

WARN Notices

Due to the current economic conditions, most employers, if they have not already done so, are in the process of trimming their work staffs or are at least contemplating reducing employee count. Employers, more than ever, need to be aware of the obligations set forth in the Federal Worker Adjustment and Re-Training Notice Act (WARN). In general, employers are covered by WARN if they have 100 or more employees, not counting employees who have worked less than six (6) months in the last twelve (12) months and not counting employees who work an average of less than twenty (20) hours a week. WARN requires a 60-day advance notice if an employer is going to shut down operations or lay off over half of the workforce at a particular location. Employees entitled to notice under WARN include hourly and salaried workers, as well as managerial and supervisory employees. A covered employer must give notice if it will be closing one or more facilities and the shutdown will result in an employment loss for fifty (50) or more employees. In the case of a mass layoff not resulting in the closing of the facility, but which will result in an employment loss at the site during any thirty (30) days period for 50-499 employees, if they make up at least 33% of the employer's active workforce, the employer is required to provide proper notice. For purposes of WARN, subject to limited exceptions, "employment loss" means termination (other than discharge for cause, voluntary resignations or retirements); layoff exceeding six (6) months or a reduction in an employee's hours of work of more than 50% in each month of any 6-month period.

Employees who have worked less than six (6) months in the last twelve (12) months and employees who work an average of less than twenty (20) hours a week are entitled to notice, even though they are not counted when determining the trigger levels discussed above.

The employer must also provide notice to the State dislocated worker unit and to the chief elected official of the unit of local government in which the employment site is located.

In the situation involving the sale of part or all of the business the following requirements apply:

1. there is always an employer responsible for giving notice;
2. if the sale by a covered employer results in a site closing or mass layoff, the required parties must receive at least sixty (60) days notice;
3. the seller is responsible for providing notice of any site closing or mass layoff which occurs up to and including the date/time of the sale;
4. the buyer is responsible for providing notice of any site closing or mass layoff occurring after the date/time of the sale;
5. no notice is required if the sale does not result in a site closing or mass layoff;
6. employees of the seller (other than those who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours as week) on the date/time of the sale become, for purposes of WARN, employees of the buyer immediately following the sale.

You should be aware that violations of the WARN provisions requiring appropriate notice may result in liability to each affected employee an amount including back pay and benefits for the

period of violation, up to 60 days. An employer who fails to provide notice as required to a unit of local government is subject to a civil penalty not to exceed \$500 for each day of violation.

Indiana employers wishing to submit a WARN notice should send the notification to:

Jennifer Long
Indiana Department of Workforce Development
10 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-7186

Additional information regarding WARN requirements can be found at <http://www.doleta.gov/programs/factsht/warn.htm>.

If you have any questions regarding WARN or other labor and employment matters, please contact Jeff Halbert at (317) 639-5454 or via e-mail jhalbert@silegal.com

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