

Delaware Adopts State Worker Adjustment and Retraining Notification Act

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Beginning January 7, 2019, Delaware law will require certain businesses doing business in the state to provide at least 60 days' advance notice of mass layoffs, plant closings, or relocations.

As a result of the Delaware Worker Adjustment and Retraining Notification Act (DE WARN Act), a category of employers not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) will have to provide notice before conducting a mass layoff, plant closing, or relocation.

Covered Employers

The DE WARN Act applies to all employers with at least 100 employees (excluding part-time employees) who work an aggregate of at least 2,000 hours a week. The federal WARN Act, in contrast, applies to employers with at least 100 employees (excluding part-time employees) who work an aggregate of at least 4,000 hours a week.

Under the DE WARN Act, a part-time employee means an employee who is employed for an average of fewer than 20 hours a week or who has been employed for fewer than six of the 12 months preceding the date on which notice is required.

The Delaware law does not apply to the federal or state government, any political subdivisions (including units of local government), school districts, or charter schools.

Events Triggering Notice: Mass Layoffs, Plant Closings, Relocations

A covered employer must give notice if:

1. A mass layoff, plant closing, or relocation will cause an employment termination, other than a discharge for cause, voluntary departure, or retirement;
2. A mass layoff will exceed six months in duration; or
3. There will be a reduction in hours of work of more than 50 percent during each month of any consecutive six-month period.

"Mass layoff" means a reduction in workforce that includes all of the following:

- a. Is not the result of a plant closing.
- b. Results in an employment loss at a single site of employment during any 30-day period for:
 1. 50 or more employees if they make up 33 percent of the employer's total workforce at the site, excluding part-time employees, or
 2. 500 or more employees.

"Plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for at least 50 employees (other than part-time employees).

"Relocation" means the removal of all or substantially all of the industrial or commercial operations of an employer to a different location at least 50 miles away.

Exceptions

An employer is not required to comply with the Delaware law's 60-day notice requirements in the event of temporary shutdowns, unforeseeable business circumstances, natural disasters, and other

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circumstances described in the law (19 Del. C. § 1905).

Employers should consult with qualified counsel to discuss whether any exceptions may apply.

Notice Requirements

Under the DE WARN Act, an employer may not order a mass layoff, plant closing, or relocation if it will cause employment loss unless the employer provides 60 days' written notice of the order to:

1. Affected employees and their representatives;
2. The Delaware Department of Labor Division of Employment Training, WARN Act Administrator; and
3. The Delaware Workforce Development Board established pursuant to the federal Workforce Innovation Opportunity Act (P.L. 113-128) for the locality in which the mass layoff, plant closing, or relocation will occur.

The notice must contain the elements required by the federal WARN Act, plus the following:

- The name, job title, home address, telephone number, and email address of each planned dislocated worker;
- General information on payouts, severance packages, job relocation opportunities, and retirement options that will be offered to dislocated workers; and
- Whether the employer is self-insured for workers' compensation insurance pursuant to Chapter 23 of Title 19 of the Delaware Code.

Penalties

The DE WARN Act authorizes the Delaware Department of Labor to investigate violations, conduct administrative hearings, and pursue penalties for the failure to comply with the notice requirements.

An employer found in violation of the DE WARN Act may be liable for back pay and the value of the cost of any benefits to employees. Monetary civil penalties of \$1,000 a day of the violation or \$100 a day of the violation for each dislocated worker, whichever is greater, also may be assessed.

In addition, an employee may bring a civil cause of action under the DE WARN Act, which includes a fee-shifting provision that may result in the employer being responsible for paying the employee's reasonable attorney's fees if the employee prevails in the action.

Before undertaking any restructuring, employers must carefully scrutinize the interplay between federal and state laws and ensure compliance with all applicable laws. Jackson Lewis attorneys are available to answer inquiries about the new Delaware law and assist employers in achieving compliance.

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