



**EMPLOYERS BEWARE:
NEW YORK STATE WARN ACT IS NOW LAW**

In the face of the dramatic downturn in the economy, Governor Patterson recently signed into law New York State’s own version of the federal Worker Adjustment and Retraining Notification (“WARN”) Act. Generally, the WARN Act requires employers to provide advance notice to employees affected by certain mass layoffs (or plant closings). The New York WARN Act, which goes into effect on February 1, 2009, is far more stringent than the federal counterpart, and covers more employers.

The following is a comparison of some of the state and federal laws’ requirements (both of which apply to covered employers).¹

REQUIREMENT	NYS WARN ACT	FEDERAL WARN ACT
Who is covered?	Employers with 50 or more (full time) employees.	Employers with 100 or more (full time) employees.
What are the notice requirements?	90 days’ advance notice of a covered mass layoff, relocation or plant closing.	60 days’ advance written notice of a covered mass layoff or plant closing.
How many employees have to be affected in order to trigger the notice obligation?	A “plant closing” is defined as a permanent or temporary shutdown of a single site of employment, if it results in an employment loss during a 30-day period of 25 or more full-time employees. A “mass layoff” is an employment loss of at least 25 full-time employees that constitutes as least 33% of the full-time workforce at a single site of employment, or the termination of 250 or more full-time employees.	A “plant closing” is defined as an employment loss at a single site of employment of 50 or more employees during any 30-day period, and a “mass layoff” is the termination of 500 or more employees or at least 50 employees if they constitute at least 33% of the workforce at a single site of employment in any 30-day period.

¹ Because the New York WARN Act requires a longer notice period than the federal law, and covers relocations, which the federal law does not, the federal WARN Act does not preempt the state version.

In addition, unlike the federal law, New York requires advance notice to workers affected by a “relocation,” which is defined as the “removal of all or substantially all of the industrial or commercial operations” to a place 50 or more miles away.²

Are there any exceptions to the notice requirements?

Yes, the requirements are waived (under both the state and federal laws) if (i) the need for the notice was not reasonably foreseeable at the time the notice would have been required; (ii) the employer was actively seeking capital (or business) at the time notice was required and, if obtained, such capital would have enabled the employer to avoid the job loss or relocation; or (iii) a natural disaster caused the need for the plant closing or layoff.

Who can sue employers for violations?

While the federal WARN Act only allows employees to sue employers for failure to comply with its requirements, the New York WARN Act provides for administrative enforcement by the New York State Department of Labor (in addition to a private right of action for affected employees).

What are the penalties for failure to comply with the law?

Employers’ failure to comply with the state law will result in similar penalties as those under the federal law. Employees who do not receive the required notice may receive up to 60 days of back pay under both laws. In addition, under both the federal and state laws, employers can be assessed civil penalties up to \$500/day for each day of the violation. However, under the New York WARN Act, the New York State Commissioner of Labor can reduce penalties if the violations were in good faith.

In conclusion, the new state law is similar in structure to the federal WARN act; however, it does require employers to provide longer notice periods, and applies to smaller companies than does the federal law. We can assist you if you are considering a reduction in force, relocation or plant closing in order to ensure that the WARN Acts’ requirements are met and other possible bases for litigation are minimized.



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This Alert was written by Eric M. Mencher and Ellen R. Storch. Mr. Mencher, a partner with the firm, heads the firm's corporate and securities group where he concentrates his practice in all phases of corporate and commercial matters including corporate formation and structuring, transactions, general commercial contracts and employer/employee relations. Ms. Storch, an associate of the firm, practices in our litigation group and focuses her practice in the area of employment law.

Any questions concerning the matters raised in this Alert should be addressed to either Mr. Mencher or Ms. Storch. They can be reached at (516) 873-2000 or by e-mail at emencher@moritthock.com or estorch@moritthock.com.

400 Garden City Plaza • Garden City NY 11530
Tel: (516) 873-2000 • Fax: (516) 873-2010
Long Island • Manhattan
www.moritthock.com

² Whether a relocation triggers an "employment loss" depends on whether and what kind of transfers are offered to the affected employees.