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Congress Proposes Major Overhaul of WARN: What Employers Need to Know About the Fair Warning Act

Law and the Workplace on **January 20, 2026**

Spikes in large-scale layoffs and anxiety over AI-driven job losses have put renewed focus on the federal Worker Adjustment and Retraining Notification (WARN) Act. Recent months have seen unusually high levels of WARN notices nationwide, with more than 39,000 workers receiving WARN notifications in October 2025 alone and even higher totals earlier in the year. At the same time, more states have enacted or toughened "mini-WARN" laws, often with lower thresholds and more onerous requirements than federal WARN.

Against that backdrop, late last year, House Democrats have introduced the Fair Warning Act (H.R. 5761), which would significantly rewrite federal WARN for the first time since 1988. Below is a practical, employer-focused overview of what H.R. 5761 would do, how it differs from current WARN, and what it would mean in practice if enacted.

Who Would Be Covered?

The current WARN Act applies to employers with 100+ full-time employees, using specific counting rules and generally focusing on a single employing entity. H.R. 5761 would amend the law to instead:

- Cover employers with "50 or more employees" (part-time included), *or* with "an annual payroll of at least $2 million";
- Broaden the concept of "employer" to include:
  - The "entity that directly employs" an employee, and
  - A "parent, affiliate, or contracting company" that exerts a "degree of control" or "integration. . . outside of or at the single site of employment" (e.g., "common ownership or financial control," "unity of personnel policies," or "de facto. . . control" over layoff decisions).

Lower Thresholds for Triggering WARN

Under the current WARN Act, notice requirements may be triggered by a “plant closing” or a “mass layoff.” A plant closing generally requires 50 or more employment losses at a single site of employment or “one or more facilities or operating units within a single site of employment” in a 30-day period. A mass layoff generally requires 500 employees to lose employment, or 50 employees if they represent at least 33% of the workforce at the site.

Under H.R. 5761, “plant closing” would be replaced by “site closing,” which triggers notice requirements when there is an “employment loss. . . during any 30-day period for 5 or more employees” at a single site of employment or “one or more facilities or operating units within a single site of employment.”

The bill would also amend the definition of a mass layoff, which would occur when:

- “10 or more employees of an employer at a single site” experience “an employment loss during any 90 day-period,” *or*
    - “250 or more employees of an employer” experience employment loss, “irrespective of employment site.”

Importantly, the bill would do away with the percentage requirement for mass layoffs, lowering the threshold for triggering WARN.

Remote Workers

The current WARN Act is silent as to whether remote workers are employees at a single site of employment when determining whether WARN is triggered. The bill explicitly pulls remote employees into the analysis: workers are counted toward a site’s totals if they “are assigned to or otherwise associated with the site,” “receive assignments or training from that site,” “report to a manager associated with the site,” or their “job loss was a foreseeable consequence of a reduction in force at the site.”

Employment Loss and Hours Reductions

The bill also tightens the “employment loss” definition. Under H.R. 5761, an employment loss would additionally be defined as “a reduction in hours of work of more than 50 percent during each month of any 90-day period that is not part of a short-time compensation program.” This halves the relevant period for reductions-in-hours to qualify as employment losses, as the current WARN Act requires the reduction to occur over a six-month period.

The bill would also amend the existing definition of employment loss to encompass "a mass layoff or site closing that is not a temporary mass layoff or site closing."

Temporary Layoffs/Site Closings

The bill also proposes a new structure for temporary mass layoffs and site closings. Under H.R. 5761, a temporary layoff or closing would be treated as an employment loss at the outset unless the employer:

- Provides WARN notice at the start, including a recall date within 90 days;
- Uses a qualifying short-time compensation ("STC") program for affected employees for the duration of the temporary period; and
- Either recalls employees for at least 90 days by the recall date, properly extends the temporary period (with continued STC), or provides at least 90 days' notice of permanent termination (subject to limited exceptions).

