

# WORKFORCE REDUCTIONS IN CALIFORNIA: DO YOU HAVE TO GIVE EMPLOYEES ADVANCE NOTICE UNDER CAL-WARN?

Insights  
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California employers across industries have been forced to make difficult decisions concerning staffing levels and the need for workforce reductions in recent months. Layoffs, facility closures, and employee relocations can potentially trigger an employer's duty to give employees advance notice of a layoff or certain other workplace events. A failure to give notice may expose employers to liability – and recent legal developments make it essential for California employers to understand their obligations. What should you do to determine whether your company is covered by Cal-WARN and how can you comply?

## Background

Notice may be required under both the federal Worker Adjustment and Retraining Notification Act (WARN Act) and the California WARN Act. Both federal WARN and Cal-WARN require employers to give at least 60 days' advance notice to employees for qualifying facility closures and layoffs.

However, the laws differ in determining who qualifies as a "covered employer" that must give this notice to employees:

- **Under federal WARN**, in general, a "covered employer" is determined by the total number of individuals employed across the entire business enterprise, not just at a single location.
- On the other hand, **under Cal-WARN**, an employer is covered if it operates a "covered establishment." This means the employer must have a facility or "covered

## Related People



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establishment" that employs at least 75 people at the time of the layoff or applicable workplace event. If you are covered by Cal-WARN, you must then determine if you are required to give advance notice to employees.

### Can a "Covered Establishment" Include Multiple Worksites?

As it stands now, courts typically find that Cal-WARN's 75-person requirement does not mean aggregating employees across multiple separate facilities. Instead, at least 75 employees must be employed at a single facility for Cal-WARN to apply.

**An Example:** In a recent case, *Lugo-Rodriguez v. My World Enterprises, Inc.*, an employer conducted layoffs and closures at two restaurant locations that were several miles apart, one in Pasadena and one in Long Beach. Because neither location alone employed more than 75 workers, the employer was not required to give notice of the restaurant closures under Cal-WARN. Each location was viewed separately, and the court refused to combine employees at both to reach the 75-employee count for Cal-WARN to apply.

**A Caveat:** Notably, courts have entertained the possibility of treating multiple locations as a single site when the sites are "adjacent and highly integrated." This determination is largely dependent upon the facts, including the physical locations of the individual sites at issue. For example, in a case against *Accredited Home Lenders Inc.*, the court found that the company's operations center and headquarters, which were separated by over three miles, did not form a single "covered establishment." If they were located closer than three miles apart, however, a court could conclude otherwise, depending on the facts.

### Recent Developments

**AB 1356:** There have been moves to change Cal-WARN's single-facility focus. In 2023, [Governor Newsom vetoed a bill](#) that would have required employers to aggregate separate locations to reach the 75-employee threshold. This bill may get reintroduced.

**SB 617:** This bill was enrolled on September 5 and is currently awaiting signature by the Governor. **[Editor's Note: SB 617 was approved by the Governor on October 1.]** If

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enacted, [SB 617](#) would change Cal-WARN notice requirements to include the following information:

- Whether the employer plans to coordinate services, such as a rapid response orientation, and through which entity;
- Email and telephone number of the local workforce development board;
- Description of the rapid response activities offered by the local workforce development board;
- Description of CalFresh, the state's food assistance program;
- CalFresh benefits helpline;
- Link to CalFresh website; and
- Email and telephone number of the employer.

### **Next Steps**

If you anticipate a layoff or closure of a worksite in California and have multiple worksites, you should:

- Evaluate whether the sites are located near each other and have integrated operations;
- Review California and federal WARN to see if notice is required, if you are covered by the laws;
- Review your draft WARN notices for compliance with both laws; and
- Track legal developments in this area.

### **Conclusion**

Fisher Phillips will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any member on our [Reductions in Force \(RIFs\)](#) team.

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