

## Governor Cuomo Signs Amendment to the New York State Worker Adjustment and Retraining Act

Employers issuing notices pursuant to the New York State Worker Adjustment and Retraining Act (NY WARN) are now subject to additional requirements due to a statutory amendment that Gov. Cuomo signed into law on November 11, 2020. This amendment, which is effective immediately, expands the list of entities whom covered employers must notify prior to implementing a plant closing or mass layoff. The list now includes: (1) the chief elected official of the unit(s) of local government and the school district(s) in which the plant closing or mass layoff will occur; and (2) each locality which provides police, firefighting, emergency medical or ambulance services or other emergency services to the site of employment subject to the plant closing or mass layoff.

The sections below provide an overview of employer obligations under NY WARN, including those set forth in the recent statutory amendment.

### **To Whom NY WARN Applies and When it is Triggered**

NY WARN applies to employers with 50 or more employees, excluding part time employees. The statutory requirements kick in when a “triggering event” takes place. There are two main types of triggering events. One is a “plant closing,” and the other is a “mass layoff.” Under NY WARN, a “plant closing” is a permanent or temporary shutdown of a single site of employment, if the shutdown results in an employment loss of 25 or more employees during any 30-day period. A “mass layoff” is a reduction in force at a single site of employment during any 30-day period of either 25 employees constituting a third of the employees at the site, or at least 250 employees, regardless of percentage. The numerical thresholds described here exclude part time employees. Importantly, NY WARN only triggers if the affected employees are out of work for six months or more. Thus, a temporary layoff of less than six months is not a NY WARN triggering event.

### **Notification Requirements**

Typically, NY WARN requires written notice to specified recipients 90 days in advance of a triggering event. However, the statute permits reduction of the notice period for “unforeseeable business circumstances.” Under the applicable regulations, a business circumstance that is not reasonably foreseeable may be established by the occurrence of some sudden, dramatic and unexpected action or condition outside the employer’s control. Examples of situations fitting this provision include “an unanticipated and dramatic major economic downturn or a government-ordered closing of an employment site that occurs without prior notice.” Employers invoking the “unforeseeable business circumstances” exception to the notice period must give as much notice as is practicable.

Previously, the required recipients under NY WARN were limited to:

- all affected employees;
- any employee representative(s);
- the New York State Department of Labor; and
- the Local Workforce Investment Board.

Now, employers must **also** notify:

- the chief elected official of the unit or units of local government and the school district or districts in which the mass layoff, relocation or employment loss will occur; and
- each locality which provides police, firefighting, emergency medical or ambulance services or other emergency services to the site of employment subject to the mass layoff, relocation, or employment loss, as applicable.

The required content of each notice is described in the applicable regulations, and generally includes information such as the name and address of the affected employment site, contact information for key individuals and expected dates of separation.

### What This Means for Employers

Employers who are covered by NY WARN and plan to implement a triggering event should provide advance notice to **all** required recipients, including those set forth in the recent amendment.

For assistance with determining your company's obligations under NY WARN (or its federal counterpart), please contact [Mary E. Aldridge](#), any [attorney](#) in our [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.



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