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Employee Benefit Plan Review

Nebraska's New Mini-WARN Law Expands Advance Notice Rules for Layoffs and Closures: Key Takeaways and Practical Steps for Employers

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Employers operating in Nebraska must make sure they understand their obligations under the state's new Worker Adjustment and Retraining Notification (WARN) Act, which has now taken effect. The new "mini-WARN" law, which requires covered employers to give 90 days' written notice before a business closing or mass layoff, goes farther than federal WARN layoff notice rules in several important ways. This article offers key takeaways about Nebraska's new requirements and practical steps for businesses to take.

Background

Nebraska's mini-WARN Act (LB 921),[1] supplements the federal WARN Act with state-level notice obligations. Although Nebraska's law incorporates much of the federal WARN framework, it also adds notice requirements and procedural nuances that employers must understand to navigate compliance effectively.

Nebraska joins at least 15 other states, including California, New York, Delaware, Maryland, Ohio, and Washington, that have enacted their own WARN laws with different triggers and thresholds for when notice is required.

Key Takeaways About Nebraska's Mini-WARN Act

Like the federal WARN Act, Nebraska's new law applies only to employers with 100 or more employees, excluding certain "part-time employees" defined under the law as those working fewer than 20 hours per week on average or those employed for fewer than 6 of the preceding 12 months. However, once an employer meets this threshold, some requirements differ under state versus federal law.

Longer Notice Period

Nebraska's mini-WARN law requires 90 days of advance written notice (compared to the federal 60-day notice period) or, if applicable, the notice period provided in the collective bargaining agreement.

Narrower Notice Triggers

Nebraska's law requires notice to be provided to the affected employees (or their representatives) and the state's labor department only upon:

- a business closing, defined as certain worksite closures impacting 100 or more covered employees (federal law requires

notice upon worksite closures impacting just 50 or more covered employees); or
- a mass layoff, defined as a reduction in force (not due to a business closing) that results in an employment loss of 100 or more covered employees at a single site during any 30-day period. (In contrast, federal law requires notice when mass layoffs impact, at a single site of employment, either (i) 50 or more covered employees which constitute at least 33% of the covered workforce, or (ii) 500 or more covered employees.)

The state law includes limited exceptions – similar to those available under federal WARN, including for strikes, lockouts, unforeseeable business circumstances, and natural disasters. In addition, Nebraska's mini-WARN permits the 90-day notice period to be reduced by the number of days for which severance payments or wages in lieu of notice are paid (in an amount equivalent to or greater than the employee's regular pay) to the employee for workdays occurring during the notice period.

Given Nebraska's mini-WARN's notice trigger is based on 100 impacted employees, it is likely that federal WARN will apply to a business before the state law kicks in. Be sure you are up to date with both state and federal requirements and discuss with counsel as to when federal versus state rules may apply.

Different Notice Content and Format Rules

Nebraska's mini-WARN will require notices to be provided to the affected employees or their union representatives (if applicable) and to the state's Department of Labor (NDOL), and all notices, regardless of recipient (except as otherwise noted), must include the following information:

- The name and address of the employment site where the business closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;
- A statement as to whether the planned action is expected to be permanent or temporary and, if the entire business is to be closed, a statement to that effect;
- The expected date of the first employment loss and the anticipated schedule for employment losses;
- The job titles of positions to be affected and the names of the employees currently holding the affected jobs (note: the notice to the NDOL must also include the addresses of the affected employees); and
- Copies of all employee handbooks, personnel policies, and employment-related policies applicable to the affected employees, or a written statement identifying the specific online location(s) where such handbooks or policies may be accessed without restriction up until the expected date of the first employment loss.

While many of these requirements overlap with federal WARN notice rules, some go much farther, such as the last requirement above regarding provision of handbooks and policies.

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NDOL Enforcement And Penalties

The NDOL will enforce Nebraska's mini-WARN, and employers that violate the law will be subject to a civil penalty of up to $100 for each day of the violation. Notably, though, the state law makes this civil penalty the exclusive remedy for mini-WARN violations.

Ways to Stay Ahead

Layoffs and business closures can come on unexpectedly. Whether it is a natural disaster or unforeseen business circumstances, there are a couple of steps to take to get ahead:

1. *Train key HR and legal staff on differences between federal and Nebraska WARN obligations*. Do not forget that there are different triggers for when federal WARN and Nebraska's mini-WARN apply, so it is important to understand the nuances of the applicable laws and consult with counsel as needed.
2. *Have counsel review your WARN notices*. The law is very specific about what information must be included in WARN notifications provided to affected employees and government entities. Nebraska's state law requires more details to be included in layoff or closure notices, and failure to include certain information could result in civil penalties.

Note

1. https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=63332.

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