

New York Amends State WARN Act to Require Additional Notifications

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By [Marc A. Mandelman](#) and [Eric I. Emanuelson, Jr.](#)

New York State [amended](#) its Worker Adjustment and Retraining Notification Act (“NY WARN Act”), effective November 11, 2020 (“Amendment”), to expand significantly the governmental entities that must receive notice of a NY WARN Act triggering event, such as a mass layoff.

Prior to the Amendment, covered employers were required to provide the mandated advance notice of a NY WARN Act triggering event to:

- affected employees and their union representatives;
- the New York State Department of Labor; and
- the Local [Workforce Investment Board](#) for the locality in which the mass layoff, relocation, or employment loss will occur.

Now, following the Amendment, when advance notice is required under the NY WARN Act, covered employers also must provide advance notice of a triggering event to:

- the “chief elected official of the unit or units of local government” (aligning New York State law with the [federal WARN Act](#)) in which the NY WARN Act triggering event will occur (e.g., the mayor, the town supervisor); **and**
- the chief elected official of the school district(s) in which the NY WARN Act triggering event will occur; **and**
- “each locality which provides police, firefighting, emergency medical or ambulance services or other emergency services to the site of employment subject to” the NY WARN Act triggering event, “as applicable.”

Notably, the Amendment does not describe the specific information that must be included in these new notification obligations—an omission that hopefully the State will promptly clarify. In the interim, at least for the notice that must be provided to the chief elected official of affected unit(s) of local government, employers should follow the notice requirements for such person(s) mandated by the federal WARN Act, which has

the same content requirements as the NY WARN Act notice to the local Workforce Investment Board.

As a reminder, the NY WARN Act's triggering events—"plant closing," "mass layoff," "relocation," and "employment loss"—are [defined](#) as follows:

- **Plant closing** means the temporary or permanent "shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment," if, as a result of the shutdown, 25 or more full-time employees lose their jobs in the applicable rolling 30- or 90-day counting period.
- **Mass layoff** means a reduction in force that:
 - is not the result of a plant closing, **and**
 - results in an employment loss at a single site of employment during the applicable rolling 30- or 90-day counting period for:
 - at least 33 percent of the employees (excluding part-time employees¹), **and**
 - at least 25 full-time employees, **or**
 - at least 250 full-time employees.
- **Relocation** means "the removal of all or substantially all" of the employer's "industrial or commercial operations" to a different location that is at least 50 miles away.
- **Employment loss** is defined as
 - "an employment termination, other than a discharge for cause, voluntary departure, or retirement";
 - a mass layoff that exceeds six months; or
 - a reduction of more than 50 percent in hours of work "during each month of any consecutive six-month period."

What New York Employers Should Do Now

The COVID-19 pandemic has forced many businesses to close or to reduce temporarily or permanently the size of their workforce. However, prior to shutting down or conducting mass furloughs or layoffs, employers must avoid inadvertently violating federal and local notice laws. Unfortunately, as if the requirements of the NY WARN Act

¹ A "part-time employee" is defined as "an employee who is employed for an average of fewer than twenty hours per week or who has been employed for fewer than six of the twelve months preceding the date on which notice is required."

were not complicated enough, they just got more onerous with the enactment of the Amendment. While employers should anticipate that the State will provide further clarification on the Amendment's new notice mandates, employers contemplating a change in operations that may result in a potentially covered "employment loss" or other triggering event should consult with counsel about their possible notification requirements under both New York State and federal law.

For more information about this Advisory, please contact:

[Marc A. Mandelman](#)

New York

212-351-5522

mmandelman@ebglaw.com

[Eric I. Emanuelson, Jr.](#)

New York

212-351-3759

eemanuelson@ebglaw.com

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