

WARN Act - Overview

TERMINATION

Revised: July 2018

Summary:

The Worker Adjustment and Retraining Notification Act (the WARN Act) offers protection to workers by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the State dislocated worker unit; and to the appropriate unit of local government.

NOTE: Although the word "plant" is used in the WARN Act, the rules apply universally to all covered employers and employees as defined in the law, not only "plant" or traditional blue-collar employees.

PENALTIES: The penalties for not complying with the WARN Act include back pay and fringe benefit payments to the employees and a potential fine of \$500.00 for each day that the 60-day notice has not been properly given.

Important Notice:

The information provided herein is general in nature and designed to serve as a guide to understanding. These materials are not to be construed as the rendering of legal or management advice. If the reader has a specific need or problem, the services of a competent professional should be sought to address the particular situation.

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Coverage

- A. Private businesses, non-profit organizations, and public or quasi-public entities separately organized from the regular government with their own governing bodies and independent authority are subject to the WARN Act. Federal, State, and local government entities which provide public services are not covered.
- B. To be covered by the law, the employer must have:
 - 1. 100 or more employees, excluding "part-time employees" (defined as an employee who works an average of fewer than 20 hours per week, or was employed for fewer than 6 of the 12 preceding months); or
- C. 100 or more full- and part-time employees who in the aggregate work at least 4,000 hours per week (exclusive of overtime). Count the number of employees at the time the first notice is to be given, unless that number is not representative of the normal level of employees.
 - 1. Temporary employees count for determining coverage but are not entitled to WARN notice. Seasonal employees may or may not be counted, depending on their status.
 - 2. All other employees count as well, including supervisors and managers.

Notice Requirements

- A. The WARN Act states, "An employer shall not order a plant closure or mass layoff until the end of a 60-day period after the employer serves written notice of such order."
- B. To whom written notice must be given
 - 1. Written notice must be given to:
 - a. Each affected employee in a non-union setting, or to each union representing affected employees;
 - 1) "Affected employee" means an employee reasonably expected to experience an employment loss.
 - 2) It also includes those who would lose jobs through a "bumping" process. If the employer cannot identify employees who may lose their jobs through bumping, the employer must provide notice to all the incumbents in the jobs which are being eliminated.
 - 3) Part-time employees and those who have worked less than 6 of the last 12 months are due notice, even though they do not count in determining if the employer is covered by the WARN Act.

- b. The "state dislocated worker unit."
 - c. The chief elected official of the local government unit where the closing or layoff will occur.
2. Who is not due notice:
- a) Temporary employees who were hired with the understanding their employment was limited to the duration of the specific project or undertaking.
 - b) Part-time employees who have not averaged 20 hours per week during the shorter of the actual period employed or the most recent 90 days.
 - c) Strikers.
 - d) Employees offered a transfer, within six months, to a substantially equivalent job within reasonable commuting distance.

C. Plant Closing

"Plant closing" is defined as the permanent or temporary shut-down of a "single site of employment," a "facility," or "operating unit" which results in "employment loss" during any 30-day period for 50 or more employees, excluding part-time employees. This does not include a temporary (ie not an ongoing) facility or worksite.

D. Mass Layoff

"Mass layoff" is a reduction in force which results in "employment loss" at a single site of employment during any 30-day period for:

1. At least 33 percent of the employees, and at least 50 employees (excluding part-timers).

OR

2. At least 500 employees, excluding part-timers.

E. Employment Loss

"Employment loss" is:

1. Termination, other than discharge for cause, voluntary departure, or retirement.
2. Layoff exceeding six months.
3. Reduction in hours of individual employees of more than 50 percent during each month of any six-month period.

F. Single Site of Employment

1. A "single site of employment" is a single location or a group of contiguous buildings.
2. Groups of structures which have separate management, workforces, and different products are separate sites.

G. Facility and Operating Unit

1. "Facility" means a building or buildings.
2. "Operating unit" means an organizationally or operationally distinct product, operation, or specific work function within or across facilities at a single site.

How to Serve Notice

- A. Notice must be served at least 60 days before separation.
- B. Notice may be sent first class mail or personal delivery with an optional signed receipt.
- C. Notice to employees via pay envelope insertion is sufficient.
- D. A preprinted notice regularly included with each paycheck is not acceptable.

CONTENTS OF THE NOTICE

- A. The notice to the public official must include:
 1. The name and address of the employment site where the plant closing or mass layoff is to occur.
 2. Whether it is a plant closing or a mass layoff.
 3. The expected date of the first separation and the anticipated schedule for making separations or a 14-day period in which the separations will occur.
 4. Job titles of positions to be affected and the number of employees in the job classification.
 5. A statement as to the existence of any applicable bumping rights.
 6. The name of each union representing affected employees, and the name and address of the chief elected officer of each union.
 7. The name, address, and telephone number of a company official to contact for further information.
- B. Notice to the employees and any existing union are very similar. The requirements regarding content in these notices are very specific. Please contact an Employers Council staff member for further help regarding these notices. Sample notices are at the end of this FYI.

