

## **Notice Required For Plant Closings Or Mass Layoffs**

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The Worker Adjustment and Retraining Notification Act (“WARN”), 29 USC 2101, requires employers to provide notice of a plant closing or mass layoff to affected employees. In January 2005, Illinois adopted a similar statute, the Illinois Worker Adjustment and Retraining Notification Act. The Illinois legislation is to be “interpreted in a manner consistent with federal WARN and the federal regulations and court decisions interpreting the Act to the extent that the provisions of the federal and State law are the same.” Therefore, to comply with both State and Federal legislation, first examine the requirements of the WARN and applicable regulations, and then look to the Illinois provisions to learn the differences.

WARN requires employers to provide notice, 60 days in advance (with limited exception), of a plant closing or mass layoff to all affected employees. An “affected employee” is any employee who is expected to experience an employment loss because of a proposed plant closing or layoff. An “employer” is any business enterprise that employs 100 or more employees, excluding part-time employees; or 100 or more employees who in the aggregate work at least 4,000 hours per week. An employer who employs fewer than 100 employees is not subject to WARN’s notification requirements. If the employer has more than 100 employees, notice must be provided to (1) the State or entity designated by the State to carry out rapid response activities, and (2) each representative of the affected employees as of the time of notice or, if there is no representative, to each affected employee.

The Secretary of Labor issued a regulation that outlines what information notice must contain and how notice can be served. Notice to each affected employees who do not have a

representative is to be written in language understandable to the employees and is to contain: (1) a statement whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect; (2) the expected date the plant closing or mass layoff will commence and the expected date the individual employee will be separated; (3) whether or not bumping rights exist; and (4) the name and telephone number of a company official to contact for further information.

Notices to the State must contain: (1) the name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information; (2) a statement whether the planned action is expected to be permanent or temporary and, if the entire plant is closing a statement to that effect; (3) the expected date of the first separation and anticipated schedule for making separations; (4) job titles of positions to be affected and number of affected employees in each job classification; (5) whether bumping rights exist; and (6) the name of each union representing affected employees and the name and address of the chief elected officer of each union.

The Illinois Act is nearly identical to WARN. Under the Illinois Act, “employer” is defined as a business enterprise that employs 75 or more employees, excluding part-time employees, or 75 or more employees who in the aggregate work at least 4,000 hours per week. While under WARN an employer who employed fewer than 100 employees is not required to provide notice of a closing or mass layoff; under the Illinois Act an employer who employed fewer than 75 employees is not be required to provide notice. An Illinois employer with 75 or more employees would need to provide notice under the Illinois Act.

The other notable difference between WARN and the Illinois Act is that the Illinois Act requires notice be provided to (1) the Department of Commerce and Economic Opportunity and

the chief elected official of each municipal and county government within which the employment loss, relocation or mass layoff occurs, (2) representatives of affected employees, *and* (3) affected employees. Under WARN, notice needs to be provided to affected employees only when there is no representative. In Illinois, notice must be provided to all affected employees, regardless of whether they have a representative.

Due to space limitations, this could not be a comprehensive review of WARN. You should confer with legal counsel in advance of any plant closing or mass layoff.