

The Federal WARN Act

By: Lee Hansen, Principal Analyst
August 30, 2019 | 2019-R-0180

Issue

This report describes the federal WARN Act's notice requirements.

Summary

The federal Worker Adjustment and Retraining Notification (WARN) Act ([29 U.S.C. § 2101 et seq.](#)) generally requires certain large employers to provide 60-days' advance written notice of a mass layoff. It applies to private or quasi-public employers that have at least 100 employees who (1) have been on the job for at least six months and work at least 20 hours per week or (2) work at least a combined 4,000 hours per week.

The employer must provide written notification about the layoffs to the appropriate local chief elected official, the state Department of Labor's Rapid Response Dislocated Worker Unit, and the affected employees or their collective bargaining representatives (if applicable). An employer who violates WARN is generally liable to affected employees for unpaid back pay and benefits during the period of violations, up to 60 days.

Below we describe the circumstances that trigger the act's notice requirements, certain employees who are not counted when determining whether the notice requirements apply, exceptions to the notice requirements, and how the act is enforced. Additional information about the WARN act is available from the state Department of Labor [here](#) and from the U.S. Department of Labor [here](#).

Circumstances that Trigger WARN Notice Requirements

According to the U.S. Department of Labor's *WARN Employer's Guide to Advance Notice of Closing and Layoffs* (available [here](#)), employers who have at least 100 full-time employees must meet the WARN Act's notice requirement when they:

1. close a facility or discontinue an operating unit permanently or temporarily, affecting at least 50 full-time employees at a single employment site;
2. close an operating unit that has fewer than 50 employees, if the closing also involves laying off enough other employees to make the total layoffs at least 50;
3. lay off 50 to 499 full-time employees who comprise at least 33% of the total workforce at a single employment site during a 30-day period;
4. lay off at least 500 full-time employees at a single employment site during a 30-day period;
5. announce a temporary layoff of less than six months that meets certain criteria, and then extend the layoff for more than six months; or
6. reduce the work-hours of at least 50 employees by more than 50% in each month in any six-month period.

Employees not Counted under WARN

According to the *Guide*, employers should not count the following types of employees when determining whether plant closings or layoffs meet the above criteria and require a WARN notice:

1. part-time employees;
2. employees who retire, resign, or are terminated for cause;
3. employees who are offered a transfer to another employment site within a reasonable distance, if (a) the closing or layoff is caused by a relocation or consolidation of all or part of the employer's business and (b) the transfer involves no more than a six-month break in employment; and
4. employees who are offered a transfer to another employment site beyond a reasonable commuting distance, if (a) the closing or layoff is caused by a relocation or consolidation of all or part of the employer's business, (b) the transfer involves no more than a six-month break in employment, and (c) the employee accepts the offer within 30 days after the offer, closing, or layoff, whichever is later.

Exceptions to Notice Requirements

According to the *Guide*, WARN notice requirements are not triggered when a covered employer:

1. closes a temporary facility or completes a temporary project and the employees were hired with the clear understanding that their employment would end with the facility's closing or the project's completion or
2. closes a facility or operating unit due to a strike or lockout and the closing is not intended to evade the act's purposes.

The act also allows for three exceptions in which the 60-day advance notice deadline does not apply, but the employer must instead provide the notice as soon as is practicable. These exceptions are for a(n):

1. faltering company: when, before a plant closing, a company (a) is actively seeking capital or business which would allow the employer to avoid or postpone a shutdown for a reasonable period and (b) reasonably and in good faith believes that advance notice would preclude its ability to obtain such capital or business;
2. unforeseeable business circumstance: when the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable when the 60-day advance notice would have been required (e.g., an unexpected cancellation of a major order); or
3. natural disaster: when a plant closing or mass layoff is the direct result of a natural disaster.

Enforcement

According to the *Guide*, an employer who violates WARN is liable to each affected employee for back pay and benefits for the period of violation, up to 60 days. However, this liability may be reduced by the employer's payment of (1) wages over the notice period and (2) voluntary and unconditional payments not required by a legal obligation.

An employer who fails to notify its local government official as required is subject to a civil penalty of up to \$500 for each day of the violation. However, this penalty may be avoided if the employer satisfies its liability to each affected employee within three weeks after the closing.

Under the act, WARN is enforced through the U.S. District Courts. Workers, their representatives, and affected local governments may bring individual or class action suits against employers believed to be violating the act. In any suit, the court may also award reasonable attorneys' fees to the prevailing party.

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