

## LABOR & EMPLOYMENT ALERT

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### NEW YORK ADOPTS A PLANT CLOSING NOTICE LAW

The State of New York has enacted a law requiring that employees be given at least 90 days advance notice of any covered mass layoff or covered plant/facility/operating unit closure. It takes effect on February 1, 2009.

The details of the law are similar in many respects to the federal Workers Adjustment Retraining and Notification Act ("WARN"), except that the length of notice is 90, rather than 60, days.

The law applies to employers having 50 or more full-time employees.

A "mass layoff" is defined to mean an action resulting in an employment loss at a single site of employment within a 30 day period for (1) at least 1/3 of the employees at that site, if the number laid off equals or exceeds 25 full time employees; or (2) at least 250 full-time employees. This definition covers actions that would not be covered by the federal WARN Act, which has a threshold of 50 employment losses to constitute a mass layoff. There is a 90-day look-back period which functions similarly to the federal Act.

A "plant closing" means the closing (for at least six months) of a site of employment, one or more facilities or operating units at a site, if the shutdown results in an employment loss at the site during any thirty-day period for 25 or more full-time employees. The federal WARN Act requires that at least 50 employees suffer an employment loss.

The content of the notice which is required is the same as the WARN notice. The required recipients are affected employees, unions, the local workforce investment boards and the N.Y. Department of Labor.

There are exceptions to the notice requirement for plant closings caused by natural disasters, failing business and strikes. There is no notice required if the site closing result from the completion of a contract or project and the employees were hired with the understanding that they would be employed only for the duration of the contract or project. There is also an exception for site closings where "the need for a notice was not reasonably foreseeable at the time the notice would have been required," which is an exception not available under the federal law. For these exceptions, notice is still required, but it is as much notice as is practicable under the circumstances. Closings or layoffs caused by a physical calamity, act of terrorism or war are not covered by the law, and would not require notice for either mass layoffs or plant closings.

The remedies under the N.Y. law are similar to the federal WARN Act, to wit, payment of the employee's wages and the value of benefits for the period of violation, up to 60 calendar days (accounting for 90 days without notice). There is a provision for an administrative claim and, alternatively, for a civil action in federal court. The latter allows for payment of attorneys' fees to a successful claimant. Damages are reduced by any amounts of severance pay or severance benefits that the employer voluntarily provides and by the amount of any damages assessed under the federal law.



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