



Fine, Boggs & Perkins LLP

California WARN Act Requirements for Mass Layoff, Relocation, or Termination Due to the COVID-19 Pandemic

Under both federal and California law, covered employers planning a “plant closing” or a “mass layoff” are required to provide affected employees and specified state and local government officials at least 60 days’ written notice. ***In response to the ongoing state of emergency declared by the California Governor in response to the COVID-19 pandemic, the Governor has issued Executive Order N-31-20, suspending certain California WARN Act requirements for an employer that orders a mass layoff, relocation, or termination at a covered establishment under certain conditions.***

Under the Executive Order, California suspended Labor Code sections 1401(a), 1402, and 1403 from March 4, 2020 through the end of the current emergency. These statutes include the statutory and civil penalty provisions of the California WARN Act. The Executive Order applies to any covered employer who “orders such a mass layoff, relocation, or termination that is caused by COVID-19-related ‘business circumstances that were not reasonably foreseeable as of the time that notice would have been required.’ ”

In order to take advantage of the provisions of the Executive Order issued by California’s Governor, employers must still comply with the following conditions:

- Provide the notices specified in Labor Code § 1401(a)-(b) to all employees of the covered establishment affected by the termination, relocation, or layoff, the California EDD, the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or layoff occurs;
- Give “as much notice as is practicable,” and provide a brief statement of the basis for reducing the notification period;
- Consistent with 29 U.S.C. § 2102(b)(2)(A) and its implementing regulations, the order for the mass layoff, relocation, or termination must be caused by COVID-19 related ‘business circumstances that were not reasonably foreseeable as of the time that notice would have been required’; and
- For written notices given after March 17, 2020, in addition to the other elements required by Labor Code § 1401(b), the notice must contain the following statement: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.”

This memorandum discusses the general principals of the notice California employers are required to give in the event of mass terminations or layoffs due to the cessation of business operations or reductions in force due to the COVID-19 pandemic. ***Please note that employers may need to comply with additional requirements under the federal WARN Act.***

Question: What is the WARN Act?

Under the federal Workers Adjustment and Retraining Notification Act (“WARN” Act) requires covered employers planning a “plant closing” or a “mass layoff” to provide affected employees and specified state and local government officials at least 60 days’ written notice. (29 U.S.C. § 2102(a); 20 CFR § 639.2).

California has its own version of a WARN-like statute that, for the most part, parallels the federal law. (Cal. Labor Code § 1400 *et seq.*) Some relevant differences are noted herein.

Question: Which Employers Are Covered Under WARN?

Under the Federal WARN Act, an employer is any business that employs: (a) 100 or more employees, excluding part-time employees; or (b) 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of overtime).

Under the California WARN counterpart, a “covered establishment” is one that employs (or within the last 12 months has employed) at least 75 persons.

Question: When Does the WARN Notice Apply?

Under federal law, employers may not order a “plant closing” or “mass layoff” until 60 days after written notice to affected employees or their representatives (i.e., Unions). A “plant closing” is defined as the permanent or temporary shutdown of a single site of employment if the shutdown results in an “employment loss” for 50 or more employees, excluding any part-time employees. A “mass layoff” is a workforce reduction that is not the result of a plant closing and results in an “employment loss” at a single site of employment during any 30-day period for: (a) at least 500 employees; or (b) at least 33% of the total employees at the site who comprise at least 50 employees (part-time employees excluded from each of these calculations). An “employment loss” is: (a) an employment termination, other than a discharge for cause, voluntary departure, or retirement; or (b) a layoff exceeding 6 months; or (c) a more than 50% reduction in work hours during each month of any 6-month period.

Under California law, notice is required prior to any “mass layoff,” “relocation” or “termination” at a covered employer. Under California law, “mass layoff” means a layoff of at least 50 employees during any 30-day period due to lack of work or lack of funds. A “relocation” means removal of all or substantially all of the employer’s industrial or commercial operations at a covered employer to a different location at least 100 miles

away. And a “termination” means the cessation of industrial or commercial operations in a covered establishment.

