

## **New York Mini-WARN Law Provides Maxi-Coverage of Employers**

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A recent New York State law will impose greater obligations on certain employers to provide notice to workers of impending layoffs or plant closings.

The law, which Governor David Paterson signed on August 5, 2008, and is titled the New York State Worker Adjustment and Retraining Notification Act ("NY Mini-WARN"), becomes effective in February, 2009, and supplements the advance notification requirements contained in the federal Worker Adjustment and Retraining Notification Act ("WARN") to employees of layoffs or plant closings.

While similar to WARN, NY Mini-Warn imposes greater obligations than its federal counterpart with respect to employers that are covered by the law, the events that trigger an employer's obligation to provide notice to employees and the amount of notice that is required. But it is also seemingly ambiguous in certain key aspects.

Generally, NY Mini-WARN applies to those who employ 50 or more full-time employees and requires employers that fall within its reach to provide 90 days' advance written notice of a "mass layoff, relocation or employment loss" to affected employees and representatives of affected employees, the New York State Department of Labor, and local workforce investment boards. This requirement—that notice be given prior to loss of employment—likely was not intended, since technically that might require application of the New York law to any loss of employment. Similarly, while the law seemingly intended a "plant closing" to be an event that triggered the law's notice requirements, a "plant closing" is not listed as one of the law's triggering events. In contrast, WARN generally applies only to those who employ 100 or more full-time employees, and requires employers to provide only 60 days' advance written notice of a "mass layoff" or "plant closing" to affected employees or their union representatives, the state dislocated worker unit and the chief elected official of the unit of local government in which the employment site is located.

Further, NY Mini-WARN has a lower threshold than WARN for determining whether a triggering event has occurred. NY Mini-WARN's notice obligations are triggered when (i) a mass layoff will result in an employment loss at a single site of employment during any 30-day period for at least 25 full-time employees who represent at least 33 percent of the employer's full-time employees or at least 250 full-time employees; or (ii) when an employer plans to relocate "all or substantially all of [its] industrial or commercial" operations to a location 50 or more miles away. NY Mini-WARN defines the term "plant closing" as 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 the single site of employment during any 30-day period for 25 or more full-time employees. WARN, on the other hand, requires a larger number of affected employees before its notice provisions are triggered. Specifically, WARN's notice provisions are only triggered when (i) a mass layoff will result in an employment loss at an employment site during any 30-day period for less than 500 full-time employees if they make up at least 33 percent of the full-time workforce or for 500 or more full-time employees, or (ii) a plant closing will result in an employment loss for 50 or more full-time employees during any 30-day period.

Both NY Mini-WARN and WARN provide employees with a private right of action for violation of their notice provisions. Importantly, however, NY Mini-WARN also provides the New York State Commissioner of Labor with authority to enforce the law. WARN does not provide for such administrative enforcement. Both laws provide for a civil penalty of \$500 per day of violation, cap an employer's liability for back pay, benefits and civil penalties at 60 days, and grant the Commissioner of Labor with authority to reduce any penalties if the violation was made in good faith.

Both NY Mini-WARN and WARN provide exceptions to their notice requirements when (i) the need for notice was not reasonably foreseeable at the time the notice would have been required; (ii) the employer was actively seeking capital or business at the time the notice was required and met certain other conditions; and (iii) the closing or layoff was due to a natural disaster. However, NY Mini-WARN also contains an additional exception to its notice requirements: notice also is not required if the triggering event results from a "physical calamity" or "an act of terrorism or war." Notably, NY Mini-WARN also contains specific provisions regarding notice requirements in the event of the sale of a business, a strike or a lockout, and the acceptable methods for providing notice.

NY Mini-WARN broadens the circumstances in which New York employers will be required to provide notice to workers impacted by relocations and reductions-in-force. As noted above, due to some ambiguities in its drafting, the new law leaves open the possibility that notice could be required for employment losses other than mass layoffs, plant closings or relocations. Moreover, there may be little incentive for employers to comply with the law's extended notice period, as currently there appear to be no consequences for failing to provide notice beyond a 60-day period.

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