California Bill Proposes to Require State Warn Act Notice to Staffing Workers

Benjamin M. Ebbink, Partner, Fisher & Phillips LLP

Like many states, California has a state law version of the federal Worker Adjustment and Retraining Notification (WARN) Act that requires advanced notice to covered employees regarding mass layoffs or plant closings. California's WARN Act mirrors the federal law in most respects, but provides greater coverage to more employers.

Proposed legislation making its way through the California Legislature would make some significant reforms to the state law – including specifying that notice must be provided to employees hired through staffing firms that are impacted by the mass layoff or plant closure.

Assembly Bill 1356, introduced by Assemblymember Matt Haney (D – San Francisco) makes a number of changes to the state WARN Act. First, the bill would expand the required advanced notice of mass layoffs and plant closures from 60 days to 90 days. Second, the bill would expand the definition of "covered establishment" to include any place of employment that employs 75 or more persons at a single location or a group of locations. Currently, the law only applies to establishments with 75 or more employees at one location.

However, staffing firms will want to pay close attention to other amendments in the proposed legislation that are aimed directly at temporary employees.

AB 1356 also would amend the state law to provide that notice of a mass layoff or plant closure must also be provided to a person employed by a "labor contractor" and performing labor with the client employer for at least 6 of the preceding 12 months. A "labor contractor" is defined as someone that supplies a client employer with workers to perform labor within the client employer's usual course of business.

Existing law provides that an employer that fails to provide the WARN Act notice is liable to employees for backpay and the value of any benefits for up to the maximum notice period (60 days under current law). AB 1356 would also specifically provide that the "labor contractor" shall remit to the employee any payment provided by the client employer for these amounts.

Proponents of the legislation – including the TechEquity Collaborative and Temp Worker Justice – have pointed to recent layoffs in the tech sector as leaving contract or temporary workers out of the state WARN Act notification requirement. They argue that this bill would close that gap and provide notification to thousands of workers "left behind" under the current law.

Bill opponents – including the California Chamber of Commerce – contend that the provisions applicable to "labor contractor" employees need to be narrowed. In their opposition letter they state:

> The bill and these definitions also do not take into account whether the worker performs work at other sites, whether they can be reassigned by the contractor, or the terms of the contract. If the client employer is just one of a worker's five assignments, the justification for receiving a WARN Act notice of a closure is far less than a worker who performs work at one site every single day. Or, if the labor contractor is able to immediately assign the worker to a new client upon learning of a closure or layoff, again the need to follow all of the WARN Act steps is obviated.

Opponents are currently attempting to negotiate amendments to the bill that would limit the notification requirements to contract workers who work for the client employer for a significant portion of their time.

For staffing firms, AB 1356 would not have a significant direct effect as the notification requirements would fall on the client employer to provide the notice to affected employees. However, there would be downstream impacts for staffing firms – including the obligation to remit to the employee any payments from the client for backpay or other damages for failure to provide notice. This may or may not conflict with contract language between the staffing firm and the client that addresses compensation for workers in the event of a mass layoff or plant closure, so contract language would have to be reviewed to ensure compliance.

In addition, should AB 1356 be enacted into law, staffing firms would likely want to build into place procedures to respond to employees who have received WARN Act notices from the client and may be concerned or asking about alternative assignments.

Even staffing firms operating outside of California may want to pay close attention to AB 1356. As we know all too well, what happens in California does not stay in California. Requirements for clients to provide WARN Act notice to staffing firm employees may soon be coming to a state near you.

AB 1356 is currently making its way through the California Legislature and could be amended further. The legislature has until September 14 to approve the proposed legislation, and Governor Newsom would have until October 14 to sign or veto the bill. Should AB 1356 be signed into law, it would go into effect on January 1, 2024.