

Review of the Worker Adjustment and Retraining Notification (WARN) Act

March 15, 2020 | Felice Ekelman, Attorney

What is the WARN (Worker Adjustment and Retraining Notification Act) Law? There is both a federal and NY State WARN law. Here are key provisions but Employers should review the regulations and should consult with counsel:

- o The New York State WARN Act applies to business enterprises in New York that satisfy the statutory definition of the term “employer.” Any business that employs 50 or more employees, excluding part-time employees, or 50 or more employees that work in the aggregate at least 2,000 hours per week, is considered a covered “employer” under the NY State WARN Act.
- o The NY State WARN Act requires an “employer” to provide at least 90 days advance written notice (60 days under the federal WARN Act) of a covered event (such as a “plant closing” or a “mass layoff”) to the following persons: (1) affected non-union employees, (2) the highest level officers of the local and international unions which represent any of the employer’s employees, (3) the state dislocated worker unit in the state where the plant closing or the mass layoff will occur, (4) the chief elected official of local government where the plant closing or mass layoff will occur, (5) the New York State Commissioner of Labor, and (6) the local workforce investment board in the location where the employment losses will occur. The notice must contain certain required information.
- o An “affected employee” means “an employee, whether full-time or part-time, who, at the time notice is required to be given, may reasonably be expected to experience an employment loss” as a result of, amongst other covered events, a “plant closing” or “mass layoff.” o A “plant closing” is the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at such site for 25 or more employees, excluding part-time employees (50 under the federal WARN Act). A “mass layoff” means a reduction in the workforce that results in an employment loss at a single site of employment for at least 25 employees, excluding part-time employees (50 under the federal WARN Act), that qualify as 33% of the workforce at that single site of employment.
 - o Note also that an employee suffers an employment loss under the federal and NY WARN Act if he/she suffers a reduction in hours of more than 50% in each month of a consecutive 6-month period.
- o A “part-time” employee under the NY State WARN Act is an employee “who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.” The NY State WARN Act is single site specific.
- o Consider if an exception applies. Given the current challenges facing us, an argument could be made that the unforeseeable business circumstance exception applies. Generally, to qualify for this exception, there must be a sudden, dramatic and unforeseen event outside of the employer’s control. Even with an exception, you must still provide notice. The exception just permits shortened notice. The notice must be sent as soon as practicable after the sudden and dramatic event. The notice must go to



all the same entities and individuals mentioned above and must include a statement explaining why a shortened notice is being provided.

The link to the NYS DOL WARN

website: <https://labor.ny.gov/workforcenypartners/warn/warnportal.shtm>