

## **WARN-ing Laid Off Employees: Notification Requirements**

Given the current state of the economy, businesses may be facing the necessity of reducing their staff as a way of cutting costs. In many cases, companies that finally decide to implement a layoff want to accomplish it right away. Nevertheless, before proceeding with a reduction, companies must consider whether they are subject to the 60-day notification requirements under federal law, i.e., the Worker Adjustment and Retraining Notification (“WARN”) Act, as well as under California law (commonly referred to as a mini WARN Act). Although the WARN Act requirements are rather detailed, the following questions will steer you in the right direction.

### **Are You Subject to the WARN Act?**

The WARN Act only applies to employers who have 100 or more employees, not counting part-time employees (i.e. employees who have worked less than six of the last 12 months, or employees who work an average of less than 20 hours per week). Keep in mind, however, that California’s notification requirements apply to any business facility that employs or has employed 75 or more employees, excluding employees who have worked less than six of the last 12 months during the past year.

### **What Kind of Events Trigger the Notification Requirements?**

The WARN Act covers “employment losses” that occur in connection with “covered plant closings” and “covered mass layoffs.” For example, an employment loss occurs for employees who are involuntarily terminated in a reduction-in-force. Under the WARN Act, a covered plant closing is where an employment site, or part thereof, is shut down, and the shutdown results in the employment loss for 50 or more employees (not counting part-time employees) during any 30-day period. California’s equivalent to a federal plant closing is called a “termination.” It requires the employer to give a 60-day notice if it ceases or substantially ceases its business operations in a covered establishment, regardless of the number of affected employees.

A covered mass layoff under the WARN Act is a layoff that does not result from a plant closing, but which, during any 30-day period, results in an employment loss at the employment site for 500 or more employees, or for 50-499 employees if they constitute at least 33% of the employer’s active workforce.

Under California’s mini WARN Act, a mass layoff is one that, during any 30-day period, will result in the layoff of 50 or more employees at a covered establishment, regardless of what percentage of the employer’s active workforce the group comprises. Moreover, to deter employers from trying to evade the WARN Act by staggering their layoffs or the closing down of their employment site, the WARN Act requires employers to give 60-days’ notice when employment losses during any 90-day period for two or more groups of employees, in the aggregate, reach the threshold for triggering the WARN Act, but each of which, separately, is less than the minimum number needed to trigger notice. This aggregation will trigger the WARN Act unless the employer shows that the employment losses during the 90-day period were the result of separate and distinct actions and causes. Even if the employer might not be required to give notice because the event is not

considered a plant closing, termination or mass layoff, California law requires the employer to give notice if it is relocating all or substantially all of its business to a different location 100 or more miles away. Literally construed, the California provision requires that notice be given even if the employee is offered and accepts continued employment at the new location.

### **Who Must Be Given Notice?**

Under the WARN Act, employers must give written notice to the chief elected officer of the representative(s) or bargaining agent(s) of affected employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss. Part-time employees must be given the 60-day notice, even though they are not counted when determining whether or not the WARN Act is triggered.

Employers also must provide 60-days' notice to the State dislocated workers unit and to the chief elected official of the unit of local government in which the employment site is located. California mirrors the federal WARN Act, with the additional requirement that notice must be given to the local workforce investment board and to the chief elected official of the county governments in which the termination, mass layoff or relocation occurs.

### **What Must the Notice State?**

The 60-days' notice must be in writing, and must include certain, specific information, depending on who is intended to receive it. For example the notices to unrepresented affected employees must state the following:

- Whether the planned action is expected to be permanent or temporary. And, if the entire facility is to be closed, a statement to that effect.
- The expected date that the covered action (i.e. plant closing, mass layoff, termination, or relocation) will commence, and the expected date of that specific employee's employment separation.
- An indication of whether or not any bumping rights exist.
- The name and telephone number of a company representative to contact for further information.

There are similar and additional items for the other required notices. Any reasonable method of delivery of the notice is acceptable, as long as it ensures receipt of the notice 60 days before the covered event.

### **Other Considerations**

Both the WARN Act and California's mini WARN Act have a number of other significant provisions. These include, but are not limited to, provisions regarding notice requirements when there is a sale of a business, narrowly-construed exceptions to giving the full 60-days' notice, and provisions concerning damages and penalties for violations of the notice requirements.

The above information should help you determine whether or not you have a "WARN" issue. If you think that you might, then you need to carefully examine the detailed

provisions and requirements of the WARN Act and California's mini WARN Act to see whether the notification requirements actually apply to your situation. If they do, then you must proceed carefully with the necessary steps to ensure compliance.

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