



New Hampshire Enacts State WARN Act

Insights

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On August 10, 2009, New Hampshire Governor John Lynch signed into law the New Hampshire Worker Adjustment and Retraining Notification (WARN) Act. The purpose of this Act is to protect workers during sudden business closings and mass layoffs. The New Hampshire WARN Act will take effect on January 1, 2010.

The New Hampshire WARN Act is similar to the federal WARN Act in many respects and, whenever possible, is intended to be construed in a manner similar to its federal counterpart. However, the functional difference between the two laws is that the New Hampshire WARN Act applies to employers who employ 75 or more employees in New Hampshire, whereas the federal WARN Act applies to employers who employ 100 or more employees.

The notice requirements of the New Hampshire WARN Act are triggered when there is a "mass layoff" or "plant closing." For purposes of this law, a "mass layoff" means a reduction in force that results in an employment loss at a single site of employment in New Hampshire during any 30-day period for at least 250 full-time employees, or at least 25 full-time employees, if they constitute 33% of the employer's full-time employees at that worksite. In addition, a "plant closing" means the permanent or temporary shutdown of a single site of employment in New Hampshire if the shutdown results in an employment loss at the worksite of 50 or more full-time employees during any 30-day period.

Before conducting a mass layoff or plant closing, an employer must provide 60 days advance written notice to the following individuals: (i) affected employees and their representatives; (ii) the New Hampshire Commissioner of Labor; (iii) the New Hampshire Attorney General; and (iv) the chief elected official of each municipality where the job losses are to occur. The notices must follow the specific requirements of the federal WARN Act.

An employer is not required to comply with the notice requirements of the New Hampshire WARN Act if:

(i) the employer is a faltering company and, at the time that notice would have been required, the employer was actively seeking capital or business through a commercially reasonable method, and (a) if obtained, the capital or business sought would have enabled the employer to avoid or postpone the mass layoff or plant closing, and (b) the employer reasonably and in good faith believed that

giving notice of the mass layoff or plant closing would have precluded the employer from obtaining the needed capital or business; or

(ii) the need for the notice was not reasonably foreseeable at the time the notice would have been required; or

(iii) the plant closing is of a temporary facility or the plant closing or mass layoff is the result of the completion of a specific project, and the affected employees were hired with the understanding that their employment was of a limited duration; or

(iv) a mass layoff or plant closing is caused by a physical calamity, natural disaster, or an act of terrorism or war; or

(v) the plant closing or layoff constitutes a strike or lockout not intended to evade the requirements of the New Hampshire WARN Act.

Employers who fail to comply with the requirements of the New Hampshire WARN Act may be liable to employees for back pay, the value of any lost benefits (including the cost of any medical expenses incurred by an employee that would otherwise have been covered), and attorneys' fees. In addition, an employer who fails to give notice as required by the New Hampshire WARN Act may be assessed a civil penalty of up to \$2,500 and a civil penalty of up to \$100 per employee for each day of noncompliance. The New Hampshire Department of Labor also has the authority to place a lien on the business revenues and all real and personal property of an employer who violates the New Hampshire WARN Act.

Given the potential damages and civil penalties that may be assessed against an employer for violations of the New Hampshire WARN Act, it is important that employers familiarize themselves with the requirements of the new law.

This Legal Alert provides information about a specific law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Service Focus

Reductions in Force (RIFs)