

# Labor Law Bulletin

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## NEW YORK PASSES STATE VERSION OF “WARN”

The Worker Adjustment and Retraining Notification Act (WARN) is a federal law that requires employers who employ at least 100 employees to provide advance notice of plant closings and mass layoffs. Some states have enacted state versions of WARN which often cover employers too small to be covered by federal law. In August 2008 New York State became one of those states, enacting a state WARN law that becomes effective on February 1, 2009 and applies to private employers who employ 50 or more employees.

The New York WARN Act requires private-sector employers with 50 or more employees (excluding part-time employees) to provide at least 90 days' notice to affected employees, their union representatives and state and local officials of a mass layoff, relocation or plant closing. A “mass layoff” is defined as a reduction-in-force that (a) is not the result of a plant closing and (b) results in termination at a single site of employment during any 30-day

period of at least 33 percent of the full-time workforce and at least 25 full-time employees, or of at least 250 full-time employees. A “relocation” is defined as the removal of all or substantially all of the industrial or commercial operations of an employer to a different location fifty miles or more away. A “plant closing” means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 25 or more full-time employees.

A mass layoff, relocation or plant closing may be deemed to occur if there are employment losses for two or more groups of employees at a single site of employment, each of which is less than the amounts specified for mass layoffs and plant closings but which, in the aggregate, meet or exceed that minimum number and occur within any 90-day period. To avoid this

determination, an employer must demonstrate that the employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the WARN Act.

There are exceptions to the notice requirement, including when the reason for employment terminations are not reasonably foreseeable in sufficient time to provide the notice. Investigation and enforcement authority is conferred on the Commissioner of Labor. Violations may result in employer liability for back pay and other employee benefits for 60 days after the violation as well as civil penalties of up to \$500 per day of violation.

If you have any questions about the New York State or federal WARN Act or wish to receive a detailed summary comparing the New York and Federal WARN Acts, please contact Jonathan Wexler (212-407-7732) or any other Vedder Price attorney with whom you have worked.

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