

# All about California's WARN Act

## Layoffs looming: What are our notice requirements under the law?

**Q. Our company is going to have to lay off a large number of employees. Are we required to give notice to the employees?**

**A.** If your company is a "covered establishment," which is defined as any industrial or commercial facility that employs (or has employed within the preceding 12 months) 75 or more persons, you need to provide notice under the California Worker Adjustment and Retraining Notification (WARN) Act.

Under California Labor Code Section 1401, "An employer may not order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order."

This notice must be given to the employees of the covered establishment affected by the order, the California Employment Development Department, the local workforce investment board and the chief elected official of each city and county government within which the termination, relocation or mass layoff occurs.

Under the act:

"Mass layoff" is defined as a layoff of 50 or more employees at a covered establishment in a 30-day period.

"Termination" is defined as the cessation of industrial or commercial operations in a covered establishment.

"Relocation" is defined as the removal of all industrial or commercial operations to a different location 100 miles away or more.

There is an exception to the California WARN Act if the mass layoff, relocation or termination is required due to a natural disaster or "act of war."

Section 1402.5 also provides an exception in the situation that an employer was actively seeking capital that would've enabled it to postpone or avoid relocation or termination, and the employer "reasonably and in good faith" thought the notice would not be needed due to its actions.

## What must WARN notices say?

**Q. What content must be included in a WARN notice to an affected employee?**

**A.** According to California Labor Code Section 1401(b), notice under the state WARN Act must include the same elements required by the federal WARN Act. The federal WARN Act Section 639.7(d) states that the notice to affected employees must be written in language understandable to the employees and is to contain:

- A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect
- The expected date when the plant closing or mass layoff will commence and the expected date when the

individual employee will be separated

- An indication whether or not bumping rights exist
- The name and telephone number of a company official to contact for further information.

The law also states that the notice may also contain information about dislocated worker assistance and the estimated duration of the mass layoff, termination or relocation if the event is not permanent.

## **What if we don't give notice?**

### **Q. What is the punishment for failing to provide adequate notice under the California WARN Act?**

**A.** An employer that has violated the California WARN Act may be required to pay back pay. This back pay must be paid either at the employee's regular rate of compensation over the past three years of work or his or her final rate of compensation—whichever is higher.

An employer may also be required to pay the value of the cost of benefits for the period during which the WARN Act was violated.

Both back pay and benefits payments may be required up to a maximum of 60 days or half the days the worker was employed—whichever is less.

Employers may also be held responsible for attorneys' fees.

Further, an employer that fails to give adequate notice under the California WARN Act may be subject to a civil penalty of up to \$500 for each day that the employer is in violation of the act. However, an employer will not be assessed this penalty if it pays all affected employees the amounts for which it is liable within three weeks from the date the employer orders the mass layoff, termination or relocation.