

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

APRIL 5, 2023

New York Proposes Update to WARN Act

On March 29, 2023, the New York Department of Labor announced a proposal to update the New York Worker Adjustment and Retraining Notification (NY WARN) Act regulations to provide clarification and conform to statutory changes enacted in 2021. The public comment period for the proposed regulations will remain open until May 30, 2023.

The NY WARN Act, originally enacted in 2008, and the federal Worker Adjustment and Retraining Notification (WARN) require private employers to provide employees with written notice of impending mass layoffs, plant closures and relocations.

General Rules Under the NY WARN Act

NY WARN Act applies to private businesses with 50 or more employees, excluding part-time employees, in New York State. It requires covered businesses to provide notice 90 days prior to (i) a plant closing affecting 25 or more employees; (ii) a mass layoff involving 25 or more employees, if those employees make up at least 33% of all employees at the site; (iii) a mass layoff involving 250 or more employees; and (iv) certain other relocations and reductions in work hours.

WARN notices must contain specific information and must be sent to the Commissioner of Labor, affected employees and their representatives, the relevant Local Workforce Investment Boards and other governmental entities. Covered businesses that fail to provide notices under the Act may be required to pay back wages and benefits to employees and/or incur civil penalties.

Notable Proposed Updates to NY WARN Act:

- Individuals working remotely but based at a particular site are included in that site's 50-employee threshold for purposes of establishing coverage as an employer.
- Purchasers that fail to uphold a condition to transfer seller's employees upon purchase of seller's business are obligated to provide WARN notices. Sellers are relieved of notice obligations in such instances.
- In addition to the governmental entities that already must receive notice, WARN notices must be served to (i) the chief elected official of the unit of local government; (ii) the school district; and (iii) the locality that provides police, firefighting and other emergency services where the employment site is located.
- Notices to the Commissioner of Labor must include additional information, including a more detailed description of the affected employees and the total number employees and affected employees at each site.
- Notices to affected employees must include additional information, including any severance package or financial incentive provided to employees, available dislocated worker assistance and any additional information related to the separation.
- Eligibility for an exception to the notice requirement is determined solely by the Commissioner of Labor. Employers seeking to assert an exception are required to submit a request and provide the necessary documentation depending on the exception being sought.

- New “Payments in lieu of Notice of Separation or Layoff” provision, whereby employers must maintain a “uniformly applied company policy” that requires a “definite period of notice” prior to separation from employment. Only where an employer has such a policy may it pay employees in lieu of providing the required NY WARN notice.

Public comments on the proposed regulations will be received until May 30, 2023. There is no set date for the regulations to become effective.

If you have any questions about the information presented in this memo, please contact [Colin Leonard](#) or any attorney in Bond’s [labor and employment practice](#) or the Bond attorney with whom you are in regular contact.

**Special thanks to Bond Associate Trainee Sam Brewster for assisting with researching and drafting this memo.*

