



Legal Alert: New York WARN Act - New Burdens on Employers

12/17/2008

On February 1, 2009, the New York State Worker Adjustment and Retraining Notification Act ("NYWA") goes into effect. Although it is based on the federal Worker Adjustment and Retraining Act ("WARN"), the NYWA is much broader; it adds new concepts that are unclearly drafted and likely to cause confusion and litigation if it is not revised. For example, unlike WARN, the NYWA could be read to apply to a single employee's termination or relocation. The NYWA provides, "an employer may not order . . . [an] *employment loss*" without giving notice. "Employment loss" is defined to include "an employment termination, other than a discharge for cause, voluntary departure or retirement." (The NYWA inexplicably omits "plant closing" as a notice-triggering event, but clearly intended that plant closings require notice as it defines and refers to "plant closings" elsewhere in the statute.) Since the NYWA does not require a minimum number of employees at the site being moved, a "relocation" technically could occur if an employer decides to "relocate" a site with just a single employee. Further, the NYWA requires an employer to notify certain government entities before it terminates *anyone* without cause or face a \$500 dollar penalty for each day notice is not given. **Exceptions**

- Where the job loss is a result of terrorism, a natural disaster, or an act of war.
- If, during what would have been the notice period, the employer was actively seeking capital or business that would have enabled it to avoid the employment loss and reasonably believed that providing notice would have prevented it from obtaining the capital or business.
- If the need for notice was not reasonably foreseeable.
- If the plant closing or mass layoff was because a project was completed and the affected employees knew when they were hired that the job was for a limited time.
- If an industrial action caused the plant closing or mass layoff.

COMPARISON WARN VS. NYWA

WARN NYWA

Coverage

100 employees

50 employees

Notice Period

60 days

90 days^[1]

Definition of "Plant Closing" as a triggering event

The permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding part-time employees.

Same, but is triggered when as few as 25 employees are affected.

Definition of "Mass Layoff" as a triggering event

A "mass layoff" is a reduction in force, which is not the result of a plant closing, and results in an employment loss at a single site of employment during any 30-day period for at least 33 percent of employees and at least 50 employees or at least 500 employees.

A "mass layoff" occurs when it affects a minimum of approximately one-third of the company's employees at a single worksite (*e.g.*, when employers with 75 or fewer employees lay off at least 25 employees, when employers with 76 – 757 employees lay off at least 33% of their workforce, and when employers with 758 or more employees lay off at least 250 employees.)

Definition of "Relocation" as a triggering event

Not covered.

A "relocation" occurs when there is a removal of all or substantially all of the industrial or commercial operation of an employer to a different location 50 or more miles away.

If you have any questions regarding the NYWA or other labor or employment related issues, please contact Alyson Bruns at 212-453-5907, abruns@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.

^[1] Employers considering layoffs shortly after the law goes into effect would have to provide notice prior to the law's effective date to meet the NYWA's 90-day notice requirement, according the Department of Labor's website.