



Layoffs: Employers Refresh Their Memory on WARN, OWBPA

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Stephen Roppolo was quoted on *SHRM Online* on February 20, 2015. The article “Layoffs: Employers Refresh Their Memory on WARN, OWBPA” discussed how many employers “are out of practice” with the Worker Adjustment and Retraining Notification (WARN) Act and Older Workers Benefit Protection Act (OWBPA) due to the economic recovery.

Stephen was quoted on WARN and OWBPA regulations.

“If you don’t have 100 employees, you don’t have to worry about” the federal WARN Act, Stephen observed. Under the law, employers count to see whether they have 100 or more employees working 20 hours or more a week for at least six months, he told *SHRM Online*.

Stephen recalled a riverboat casino that shuttered before it opened its doors. Hundreds of employees were laid off, but none had been with the company for more than six months, so the employees weren’t covered by the WARN Act.

The WARN Act requires 60 days advance notice of a layoff “for a soft landing,” he noted; no severance is required.

Some employers are reluctant to give 60 days’ notice because they are concerned about the impact the notice will have on remaining employees’ productivity and morale, Stephen said. They don’t want employees jumping ship or spending their days looking for greener pastures. However, he called these concerns “misguided” when those left behind are happy to still be employed.

Stephen said the WARN Act’s notice requirement is triggered if 50 or more employees are laid off in a 30-day period and these employees make up at least 33 percent of the employer’s workforce where the layoff occurs. It also is triggered if 500 or more employees are laid off. If there are multiple related layoffs, the number of laid-off employees is counted during a 90-day period.

Not everyone in a facility needs to be notified, just those affected, Stephen said. The WARN Act also requires notice to state dislocated worker units and the chief elected officials of local governments.

There is a faltering company exemption, but relying on it “makes me nervous,” Stephen said. The exemption requires that the business be looking for financing when it would have been giving notice,

and courts have been strict about that requirement—looking for financing 45 days rather than 60 days in advance of the layoff, for example, may not suffice.

Before selecting who goes, it's a good idea to develop objective criteria for what makes someone good enough to keep, Stephen remarked. "It's much better to decide on the criteria first," rather than the individuals, he said.

Companies need to dot all i's and cross all t's on OWBPA language for a lawful release, Stephen said. Once the objective criteria has been applied to select who will be laid off, the hard work of implementing the layoff remains.

To read the full article, please visit [SHRM Online](#).

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Stephen J. Roppolo
Regional Managing Partner
713.292.5601
[Email](#)