Notice Period & Content Requirements

The current WARN Act requires 60 days' advance written notice to affected employees (or their union) and certain state/local officials. H.R. 5761 would extend this notice period to 90 days, which would bring it in line with certain state mini-WARN Acts. In addition, the bill would require that notice also go to:

- The U.S. Secretary of Labor and the State Governor, and
- The state entity responsible for rapid response services under the Workforce Innovation and Opportunity Act.

H.R. 5761 would also codify two requirements of the notice, which were previously only required by Department of Labor regulations:

- Whether the layoff is permanent or temporary and, if temporary, the expected recall date; and
- A list of the names, addresses, and occupations of affected employees (for notices to government entities).

The bill would also require the following information to be included in the notice:

- Information about opportunities at other employer locations; and
- A statement of the employee's rights as to wages, severance, and benefits.

Enhanced Enforcement

Under current law, workers can recover up to 60 days of back pay and benefits for WARN violations, but there are no civil penalties and enforcement is entirely private. H.R. 5761, if passed, would materially change that dynamic:

- The bill would expand damages to require up to 90 days of back pay and benefits, plus an additional 30 days of back pay as liquidated damages, subject to limited defenses.
- The bill would also allow back-pay periods to be extended where an "employee is on parental, family, or medical leave" that is cut short because of the employment loss.
- WARN rights and remedies, including the ability to bring or participate in a Rule 23 class action, would be expressly non-waivable by predispute agreement. Only settlements negotiated by private counsel or designated unions could waive them.
- Parties would be unable to use predispute arbitration agreements and class/collective action waivers to limit WARN enforcement or participation in WARN actions.

The bill would also direct the U.S. Department of Labor to create a public WARN database, making employer notices searchable by geography, industry, and date.

Interaction with State "Mini-WARN" Laws

Several states, including New York, New Jersey, California, and more recently Ohio and Washington, have moved to adopt or strengthen WARN-type statutes, often with lower headcount thresholds or longer notice periods than federal WARN.

If H.R. 5761 were enacted, employers would face:

- A more demanding federal floor (e.g., 90-day notice, 5-employee closing threshold, 10-employee mass layoff threshold at a site); and
- Continuing obligations under state mini-WARN statutes where those laws are equal or more protective.

For multi-state employers, complying with the potential new law becomes less about spotting where state law exceeds federal WARN and more about identifying the highest standard that the employer must adhere to among the various statutes.

Implications of the Fair Warning Act

If enacted, the Fair Warning Act would move WARN compliance earlier in the decision cycle. With lower triggers and a longer notice period, employers would benefit from building WARN analysis into restructuring planning, particularly where reductions are phased, dispersed, or involve multiple entities.

Remote Work Would Remain a "Site" Fac Question, But With Clearer Statutory Requirements.

Even under existing case law, determining a remote employee's "single site of employment" can be fact-intensive. The bill's express treatment of remote workers would make it more important for employers to provide consistent, business-grounded rules for site association (e.g., reporting structure, where work is assigned/managed) and to align their Human Resources Information System practices with how work is actually organized.

Enterprise Structure and Contracting Relationships May Require More Deliberate Allocation of WARN Responsibilities.

Expanded "employer" concepts could increase the need for clarity among parents, affiliates, and contracting counterparties about who owns notice obligations, what information must be shared (and when), and how workforce decisions are approved and communicated. Employers may want to revisit governance and key commercial terms to ensure they support timely coordination if notice is required.

Arbitration Limits May Pose Conflicts with the FAA.

The bill's pre-dispute arbitration and class waivers for WARN claims would likely conflict with the Federal Arbitration Act unless Congress supplies a clear contrary command. If the bill becomes law, we should expect early litigation over enforceability and, if the limits stand, more WARN class actions filed in court.

Federal WARN May Become More Protective than Certain State Mini-WARN Laws.

Federal WARN has long functioned as a floor, with state mini-WARN laws imposing equal or more protective standards. If H.R. 5761 is enacted with broader coverage and remedies, most state regimes will continue to operate where they exceed the federal baseline—longer notice periods, lower thresholds, or additional content requirements. Where a state law is less protective than the new federal standard, employers would still need to comply with federal WARN, and the state law would be effectively superseded in practice.

We will continue to monitor federal and state WARN developments closely.

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