

PRE-LAYOFF WARN ACT COMPLIANCE FOR U.S. EMPLOYERS

The Worker Adjustment and Retraining Notification Act (WARN Act) is a federal law that requires employers to provide notice 60 calendar days in advance of a reduction in force (RIF).

Which Employers are Covered by WARN?

WARN applies to employers with:

- more than 100 full-time workers (not counting workers with less than six months on the job or workers working less than 20 hours per week), and
- 100 or more full- and part-time workers who collectively work at least 4,000 hours per week exclusive of overtime.

In determining whether they meet this threshold, employers should count workers at all locations, not just those affected by layoff. Employers not covered by WARN by may still be covered by corresponding state "mini-WARN" laws. Typically, these laws apply to employers of a smaller size and have greater notice requirements.

When Does WARN Apply?

WARN notice requirements are triggered by a plant closing or a mass layoff. Specifically, WARN is triggered when a covered employer does any of the following:

- Closes a facility or discontinues an operating unit permanently or temporarily, affecting at least 50 employees, not counting part-time workers, at a single site of employment. This is what is known as a plant closing. (A plant closing also occurs when an employer closes an operating unit that has fewer than 50 workers but that closing also involves the layoff of enough other workers to make the total number of layoffs 50 or more.)
- Lays off 500 or more full-time workers at a single site of employment during a 30-day period; or lays off between 50 and 499 full-time workers, and these layoffs constitute 33% of the employer's total active full-time workforce at the single site of employment.
- Announces a temporary layoff of less than 6 months that meets either of the two criteria above and then decides to extend the layoff for more than 6 months.
- Reduces the hours of work for 50 or more workers by 50% or more for each month in any 6-month period.

WARN's notice requirements may also be triggered by separate RIFs occurring within a rolling 90-day period that, alone, do not meet WARN thresholds but, in the aggregate, constitute a plant closing or mass layoff.

What Does WARN Require?

WARN requires employers provide notice of the impending RIF **at least** 60 days before the RIF to specific recipients, below. The notices have specific requirements for each recipient:

- Notice to non-union employees must contain: a statement as to whether the planned action is expected to be permanent or temporary and whether or not the entire plant is to be closed; the expected date of the employee's separation and when the plant closing/mass layoff will commence; whether there are any bumping rights; and the name and telephone number of an employer representative for further information.
- Notice to the representatives of unionized employees must contain: the name and address of the employment site where the plant closing/mass layoff will occur, and the name and telephone number of an employer representative for further information; a statement as to whether the planned action is expected to be permanent or temporary and whether or not the entire plant is to be closed; the planned schedule of job reductions; and the job titles of positions affected and the names of the workers currently holding affected jobs.
- Notice to the state dislocated worker unit and the local chief elected official must contain: the name and address of the employment site where the mass layoff or plant closing is to occur along with the name and telephone number of the employer contact; a statement of whether the employment loss will be temporary or permanent and whether or not the entire plant is being closed; the planned schedule of job reductions; the job titles of positions that will be affected and the number of affected employees in each position; a statement of bumping rights if applicable; and the name of each union/employee representative and the name and address of the chief elected officer of each union.