AGGREGATION

- A. If within any 90-day period, employment losses for two or more groups of employees in the aggregate exceed the minimum number, the notice is required unless the employer can prove separate and distinct actions and causes.

B. This rule applies only to separate actions that are below the threshold amounts. Do not aggregate a small action with a large employee reduction, which is a covered WARN Act notice event.

SALE OF ALL OR PART OF A BUSINESS

A. In a sale where a "mass layoff" or "plant closing" is initiated, the seller is responsible before the date of sale and the buyer is responsible thereafter for meeting the WARN Act requirements.

B. Individuals who are employees of the seller on the date of the sale shall be considered employees of the purchaser immediately after the sale.

REDUCTION IN NOTICE REQUIREMENTS

A. The normal 60-day notice period may be reduced if:

1. It was not reasonably foreseeable the layoff would extend beyond six months and notice is given when it is reasonably foreseeable the extension will go beyond the six months.
2. A company is, in good faith, seeking capital or business (the "faltering company" exception).
3. Business circumstances which were not reasonably foreseeable lead to the plant closing or mass layoff.
4. The plant closing or mass layoff is caused by a natural disaster.

B. The extent to which the courts will allow these exceptions to be used is often uncertain. An employer would be well advised to contact legal counsel when dealing with a reduced notification period.

NOTICE EXTENSION REQUIREMENTS

A. The original notice of 60 days may be extended within a 14-day period without additional notice.

B. If postponement of more than 14 days but less than 60 days occurs, an additional notice is mandatory as soon as possible. Such notice must: (1) refer to the earlier notice, (2) give the date or 14-day period to which postponed, and (3) give the reasons for the postponement.

C. Any extension beyond 60 days requires an entirely new notice. "Rolling" or "continual" notices are not allowed.

Severance Pay

The 60-day notice requirement may not be offset by any severance payment to an employee or any other separate legal obligation.

ENFORCEMENT

- A. The WARN Act is enforced in the Federal District Courts, not by an administrative agency.
- B. The prevailing party may be awarded attorney's fees.

STATE LAWS AND LOCAL ORDINANCES

- A. Many states have laws on plant closings. Compliance with both state law and the federal WARN Act is required.
- B. A limited number of cities have a local ordinance affecting this subject. Compliance with a local ordinance is also required.

SAMPLES

SAMPLE NOTICE TO EMPLOYEE REPRESENTATIVE

[DATE]

[NAME], [TITLE]

[UNION]

[ADDRESS]

Re: Notice of Plant Closing

Dear [NAME]:

It is with regret that I inform you that ACME Machine Shop's entire plant located at [STREET ADDRESS, CITY, STATE, AND ZIP CODE OF PLANT], will be permanently closed and shut down as of [DATE, OR WITHIN 14 DAYS THEREAFTER]. This Notice is provided to you as the chief elected official of the [COMPLETE UNION NAME AND LOCAL].

ACME Machine Shop expects to permanently terminate the employment of [NUMBER OF TERMINATED EMPLOYEES] employees, whose last day of work will be [DATE, OR WITHIN 14 DAYS THEREAFTER [OR THE DATES ARE SHOWN ON THE EMPLOYEE LISTS BY THE NAME OF EACH INDIVIDUAL EMPLOYEE WITH "OR WITHIN 14 DAYS THEREAFTER"]]. All personnel at the facility and all job titles are affected, [ALTHOUGH (NUMBER AND JOB TITLE(S)) WILL BE OFFERED TRANSFERS TO (NEW JOB TITLE) POSITIONS AT ACME FACILITIES IN (LOCATION(S), EFFECTIVE DATE)]. Because the shutdown will be permanent, there are no applicable bumping rights. A list of affected employees, [INCLUDING THOSE TO WHOM ACME IS OFFERING TRANSFERS,] and their job titles is appended as Attachment A. [PREPARE AND ATTACH LIST; MUST NAME INDIVIDUAL EMPLOYEES AND JOB TITLES.]

Should you require further information or wish to discuss this matter, please contact me at [AREA CODE AND TELEPHONE NUMBER].

