Affairs (1987b).

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6. See, for example, Bluestone and Harrison (1982).

7. See, for example, McKenzie (1982).

8. See U.S. Bureau of Labor Statistics (1985; 1987).

9. Moreover, because the question was asked *ex post*, or after the fact, one cannot distinguish between true notice or *ex ante* expectation on the one hand, and *ex post* rationalization on the other hand. As we will discuss in chapter 8, this distinction is crucial in evaluating the potential effects of legislated advance notice provisions.

10. Both shortcomings are remedied in the *Survey of Displaced Workers* that is part of the January 1988 *Current Population Survey*.

11. See Brown (1987).

12. See U.S. General Accounting Office (1987).