

Client Alert

Employment Practices Group

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New York WARN Act

Last month, New York State joined a growing number of states that have enacted broader employee protections than those provided by the Federal Worker Adjustment and Retraining Notification Act (“US WARN”). The New York State Worker Adjustment and Retraining Notification Act (“NY WARN”), imposes requirements on employers that are more expansive than those currently imposed by US WARN on the following bases: (i) more employers are covered, (ii) it is more easily triggered, and (iii) employers are required to provide 50% more notice time than under US WARN.

US WARN requires employers of 100 or more employees to provide affected employees 60 days’ advance notice of a plant closing or mass layoff. US WARN only pertains to layoffs of a minimum of 50 employees within a 30-day period. Although based on US WARN, NY WARN is more expansive. It requires employers with 50 or more employees to provide 90 days’ advance notice of a mass layoff, plant closing, or relocation. Its defined terms include reductions in force of as few as 25 employees. Below we have included a chart setting forth the differences between defined terms in the statutes.

More specifically, NY WARN requires employers to provide 90 days’ advance written notice when: (i) a mass layoff results in employment losses during a 30-day period affecting at least 25 full-time employees representing at least 33% of the workforce, or at least 250 full-time employees; (ii) a plant closing results in employment losses during a 30-day period of 25 full-time employees; or (iii) a relocation involves removal of all or substantially all of the industrial or commercial operations of an employer to another location at least 50 miles away, regardless of whether there are any employment losses. The required written notice must be provided to affected workers, the New York State Department of Labor (“NYS DOL”) and local workforce investment boards.

Employers are exempt from the notice requirements if: (i) the need for notification was not reasonably foreseeable at the time the notice was required; (ii) the employer was actively seeking capital or business when the notice was required and such capital or business, if obtained, would have enabled the employer to avoid or postpone the relocation or layoff; (iii) the closing or layoff was due to a natural disaster or an act of terrorism or war; (iv) the operation being closed was a temporary facility or the project completed was of limited duration and the affected employees were hired with the understanding that their employment would terminate on such closing or completion; or (v) if the plant closing or layoff is the result of an industrial action, such as a strike or lockout.

NY WARN grants affected employees and their representatives the right to bring suit against employers within six years for back pay, the value of benefits lost during the notice shortfall period, and, at the discretion of the court, attorneys’ fees. Back pay is capped at 60 calendar days. The NYS DOL can also be awarded a civil penalty of \$500 for each day of violation. In addition, NY WARN grants the NYS DOL enforcement authority and the ability to promulgate rules “necessary to carry out” the act.

Given that NY WARN is broadly drafted, and still untested, employers considering reducing their forces or relocating their operations should protect themselves in the following

ways: (i) before engaging in a reduction in force, relocation or plant closing, determine whether their New York employees will be affected, and consider the applicability of NY WARN; and (ii) make arrangements to retain accurate records of all decisions relating to such reductions in force for at least six years.

DEFINED TERMS	US WARN	NY WARN
Employer	100 full-time employees company-wide.	50 full-time employees company-wide.
Mass Layoff	At least 50 employees <i>and</i> 33% of the workforce OR at least 500 employees suffer an employment loss within 30 days.	At least 25 employees <i>and</i> at least 33% of the workforce OR at least 250 employees suffer an employment loss within 30 (or sometimes 90) days.
Plant Closing	The shutdown of an employment site resulting in an employment loss within a 30-day period for at least 50 full-time employees.	The shutdown of an employment site resulting in an employment loss within a 30-day period for at least 25 full-time employees.
Relocation	N/A	The removal of operations of an employer to a location that is at least 50 miles away regardless of employment losses.
Notice Period Required	60 days	90 days
Statute of Limitations for Filing Suit	Varies according to state.	6 years from termination of employment.

If we can provide you with assistance regarding the NY WARN Act or any employment matter, please contact Aliza Herzberg.

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