

The Worker Adjustment and Retraining Notification Act (“The WARN Act”)

Two separate, but similar, versions of the WARN Act exist: a federal WARN Act and an Illinois WARN Act. Illinois employers must follow both laws. In general, the Illinois WARN Act contains stricter notice requirements, but since Illinois employers must follow both laws, the following information combines the requirements under both the federal and Illinois WARN Acts. For ease of reference in this summary, the combined laws are referenced generally as the WARN Act.

Overview: the WARN Act requires larger employers to provide advanced notice before a mass layoff or plant closure.

Employers subject to the WARN Act: only those employers who have 75 or more full-time workers are subject to the requirements of the WARN Act (“Covered Employer”).

Notice Requirements: A Covered Employer must provide written notice to the workers as well as certain state and local government officials at least 60 calendar days before a “mass layoff” or a plant closing.

Definition of “mass layoff” triggering the notice requirements:

- a) the layoff of 25 or more full-time employees, provided they constitute 1/3 or more of the total full-time employees at the site; or
- b) the layoff of 250 or more full-time employees at a single site.

Definition of “Plant Closure” triggering the notice requirements: Closure of a work site that employs 50 or more employees.

NOTE -- Temporary Layoffs: temporary layoffs that extend for less than 6 months do not trigger notice requirements under the WARN Act.

COVID-19 Implications on the WARN Act: The Illinois Department of Labor (“IDOL”) has issued additional information about exceptions to the WARN Act based on the business challenges from the COVID-19 pandemic. In so doing, the IDOL specifically referenced Section 15 of the Illinois WARN Act, which provides exceptions to the 60-day notice requirement based on unforeseen business circumstances. While the WARN Act still applies during the COVID-19 pandemic, according to the release, during the pandemic, the IDOL will provide individual determinations to employers who seek an exception to the 60-day notice requirement under Section 15. Even if the exception request is approved, however, an employer must still provide as much notice as soon as practicable.

Penalties and Damages. An employer that fails to provide notice as required by law is liable to each affected employee for back pay and benefits for the period of the violation, up to a maximum of 60 days. The employer may also be subject to a civil penalty of up to \$500 for each day of the notice violation as well as attorneys' fees if a civil action is filed.