

COVID-19 Outbreak May Give Rise to WARN Act Claims Against Companies That Engage in Mass Layoffs of Employees

Employees either laid off or furloughed without proper notice due to the COVID-19 coronavirus outbreak may have a claim against their employer. Under the federal Worker Adjustment and Retraining Notification (WARN) Act, an employer with at least 100 employees must give at least 60 days' notice before either laying off or furloughing 50 or more employees at a given worksite, or an operating unit within a worksite, for a period of 6 months or more. In addition, the number of furloughed or laid off employees must be at least 33% of the number of full-time workers at that employment site. Under Illinois's version of the WARN Act, employers with at least 75 employees must provide the 60-day warning.

Warning must be given to all employees subject to the layoff, as well as the chief executive or mayor of the municipality in which the work site is located, and the leader of the labor union representing the employees, if there is one. Employers found liable for WARN Act violations could owe back pay and benefits to unwarned employees, depending on how many days' notice were actually received. Employers may also be liable for a \$500 fine per day until they are in compliance. The protections apply to both salaried and hourly employees, as well as supervisory and managerial employees.

Employers still have to comply with WARN Act requirements despite shelter-in-place and other COVID-19-related orders that result in temporary layoffs and furloughs lasting more than 6 months. Under the WARN Act, there is no distinction between a furlough and a layoff. The law provides exceptions for employers based on "unforeseen business circumstances." But employers who are aware of the impact of COVID-19 and continue to employ workers are less likely to enjoy the protection of the "unforeseen business circumstance" exemption, as more time passes where employers should be aware of the effects of the outbreak. Even when companies are considered to have made mass layoffs based on "unforeseen business circumstances," they must still provide notice, even if it is not the full 60 days.

The WARN Act does not apply to federal, state, and local public employers that provide public services. The U.S. Department of Labor is reviewing its WARN Act guidance in light of the COVID-19 outbreak.

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