



## New York State WARN Act to Take Effect

The New York State Worker Adjustment and Retraining Notification Act (WARN Act) will take effect February 1, 2009. The WARN Act amends the New York Labor Law to require private sector employers to provide 90 days advance written notice to their affected employees, any union representing the affected employees, and certain government agencies of a plant closing, business relocation, or mass layoff. This new law applies to New York employers who employ 50 or more full-time employees (the federal WARN Act applies to employers with 100 or more employees).

Notice is required if a qualified employer will (1) implement a mass layoff causing an "employment loss" for 250 full-time employees, or at least 25 full-time employees representing at least 33 percent of its workforce; (2) shut down permanently or temporarily 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" during any 30-day period for 25 or more employees; or (3) relocate all or substantially all of its commercial operations to another location at least 50 miles away, resulting in employment loss for 25 or more full-time employees. "Employment loss" means an involuntary employment termination, a layoff exceeding six months, or a reduction in work hours of more than 50 percent during each month of any consecutive six month period.

An employer must also give notice if the employment losses that occur during any 30-day period do not meet the threshold requirements of a plant closing or mass layoff, but, in the aggregate, meet or exceed the thresholds during any 90-day period. Job losses within any 90-day period will count together toward threshold levels unless the employer demonstrates that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

An employment loss does not result if, before the plant closing or mass layoff, the employer offers to transfer the employees to different sites of employment within a reasonable commuting distance with no more than a six-month break in employment or if the employer offers to transfer the employees to any other site of employment regardless of distance with no more than

a six-month break in employment and the employee accepts within 30 days of the offer or the closing or mass layoff, whichever is later.

Part-time employees are not defined as employees under this law. A part-time employee is an employee who works on average of less than 20 hours per week; an employee who works as few as 20 hours a week is considered full time. Individuals who have been employed for fewer than six of the 12 months preceding the date on which the notice is required are also excluded.

The employer may provide a reduced period of notice of a plant closing if the employer was actively seeking capital or business at the time the notice would have been required, if the capital or business sought would enable the employer to avoid or postpone the termination of employees, and if the employer reasonably believed that giving the required notice would have precluded the employer from obtaining the needed capital or business. An employer may also provide a reduced period of notice for a plant closing if the need for the notice was not reasonably foreseeable at the time the notice would have been required.

As mentioned above, if notice is required, it must be sent to the affected employees, any union representing those employees, the New York Department of Labor, and the local workforce investment board.

An employer may be liable for back pay and for the value of the cost for any lost benefits, including the cost of any medical expenses incurred by the employee that would have been covered by an employee benefit plan, for the duration of a violation, up to a maximum of 60 days or half the days the employee was employed by the employer, whichever is smaller. Attorneys' fees and a civil penalty of \$500 per day can also be imposed.

If you have any questions regarding this new law or any other labor or employment law questions, please contact Joseph Braccio, practice group leader for Hodgson Russ's Labor & Employment Practice Group.

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