§ 860-g. Violation; liability. 1. An employer who fails to give notice as required by paragraph (a) of subdivision one of section eight hundred sixty-b of this article before ordering a mass layoff, relocation, or employment loss is liable to each employee entitled to notice who lost his or her employment for:

(a) Back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(b) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

2. Back pay and other liability under this section is calculated for the period of the employer's violation, up to a maximum of sixty days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller.

3. Payments to an employee under this section by an employer who has failed to provide the advance notice of a facility closure required by this article or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 1201 et seq.) shall not be construed as remuneration under article eighteen of this chapter. Unemployment insurance benefits under article eighteen of this chapter may not be denied or reduced because of the receipt of payments related to an employer's violation of this article or the federal Worker Adjustment and Retraining Notification Act.

4. The amount of an employer's liability under subdivision one of this section, shall be reduced by the following:

(a) Any wages, except vacation moneys accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(b) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

(c) Any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution

pension plan, on behalf of and attributable to the employee for the period of the violation.

(d) Any liability paid by the employer under any applicable federal law governing notification of mass layoffs, plant closings, or relocations.

(e) In an administrative proceeding by the commissioner, any liability paid by the employer prior to the commissioner's determination as the result of a private action brought under this article.

(f) In a private action brought under this article, any liability paid by the employer in an administrative proceeding by the commissioner prior to the adjudication of such private action.

5. Any liability incurred by an employer under subdivision one of this section with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

6. If an employer proves to the satisfaction of the commissioner that the act or omission that violated this article was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this article, the commissioner may, in his or her discretion, reduce the amount of liability provided for in this section. In determining the amount of such reduction, the commissioner shall consider (a) the size of the employer; (b) the hardships imposed on employees by the violation; (c) any efforts by the employer to mitigate the violation; and (d) the grounds for the employer's belief.

7. An aggrieved employee, local government, or an employee representative seeking to establish liability against an employer may bring a civil action on behalf of the person, other persons similarly situated, or both, in any court of competent jurisdiction, within the time period provided by section two hundred thirteen of the civil practice law and rules. The court may award reasonable attorneys' fees as part of costs to any plaintiff who prevails in a civil action brought under this article. If the court determines that an employer conducted a reasonable investigation in good faith, and had reasonable grounds to

believe that its conduct was not a violation of this article, the court may reduce the amount of any penalty it would otherwise impose against the employer under this article.

8. Neither the commissioner nor any court shall have the authority to enjoin a plant closing, relocation, or mass layoff under this article.