

## **WARN Act Summary**

As of January 1, 2010, a new state law takes effect that will require all New Hampshire employers with 75 or more employees to issue a warning before closing facilities or laying-off more than one-third of the workforce. Damages and civil penalties can be assessed against employers who violate the Act. The new law is RSA chapter 275-F which is commonly referred to as the WARN Act.

The Worker Adjustment and Retraining Notification Act (WARN Act) provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of closings and mass layoffs. Advance notice provides workers and their families time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. The WARN Act also provides for notice to State officials so that dislocated worker assistance can be promptly provided.

While the 60-day period is the minimum for advance notice required by the New Hampshire WARN Act, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice. Not all plant closings and layoffs are subject to the Act, and certain employment thresholds must be reached before the Act applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. To which employers does the WARN Act apply?

The Act only applies to private employers with 75 or more full-time employees. Part-time employees are not included in meeting the 75-employee threshold.

When are notice requirements triggered under the WARN Act?

The employer must give notice if there is:

An employment loss at a single site during a 30 day period of at least 250 employees or at least 25 employees if that constitutes 33% of the fulltime employees. A plant closing means the permanent or temporary shutdown of a single site of employment in New Hampshire if the shutdown results in an employment loss at the single site of 50 or more employees.

Who must receive a notice?

The employer must give 60-days advance written notice to the affected workers and their union, and the chief elected official of the affected locality, and the NH Attorney General, and the NH Commissioner of Labor.

Are any special payments or benefits required?

No payments or benefits are required if a 60-day notice is given.

Who enforces this law?

Enforcement is by the State of New Hampshire. Damages and civil penalties can be assessed as a result of a lawsuit filed by impacted workers in State Superior Court by workers, or through an investigation by the NH Department of Labor, which could result in the Department issuing a lien.

Are there exceptions? Can there be a shortened notification period? Can a company not give 60 days notice and not be in violation of the WARN Act? The exceptions are as follows (quoting from the law):

I. In a mass layoff or plant closing, an employer is not required to comply with the notice requirement of RSA 275-F:3 if:

(a) The employer is a faltering company and at the time that notice would have been required, the employer was actively seeking capital in the form of loans, or the issuance of stocks, bonds, or other methods of internally generated financing, or additional money, credit, or business through a commercially reasonable method which opportunities were objectively realistic; and

(1) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the mass layoff or plant closing; and

(2) The employer reasonably and in good faith believed that giving the notice required by RSA 275-F:3 would have precluded the employer from obtaining the needed capital or business; or

(b) The need for notice was not reasonably foreseeable at the time the notice would have been required; or

(c) The plant closing is of a temporary facility or the plant closing or mass layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking; or

(d) A mass layoff or plant closing is necessitated by a physical calamity, natural disaster, or an act of terrorism or war; or

(e) The closing or layoff constitutes a strike or lockout not intended to evade the requirements of this chapter.

For questions, call Martin Jenkins at 271-8492.