

Client Alert

A report
for clients
and friends
of the Firm August 2008

New York State WARN Act Becomes Law

On August 5, 2008, New York State Governor David Paterson signed into law the New York State Worker Adjustment and Retraining Notification Act ("NY WARN Act"). The law is more expansive than the Federal Worker Adjustment and Retraining Notification Act ("Federal WARN Act") in regard to covered private sector employees, covered events requiring notice to employees and the amount of time notice is required. New York now joins a growing number of other states, including California, New Jersey and Illinois, who have adopted their own WARN legislation to supplement the federal law. Because the NY WARN Act requires a substantially longer notice period and covers relocations, the Federal WARN Act will not preempt it. Employers are well-advised to carefully plan their future workforce restructurings and reductions.

The NY WARN Act amends the New York Labor Law by adding Article 25-A, which requires certain private sector employers to provide advance written notice to affected employees and other parties before commencing a mass layoff, plant closing or relocation.¹ The law takes effect in February 2009 (*i.e.*, 180 days from the date of enactment).

The Managing Change/Reductions in Force Practice Group at Proskauer Rose LLP highlights for your attention the key provisions contained in the NY WARN Act.

Key Provisions of the NY WARN Act

- Applies to private sector New York employers who employ 50 or more full-time employees whereas the Federal WARN Act applies to employers who employ 100 or more full-time.
- Requires 90-days advance written notice of mass layoffs, plant closings or *relocations* to affected employees, their representatives, the New York State Department of Labor and local workforce partners, which is a significant increase from the 60 days of advance written notice required under the Federal WARN Act.
- Requires an employer to provide 90-days advance written notice if the mass layoff or *relocation* results in 25 or more full-time employees who represent 33% of the workforce losing their positions over any 30-day period as opposed to 50 full-time employees losing their positions and constituting at least 33% of the workforce at a single site as is required under the Federal WARN Act.
- Requires an employer to provide 90-days advance written notice if the plant closing results in 25 employees losing their positions over any 30-day period, rather than the minimum of 50 employees as under Federal WARN.
- Requires 90-days advance written notice in the event of an employer's relocation of "all or substantially all of the industrial or commercial operations" of an employer to a location 50 or more miles from current location.

¹ The signed law indicates that 90-days notice is required if the employer orders "a mass layoff, relocation or employment loss" (emphasis added), but makes no mention of a plant closing. Based on the legislative history, it does not appear that the NYS Legislature and Governor intended notice to be required in all "losses of employment", such as involuntary terminations, but rather the intent must be to track the Federal WARN scheme of requiring notice in New York State for covered mass layoffs and plant closings while now adding relocations.

- Provides exceptions to the notice requirement, including that (i) the need for notice was not reasonably foreseeable at the time the notice would have been required; (ii) the employer was actively seeking capital or business at the time the notice was required and if obtained would have enabled the employer to avoid or postpone the mass layoff, relocation or plant closing; or (iii) the plant closing or layoff was due to a natural disaster. These exceptions track the Federal WARN Act.
- Provides for administrative enforcement by the New York State Department of Labor and a private right of action, whereas the Federal WARN Act provides only for a private right of action.
- Makes an employer in violation liable for back pay and employee benefits capped at 60 days of the violation, similar to the Federal WARN Act.
- Provides a civil penalty of \$500.00 per day of violation to employers who fail to give proper notice, similar to the Federal WARN Act.
- Grants the New York State Commissioner of Labor with the authority to reduce any penalties if the violation was in made good faith.

Conclusion

This new law is very similar in structure and use of key defined terms as the Federal WARN Act, however, it will require employers to provide a substantially longer notice period than previously required for many workforce restructurings and reductions. Employers would be well-advised to engage legal counsel when considering a reduction in staff, plant closure or relocation.

The Proskauer Rose Managing Change/Reductions in Force Practice Group has extensive experience in addressing these and related issues in connection with virtually every type of workforce change. We would be pleased to assist you in navigating through any reductions in force or work force restructurings in which you may be engaged.

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The Proskauer Rose Managing Change/Reductions in Force Practice Group is a multi-disciplinary practice group resident in the national and international offices of the Firm that specializes in partnering with our clients to address all legal aspects of the planning and implementation of workforce change in connection with job restructurings, reductions in force and corporate transactions.

If you have any questions about the impact of this new law, please contact one the Proskauer attorneys listed below:

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