

# SNSFE QUARTERLY REVIEW

Fourth Quarter 2007- ISSUE 5

A newsletter for our clients and friends

*We have arrived at that time of the calendar year during which employers find themselves compelled to consider reductions in force. What follows is a discussion of the Federal and Illinois statutes which may affect plant closures and layoffs...*

*From the President*



The Worker Adjustment and Retraining Notification Act ("WARN"), 29 USC 2101, requires employers to provide notice of a plant closing or mass layoff to all affected employees. In January 2005, Illinois adopted a similar statute, the Illinois Worker Adjustment and Retraining Notification Act ("I-WARN"). I-WARN provides that it is to be interpreted in a manner consistent with WARN and the federal regulations and court decisions interpreting WARN, to the extent that the provisions of the federal and state law are the same. To know what action is needed to comply with both state and federal legislation it is first necessary to know the requirements of WARN and related regulation and then look to I-WARN to satisfy any additional or differing state law requirements.

**WARN: General Requirements.** WARN (with limited exceptions) requires employers to provide 60 days advance notice of a plant closing or mass layoff to all affected employees. An affected employee is defined as any employee who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff. An employer is defined as 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.

A plant closing, in a nutshell, is defined as a permanent or temporary shut down at a single site which results in an employment loss during any 30 day period for 50 or more full time employees. A mass lay off is defined as an employment loss at a single site during any 30 day period which is not the result of a plant closing but which results in the loss of at least 50 employees where they constitute at least 33% of full time employees, or at least 500 full time employees. An employer who employs less than 100 employees would not be subject to the notification requirements of WARN. If an employer has 100 or more employees, advance notice of a plant closing or mass lay off must be provided to (1) the State or entity designated by the State to carry out rapid response activities under 29 USC 2864(a)(2)(A), and (2) each representative of the affected employees as of the time of notice or, if there is no representative, to each affected employee.

**Notice Requirements.** Pursuant to WARN, the United States Secretary of Labor issued regulations that outline information the WARN notice must contain and how notice can be given. Notice to affected employees who do not have a representative is to be written in language understandable to such 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 when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated; (3) an indication whether or not bumping rights exist; and, (4) the name and telephone number of a company official to contact for further information.

Required notice provided 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 as to 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 the anticipated schedule for making separations; (4) the job titles of positions to be affected, and the number of affected employees in each job classification; (5) an indication as to 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 WARN regulations further provide that any reasonable method of delivery which is designed to ensure receipt of notice at least 60 days before separation is acceptable. While the regulation does not mandate specific method of delivery, it does provide an illustrative list of acceptable methods. More specifically, first class mail, personal delivery with optional signed receipt, and insertion of notice into pay envelopes are listed as options that meet the requirements of the Act. However, a ticketed notice, i.e., preprinted notice regularly included in each employee's pay check envelope, does not meet the requirements of the Act.

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This newsletter is provided as a public resource for information purposes. The information offered is not intended as, and does not represent, legal advice. The reader should never rely on the content of a newsletter. We urge you to seek professional counsel concerning your situation. Under professional rules, this newsletter may be regarded as advertising material. Copyright 2007. All rights reserved. Shaheen, Novoselsky, Staat, Filipowski & Eccleston, P.C. Carol Grimes, Editor.

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Steven C. Filipowski, President

*From the President* CONTINUED FROM PAGE 1:

**I-WARN: General Requirements.** I-WARN is nearly identical to WARN. I-WARN defines "employer" as any 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. I-WARN requires notice to 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. (WARN requires notice be provided to affected employees only when there is no employee representative.) ■

If you have any questions regarding WARN requirements or if you need assistance with planning a reduction in force or with any employment relations problem, give us a call.



Steven C. Filipowski

SNSFE  
news and  
upcoming  
events

Call 312.621.4400  
for more information.

See a full listing of  
upcoming events on our  
website at  
www.snsfe-law.com

JACK HAAN will be presenting a webinar in November. Information will be available on our website soon. Read Jack's article on page 2: ***"Failing To Follow Formalities: The Business Owner's Risk of Personal Loss for Corporate Liabilities."***

JAMES ECCLESTON appeared on First Business Morning News in August to discuss how the new SEC rules could impact the market and investors; and in May to discuss one of the latest stock scams - putting "China" in a company name hoping to attract the attention of investors. Read Jim's article on page 3: ***"SEC Details Deficiencies Most Commonly Found During Examinations of Investment Advisers."***

CHRISTOPHER MOYEN recently joined the Firm as an Associate in our Securities Law practice concentrating in the representation of investment advisers and other financial services professionals. His webinar, *"The Top 10 Current Compliance Issues For Investment Advisers"* scheduled for Sept. 25 will be available for replay on our website.