

## Client Advisory

March 2005

# WARNing: New Illinois Plant Closing Law Takes Effect

Illinois employers considering a mass layoff or plant closing must be aware of the new Illinois Worker Adjustment and Retraining Notification Act (Illinois WARN Act), which took effect on January 1, 2005. Like the Federal WARN Act, the Illinois WARN Act requires employers to take certain steps in conducting plant closings and mass layoffs. While the Illinois WARN Act is substantially similar to the Federal WARN Act, it applies to a greater number of employers and events.

### **How Is the Illinois WARN Act Different From the Federal WARN Act?**

Compared to the Federal WARN Act, the Illinois WARN Act applies to smaller businesses, expands the definition of a mass layoff, increases notification requirements, and provides further enforcement options for employees and unions. The Illinois WARN Act also applies to “relocations,” a term which is not used in the Federal WARN Act and which the new state law fails to define.

### **What Businesses Are Subject to the Acts?**

The Federal WARN Act applies to businesses with 100 or more full-time employees, while the Illinois WARN Act applies to businesses with 75 or more full-time employees. Both statutes exclude “part-time” employees, *i.e.*, employees who work “an average of fewer than 20 hours per week or who [have] been employed for fewer than 6 of the 12 months preceding the date on which notice is required.”

Thus, Illinois businesses subject to the Federal WARN Act also fall within the Illinois Act’s reach, and must comply with both statutes.

### **How Does the Illinois WARN Act Expand the Definition of a Mass Layoff?**

The Federal WARN Act defines a mass layoff as a reduction in force, at a single site, during any 30 day period, of 500 or more full-time employees, or of 50 or more full-time employees comprising at least one-third of all full-time employees at the site. The Illinois WARN Act expands the definition of a mass layoff to include smaller reductions in force of just 250 or more full-time employees, or of 25 or more full-time employees comprising at least one-third of all full-time employees at the site.

Both laws also apply to a “plant closing,” which they define as a permanent or temporary shutdown of a single site of employment (or one or more facilities or operating units within a single site) that results in an employment loss during any 30-day period for 50 or more full-time employees.

The Illinois WARN Act also specifically applies to “relocations,” although the statute does not define that term. Although the Federal WARN Act does not expressly apply to relocations, an employer relocating a plant or facility outside of a reasonable commuting distance from its original location may effectively engage in a mass layoff or plant closing, thus triggering the duty to provide advance notice.

## **How Does the Illinois WARN Act Increase the Notice Requirements?**

When conducting a plant closing or mass layoff, both laws require employers to give 60 days advance written notice of the event. The statutes differ, however, in who must be notified.

The Federal WARN Act requires that employers provide notice of a plant closing or mass layoff to all affected employees' union representatives, or if employees are not represented by a union, to the employees themselves. The Illinois WARN Act requires that employers notify both affected employees *and* their unions of such an event. Both statutes define an affected employee as one who "may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff."

The Federal WARN Act requires that employers also notify the chief elected official of the one local government to which it pays the highest taxes, while the Illinois WARN Act requires that employers notify the chief elected officials of both the county and municipality in which the event occurred. Under the Federal WARN Act employers must also notify the Illinois Department of Employment Security, while under the Illinois WARN Act employers must notify the Illinois Department of Commerce and Economic Opportunity.

Again, if an Illinois business is subject to the Federal WARN Act, it will also be subject to the Illinois WARN Act and must satisfy all notice requirements of both statutes.

## **What Further Enforcement Options Are Available Under the Illinois WARN Act?**

Under the Federal WARN Act, employees or their union representative(s) may file suit in court. The Illinois WARN Act, however, gives the Illinois Department of Labor the authority to create rules to enforce the Act, including a rule granting employees the right to pursue administrative hearings. Emergency rules, currently in effect until proposed rules are enacted, provide for informal administrative hearings held by the Illinois Department of Labor.

An employer in violation of either statute may be liable for back pay, the value of any lost benefits, and a penalty of up to \$500 per day for each day notice is late. The Federal WARN Act also gives employees the right to recover their attorney's fees.

## **We Can Help**

Katten Muchin Zavis Rosenman Labor and Employment attorneys can assist you with any reduction in force or plant closing, to determine whether you are subject to either the Illinois or Federal WARN Acts, and when and how notices must be given to comply with one or both laws. We can also assist you with other issues that arise in such situations, including severance benefits, union negotiations and employee releases.

If you have any questions on the Illinois or Federal WARN Acts, or other employment issues, please contact any of the following KMZ Rosenman Labor and Employment attorneys:

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