

New Hampshire Enacts Mini-WARN: Broadening the Scope of Advance Notice for Layoffs

Karen S. Aframe | August 25, 2009

Effective January 1, 2010, New Hampshire employers must comply with New Hampshire's Worker Adjustment and Retraining Notification (mini-WARN) Act (N.H. RSA 275-F).

This law is modeled after the federal WARN Act, 29 U.S.C. 2101 et seq., and is intended to broaden the protections for New Hampshire workers from sudden loss of employment. As discussed below, employers who fail to comply face significant financial penalties.

Like its federal counterpart, the new state law, signed by Gov. Lynch on August 10, 2009, requires employers to provide sixty (60) days advance written notice before significant employment losses, including mass layoffs and plant closings. However, unlike the federal law, which covers those with 100 or more employees, New Hampshire's WARN Act will cover to companies with 75 or more full-time employees or 75 or more employees who in the aggregate work at least 3,000 hours per week, excluding overtime. In addition, New Hampshire employers should note that the state law's application to parent companies is much stricter than the federal law.

Under New Hampshire's WARN, a mass layoff is defined as one resulting in the loss of jobs during a 30-day period for at least 250 workers or at least 25 workers if they constitute a third of the workforce. A plant closing is defined as a permanent or temporary shutdown resulting in a least 50 job losses. For purposes of counting employees under this section, part-time employees are excluded. Like the federal law, under certain circumstances, the minimum number of employees to meet these definitions will be triggered by aggregating two or more events at a single site, which occur within a 90 day period.

In the event that New Hampshire's WARN Act's notification provisions are triggered, the employer must provide the written notice to employees and their representatives, the New Hampshire Labor Commissioner, the Attorney General, and the chief elected official of each municipality in New Hampshire where the plant closing or mass layoff occurs. Employers who meet the threshold requirements of the New Hampshire and federal law must comply with both. Under both laws, the notice must contain the elements required by federal WARN.

The new law has real teeth. Employers who fail to comply with New Hampshire WARN will be liable for back pay and lost benefits for each employee who was entitled to notice, costs and reasonable attorney's fees, as well as, civil penalties of up to \$2500, plus \$100 per employee for each day of non-compliance. The Labor Commissioner may also place a lien on the business revenues and all real and personal property of the employer.

Although, as yet, there are no administrative regulations accompanying this new statute, the law states that whenever possible, it shall be interpreted in a manner consistent with the federal WARN Act to the extent the provisions of the federal and state laws are the same. To that end, the following guidance available from the U.S. Department of Labor may be useful to employers: <http://www.doleta.gov/layoff/rapid.cfm>

Due to the current economic climate, the New Hampshire WARN is likely to be triggered early in the new year. To insure compliance with both state and federal WARN Acts and avoid potential liabilities, employers should consult with counsel in advance of implementing any employment layoff,

reduction in force, or plant closing. For more information, contact Karen Aframe at 603 623-8700 or kaframe@bernsteinshur.com