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Are You Prepared for a Possible Mass Layoff Under New York's Revised WARN Act Regulations?

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The New York Department of Labor (NY DOL) recently issued substantial revisions to the regulations governing the New York Worker Adjustment and Retraining Notification Act (NY WARN). NY WARN, like the federal WARN Act, requires employers, in certain circumstances, to give employees advanced written notice of a mass layoff or plant closing. The NY WARN is, however, broader in scope than the similar federal WARN Act. For example, while the federal act applies to employers with 100 or more employees, the NY Warn Act covers employers with only 50 or more employees. Similarly, NY WARN can be triggered by a layoff affecting 25 or more employees, as compared to 50 employees under the federal WARN Act. The notification period is also greater under NY WARN, requiring 90 days notice, instead of the 60 days required by the federal WARN Act.

Some of the revisions to the regulations include new requirements as to what information must be provided to employees affected by a qualifying mass layoff or plant closing, as well as to the Commissioner of Labor and other individuals or entities required to receive notice. The revised regulations also clarify the definitions of certain terms in the Act, such as "affected employee," "employment loss," "hours of work," "mass layoff," "relocation," and other terms.

Of note is the definition of "date of layoff", which now means "the last day an employee is eligible or permitted to work for his/her employer." This change is significant in that the closing of a plant sometimes occurs due to events that do not allow an employer to give the required

advanced notice. In such circumstances, employers often close the plant, but retain the employees on the payroll for the required notice period in order to avoid the notice obligations. This practice now appears to be prohibited, but an employer who is unable to give the required notice can still avoid liability under NY WARN by paying its employees all wages and benefits due under the Act within three weeks of the employees' last day of work.

Any New York-based employer contemplating a mass layoff or plant closing should be familiar with these new regulations and consult legal counsel for guidance in navigating the requirements of NY WARN and the federal WARN Act.

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