

WARN Act Considerations in Times of COVID-19

The COVID-19 pandemic is altering the way businesses operate, provoking temporary closures which may lead to reduction in force plans (RIF's) or closing of businesses. These measures may be subject to the Worker Adjustment and Retraining Notification ("WARN") Act.

Below is a summary of some of the relevant provisions under the WARN Act as the COVID-19 pandemic impacts businesses.

- 1. What is the WARN Act?** It is a federal statute that requires covered employers to provide certain written notifications at least 60 days in advance of a mass layoff or plant closure affecting 50 or more employees during a 90-day period.
- 2. Who are Covered Employers under WARN Act?** Those with 100 or more employees excluding part-time employees (or including part-time employees, who in the aggregate work at least 4,000 hours per week, not counting overtime hours).
- 3. Does the WARN Act apply to temporary layoffs?** Temporary layoffs of less than 6 months are not considered to result in an employment loss that would otherwise trigger the WARN Act. In these cases, a WARN Act notice is not required.
- 4. Under which circumstances must the WARN Notification be provided in a period of less than 60 days:**
 - a. Natural disaster*
 - b. Unforeseeable business circumstances*
 - c. When it comes to a "faltering company"*

*In these circumstances, the employer must provide the WARN Notice or as much information as practical, or as soon as possible even if employment termination has occurred. The notice must include a brief statement with the reasons why the notice was provided in a period of less than 60 days.

- 5. What is considered an "unforeseeable business circumstance":** That which is caused by some sudden, dramatic and unexpected action or condition, beyond the control of the employer (e.g. a major, unexpected and extreme economic recession).
- 6. COVID-19:** The WARN Act may apply to RIFs caused by COVID-19. Such reduction, however, could be considered within the exception of "unforeseeable commercial circumstances" and the notification requirement could be satisfied in less than 60 days, or after the employment termination has occurred. If an employer anticipates or is already seeing that its businesses will need to carry out a RIF or closure of operations, it must document such hardships since as time elapses, demonstrating such circumstances as a consequence of COVID-19 will become more difficult.

Our COVID-19 multidisciplinary taskforce, including Labor and Employment law practitioners, is available to assist clients address questions and legal and practical considerations pertaining to this evolving topic.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.

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