



## A WORD OF 'WARN'-ING TO COMPANIES IN DISTRESS

By **DANIEL A. SCHWARTZ**

So the economic recession (even if it is not "officially" a recession) is upon us. Home sales are slowing, retail sales are down and the stock market is doing its best to drive everyone crazy.

While some companies are able to float a while on their existing cash, there also comes a point in time when layoffs, downsizing, reductions-in-force or whatever euphemism you want to use become a serious consideration for a company needing to cut costs.

Companies have become increasingly savvy in the use of severance agreements to reduce their exposure to lawsuits.

But one federal law sometimes slips between the cracks: the WARN Act (short for "Worker Adjustment and Retraining Notification"). Why? Because by the time a company decides to do a layoff, it may be too late to comply with the act. However, following a few important steps can reduce a risk of substantial damages down the road.

### What is WARN?

Overall, WARN requires an employer give notice to employees who may be affected by a plant closing or mass layoff. The employer must also notify the Connecticut Department of Labor and local officials of its proposed actions. The state then posts this information in monthly reports available online.

But, WARN is *not* a mandatory severance law. It doesn't mean that employers need to give employees severance when they are affected by a mass layoff or plant closing.



At this point, some specifics about the act may be helpful. As always, those who need more information should seek legal counsel and review the applicable laws. In addition, some states have additional requirements that must be complied with; this article just discusses the WARN Act as applied to employers in Connecticut.

### Who's Covered?

Not all employers are covered. Employers who have 100 or more full-time employees are covered. But employers who have 100 or more full-time *and* part-time employees who, in total, work more than 4,000 hours

Businesses must  
provide notice of closings  
or mass layoffs

per week are also covered. Most governments are not covered, but some quasi-public and public entities may be covered.

### When Does WARN Apply?

Two types of events that are covered by WARN – plant closings and mass layoffs. Employment losses within each of them triggers some notice requirements. All of these terms have a definition though.

"Plant closings" are a permanent or temporary shutdown of a "single site of employment" (though it can also be one or more facilities or operating units within a single site of employment), so long as the shutdown results in an employment loss at that site for 50 or more full-time employees during any 30-day period.

"Mass layoffs" are a reduction in force (that is also not the result of a plant closing) that results in an employment loss at a single site of employment during any 30-day period for at least 50 employees. These 50 or more employees must also make up at least 33 percent total employees (excluding any part-time employees). This will also be satisfied if there are at least 500 employees (excluding any part-time employees) affected by the mass layoff as well.

The term "employment loss" is fairly broad. It means either: a termination of employment for reasons other than a discharge for cause, voluntary departure, or retirement; a layoff longer than six months (which indicates that the employee may return after the layoff); or a reduction in hours of more than 50 percent during each month of any six-month period.

### What Notice Is Required?

A WARN notice must be given to each employee at least 60 days before a plant

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closing or mass layoff. However, if there is a union, the notice must be given to the union representative of the affected employees. In Connecticut, notice must also be provided to the Connecticut dislocated worker unit and the chief elected official of the local government where the closing or layoff is occurring.

The web site for the Connecticut Department of Labor has some more specifics on the notice required. Written notification should be printed on company letterhead, signed by the authorized employer representative, and addressed to:

**Rapid Response Unit**  
**Connecticut Department of Labor**  
 200 Folly Brook Boulevard  
 Wethersfield, CT 06109-1114

This notification should include: the name and address of the employment site where the plant closing or mass layoff will occur; the date(s) of proposed closing or mass layoff; the number of affected workers, and address of their collective bargaining representative and chief elected officer if applicable; and, the name, address, and telephone number of the employer representative to contact regarding the closing or mass layoff.

## **A WARN NOTICE MUST BE GIVEN TO EACH EMPLOYEE AT LEAST 60 DAYS BEFORE A PLANT CLOSING OR MASS LAYOFF. IF THERE IS A UNION, THE NOTICE MUST BE GIVEN TO THE UNION REPRESENTATIVE OF THE AFFECTED EMPLOYEES.**

Interestingly enough, the Department of Labor web site also encourages employers to seek legal counsel regarding the notices.

### **Unforeseeable RIF**

WARN does contain some exceptions to the notice rule. An employer does not need to give notice if a plant closing is the closing of a temporary facility, or if the closing or mass layoff is the result of the completion of a particular project or undertaking. This exemption applies only if the workers were hired with the understanding that their employment was limited to the duration of the facility, project or undertaking. An employer cannot label an ongoing project “temporary” to evade its obligations under WARN.

Less than 60 days notice may also be allowed if the business is a “faltering company,” has encountered an “unforeseeable business circumstance,” or been affected by a “natural disaster.” These exceptions are going to typically be construed narrowly, given the remedial nature of WARN.

Lastly, despite the legal requirements, there is an aspect of providing notice that is a good business practice, too. By notifying employees of the difficult choices that lie ahead, employees may be more willing to be understanding of the situation and less likely to be angry at the result.

Times are tough, but failing to comply with the law may make a tough time that much tougher. ■