

Reduced hours and WARN: Are we liable?

Q. Due to the poor economy, we recently cut one of our manufacturing shift's hours by 60%. This will continue indefinitely. We gave the affected employees two weeks' advance notice, but we have now received a letter from an attorney claiming we should have given them 60 days' advance notice. Is that right?

A. The lawyer may be right, depending on the circumstances of your company's hour reduction. The federal Worker Adjustment and Retraining Notification (WARN) Act generally applies to employers with at least 100 employees. It requires covered employers to give affected employees and certain outside entities and individuals at least 60 days' advance notice of a "plant closing" or "mass layoff" as those terms are defined by WARN.

While employers usually think of WARN as applying to plant closings and mass layoffs that result in terminations of employment, WARN can also apply to some significant hour reductions.

Under WARN, a covered "plant closing" includes the permanent or temporary shutdown of a single site (or a unit within a single site) if the shutdown results in "employment loss" during any 30-day period for at least 50 full-time employees. A covered "mass layoff" includes an "employment loss" at a single site of employment during a 30-day period either for at least 500 full-time employees or at least 33% of the full-time employees *and* 50 or more full-time employees.

To determine whether a covered plant closing or mass layoff has occurred under WARN, the law provides that an "employment loss" includes, in addition to most involuntary terminations, a reduction in hours of more than 50% during each month for a six-month period.

As such, your company likely was obligated to provide 60 days' advance notice under WARN if each of the following applies:

1. Your company has enough employees to be covered by WARN
2. Its 60% hour reduction will occur in each month of a six-month period
3. The hour reduction affects enough employees to constitute a "plant closing" or "mass layoff" under WARN.

If any of your employees are located outside Minnesota, check for state law requirements that apply.