Question: What is the effect of the California Executive Order?

In response to the ongoing state of emergency declared by the California Governor in response to the COVID-19 pandemic, the Governor issued Executive Order N-31-20, suspending certain California WARN Act requirements for an employer that orders a mass layoff, relocation, or termination at a covered establishment under certain conditions. Primarily, the impact is that the 60-day advance notice requirement is suspended, provided the other notice requirements are still met.

While this Order only impacts the California version of the rules, the federal WARN Act already includes an exemption for “unforeseen business circumstances” that eliminates the 60-day requirement where the closures or layoffs were caused by some “sudden, dramatic, and unexpected action or condition outside the employer’s control.” Thus, the Governor’s Order brings California more into line with federal requirements.

Question: Who Must Receive Notice?

Notice must be given to all affected employees (both part-time and full-time employees). In addition, notice must be sent to the State dislocated worker unit, and the chief elected official of the unit of local government within which the closing or layoff is to occur. In California, notice to the State dislocated worker unit should be sent to:

WARN Act Coordinator
Automation and Local Support Section
Workforce Investment Division
Employment Development Department
P.O. Box 826880, MIC 69
Sacramento, CA 94280

Question: What is the Liability for Failing to Comply with WARN Obligations?

Both federal and California law allow aggrieved individuals to bring a civil action to recover for each day of the violation (up to 60 days maximum) backpay and benefits under an employee benefit plan. In addition, the employer may be required to pay a civil penalty that could be as high as \$500.00 for each day of the violation. In addition, the California Labor Commissioner has statutory authority to examine company records in connection with any investigation of a WARN violation.

Note: Compliance with the California Executive Order suspends the penalty provisions under California law.

WARN Act Letter to Elected Officials

[LETTERHEAD]

[DATE]

VIA FIRST CLASS CERTIFIED U.S. MAIL

WARN Act Coordinator
Statewide Services Unit
Workforce Services Division
Employment Development Department
P.O. Box 826880, MIC 69/Room 3099
Sacramento, CA 94280-0001

[Notice must also be given to the Local Workforce Development Board. For your specific board, see https://www.edd.ca.gov/Jobs_and_Training/Local_Area_Listing_by_County.htm]

John C. Officer
Local Workforce Development Board
Street Address
City, California, Zip Code

[Notice must also be given to the chief elected official of **each** city **and** county government within which the termination, relocation or mass layoff occurs. Your local workforce office, found at the website above, can assist you in determining the chief elected officials to whom notice should be addressed.]

Joan C. Supervisor
County Board of Supervisors
Street Address
City, California, Zip Code

Joan C. Mayor
Mayor, California City
Street Address
City, California, Zip Code

Re: W.A.R.N. Notice from [Company name and DBA]

Dear Sir/Madam:

[Company Name and DBA] has decided that it is necessary to [layoff 50 or more employees within a 30 day period at] OR [to permanently close the entirety of] its company operations located at [ADDRESS of the employment site where the closing or mass layoff will occur]. This action is necessary due to the unprecedented and ongoing State of Emergency in California related to the COVID-19 global pandemic. The ongoing threat and spread of COVID-19 has resulted in rapid and drastic changes to our business needs and circumstances that were not reasonably foreseeable as recently as just days ago, necessitating [these layoffs] OR [this closure].

[These layoffs] OR [This closure] will occur on [specify date]. The reduced notification period of this notice is being made pursuant to Executive Order N-31-20 of Gavin Newsom, Governor of the State of California. This notice is being provided as soon as practical under these unprecedented circumstances, as the required layoffs have been caused by COVID-19-related business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

[As Applicable: Statement as to whether the planned action is expected to be permanent or temporary and, if the entire dealership is to be closed.]

[If Applicable: Anticipated schedule for subsequent separations.]

A list of the job titles of positions to be affected, and the number of employees to be laid off in each job classification is attached hereto.