Very truly yours,

[NAME]

[TITLE]

SAMPLE NOTICE TO LOCAL GOVERNMENT OFFICIALS

[DATE]

[NAME OF OFFICIAL]

[TITLE]

[ADDRESS]

Re: Notice of Plant Closing

Dear [NAME]:

I am writing to inform you that ACME Machine Shop's entire plant located at [STREET ADDRESS, CITY, STATE, AND ZIP CODE OF PLANT], will be permanently closed and shut down as of [DATE, OR WITHIN 14 DAYS THEREAFTER].

ACME expects to permanently terminate the employment of [NUMBER OF TERMINATED EMPLOYEES] employees, whose last day of work will be [DATE, OR WITHIN 14 DAYS THEREAFTER [OR THE DATES ARE SHOWN ON THE EMPLOYEE LISTS BY THE NAME OF EACH INDIVIDUAL EMPLOYEE WITH "OR WITHIN 14 DAYS THEREAFTER"]]. All personnel at the facility and all job titles are affected [, ALTHOUGH (NUMBER AND JOB TITLE(S)) WILL BE OFFERED TRANSFERS TO (NEW JOB TITLE) POSITIONS AT ACME FACILITIES IN (LOCATION(S), EFFECTIVE (DATE))]. Because the shutdown will be permanent, there are no applicable bumping rights for any employees involved. A breakdown of the number of employees in each affected job classification, [INCLUDING THOSE TO WHOM ACME IS OFFERING TRANSFERS,] is appended as Attachment A. [PREPARE AND ATTACH LIST; NEED ONLY LIST JOB TITLES OF AFFECTED POSITIONS AND NUMBER OF AFFECTED EMPLOYEES IN EACH CLASSIFICATION.]

[IF EMPLOYEES REPRESENTED BY A UNION, INSERT THE FOLLOWING PARAGRAPH:]

[NUMBER] of the employees affected by this anticipated action are represented by [COMPLETE UNION NAME AND LOCAL]. The chief elected representative of those employees is [NAME AND ADDRESS OF EMPLOYEE REPRESENTATIVE].

Should you require further information or wish to discuss the effect or impact of this decision, please contact me at [AREA CODE AND TELEPHONE NUMBER].

Very truly yours,

[NAME]

[TITLE]

SAMPLE NOTICE TO EMPLOYEES NOT REPRESENTED BY A UNION

[DATE]

[NAME]

[ADDRESS]

Re: Notice of Plant Closing

Dear [NAME]:

It is with regret that I inform you that ACME Machine Shop's entire plant located at [STREET ADDRESS, CITY, STATE, AND ZIP CODE OF PLANT] will be permanently closed and shut down as of [DATE, OR WITHIN 14 DAYS THEREAFTER]. Your last day of work will be [DATE, OR WITHIN 14 DAYS THEREAFTER]. Because the shutdown will be permanent, there are no applicable bumping rights.

I want to thank you for your efforts during your employment. Should you require further information, please contact me at [AREA CODE AND TELEPHONE NUMBER].

Very truly yours,

[NAME]

[TITLE]

SAMPLE NOTICE TO DIRECTOR OF STATE DISLOCATED WORKER UNIT

[DATE]

Director of the [YOUR STATE] Dislocated Worker Unit

[ADDRESS]

Re: Notice of Plant Closing

Dear Director:

I am writing to inform you that ACME Machine Shop's entire plant located at [STREET ADDRESS, CITY, STATE, AND ZIP CODE OF PLANT], will be permanently closed and shut down as of [DATE, OR WITHIN 14 DAYS THEREAFTER].

ACME expects to permanently terminate the employment of [NUMBER OF TERMINATED EMPLOYEES] employees, whose last day of work will be [DATE, OR WITHIN 14 DAYS THEREAFTER [OR THE DATES ARE SHOWN ON THE EMPLOYEE LISTS BY THE NAME OF EACH INDIVIDUAL EMPLOYEE WITH "OR WITHIN 14 DAYS THEREAFTER"]]. All personnel at the facility and all job titles are affected. Because the shutdown will be permanent, there are no applicable bumping rights for any employees involved. A breakdown of the number of employees in each affected job classification is appended as Attachment A. [PREPARE AND ATTACH LIST; NEED ONLY LIST JOB TITLES OF AFFECTED POSITIONS AND NUMBER OF AFFECTED EMPLOYEES IN EACH CLASSIFICATION.]

[IF EMPLOYEES REPRESENTED BY A UNION, INSERT THE FOLLOWING PARAGRAPH:]

[NUMBER] of the employees affected by this anticipated action are represented by [COMPLETE UNION NAME AND LOCAL]. The chief elected representative of those employees is NAME AND ADDRESS OF EMPLOYEE REPRESENTATIVE].

If you have any questions or wish to discuss the effect or impact of this decision, please contact me at [AREA CODE AND TELEPHONE NUMBER].

Very truly yours,

[NAME]

[TITLE]