[If Applicable: For multiple lay-off locations, provide a breakdown of the number of affected employees and their job titles by each lay-off location.]

[If Applicable: Indication as to whether or not bumping rights exist.]

[If Applicable: Name of each union representing affected employees.]

[If Applicable: Name and address of the chief elected officer of each union.]

We have also notified the employees. A copy of that letter is attached.

If an employee has lost his/her job or been laid off temporarily, he/she may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.

If you have any questions or need additional information about [these layoffs] OR [this closure], you may contact [Name of Company Official] at [phone number] and [email address].

Sincerely,

[Name]
[Title/Position]

WARN Act Letter to Employees

[LETTERHEAD]

[DATE]

VIA FIRST CLASS CERTIFIED U.S. MAIL

[Name and address of Employee]

Re: W.A.R.N. Notice from [Company name and DBA]

Dear [Name of Employee]:

[Company Name and DBA] has decided that it is necessary to [layoff 50 or more employees within a 30 day period at] OR [to permanently close the entirety of] its company operations located at [ADDRESS of the employment site where the closing or mass layoff will occur]. This action is necessary due to the unprecedented and ongoing State of Emergency in California related to the COVID-19 global pandemic. The ongoing threat and spread of COVID-19 has resulted in rapid and drastic changes to our business needs and circumstances that were not reasonably foreseeable as recently as just days ago, necessitating [these layoffs] OR [this closure].

[These layoffs] OR [This closure] will occur on [specify date]. You will be laid off on that day, as well. The reduced notification period of this notice is being made pursuant to Executive Order N-31-20 of Gavin Newsom, Governor of the State of California. This notice is being provided as soon as practical under these unprecedented circumstances, as the required layoffs have been caused by COVID-19-related business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

[As Applicable: Statement as to whether the planned action is expected to be permanent or temporary and, if the entire company is to be closed.]

[If Applicable: Indication as to whether or not bumping rights exist.]

If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.

If you have any questions or need additional information about [these layoffs] OR [this closure], you may contact [Name of Company Official] at [phone number] and [email address].

Sincerely,

[Name]
[Title/Position]

WARN Act Letter to Represented Employees

[LETTERHEAD]

[DATE]

VIA FIRST CLASS CERTIFIED U.S. MAIL

[Name and Address of Employee Representative]

Re: W.A.R.N. Notice from [Company name and DBA]

Dear Sir/Madam:

[Company Name and DBA] has decided that it is necessary to [layoff 50 or more employees within a 30 day period at] OR [to permanently close the entirety of] its company operations located at [ADDRESS of the employment site where the closing or mass layoff will occur]. This action is necessary due to the unprecedented and ongoing State of Emergency in California related to the COVID-19 global pandemic. The ongoing threat and spread of COVID-19 has resulted in rapid and drastic changes to our business needs and circumstances that were not reasonably foreseeable as recently as just days ago, necessitating [these layoffs] OR [this closure].

[These layoffs] OR [This closure] will occur on [specify date]. The reduced notification period of this notice is being made pursuant to Executive Order N-31-20 of Gavin Newsom, Governor of the State of California. This notice is being provided as soon as practical under these unprecedented circumstances, as the required layoffs have been caused by COVID-19-related business circumstances that were not reasonably foreseeable as of the time that notice would have been required.

[As Applicable: Statement as to whether the planned action is expected to be permanent or temporary and, if the entire company is to be closed.]

[If Applicable: Anticipated schedule for subsequent separations.]

A list of the job titles of positions to be affected, and the names of workers currently holding affected jobs, is attached hereto.

[If Applicable: For multiple lay-off locations, provide a breakdown of the number of affected employees, their names, and their job titles by each lay-off location.]

[If Applicable: Indication as to whether or not bumping rights exist.]

If an employee has lost his/her job or been laid off temporarily, he/she may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.

If you have any questions or need additional information about [these layoffs] OR [this closure], you may contact [Name of Company Official] at [phone number] and [email address].

Sincerely,

[Name]

[Title/Position]