



LAYOFFS AND BUSINESS CLOSING LAWS In The Event of a Natural Disaster

The WARN (Worker Adjustment and Retraining Notification) Act imposes a notice obligation on covered employers (those with 100 or more full-time employees) who implement a “plant closing” or “mass layoff.” These quoted terms are defined extensively under WARN’s regulations - they are not intended to cover every single layoff or plant closing*.

*Consult the WCI Employment Law Guide, Chapter 23, for definitions of mass layoff or plant closing. (Available at “Resource Links” on WCI website).

The following FAQ’s are designed assuming your business must comply with WARN:

Do we have any legal liability if we are forced to suspend operations without prior notice because of a natural disaster and its aftermath?

Probably not, so long as you take steps to issue appropriate notice as soon as practicable. The WARN Act imposes a notice obligation on covered employers who implement a “plant closing” or “mass layoff,” even when they are forced to do so an unforeseeable business circumstance.

What does the WARN Act require in cases of natural disaster?

Generally speaking, covered employers must provide at least 60 calendar days of notice prior to any covered plant closing or mass layoff in NC, SC, GA, and VA (longer under some state laws). Fortunately, even in cases where its notice requirements would otherwise apply, the federal WARN Act provides a specific exception “if the plant closing or mass layoff is due to any form of natural disaster.” This provision would clearly apply to hurricanes.

To qualify for the exception, you must be able to show that the plant closing or mass layoff was a direct result of the natural disaster. You must also provide notices soon as practicable given the circumstances, along with a statement explaining the failure to provide the full 60-day notice – which in this case would obviously be tied to the unforeseeable nature of the hurricane and its aftermath.

The WARN regulations provide that, while a disaster may preclude full or any advance notice, you still must give such notice as is practicable containing as much of the information as is available in the circumstances, whether in advance or after the fact of an employment loss caused by a natural disaster.

Sample notices required under WARN must be given:

- To the Highest Elected Official where the site is located
- To the Employee
- To the Department of Commerce
- To the union official (if applicable)

For your convenience, sample notices are provided in the Toolbox.

For employees residing in the immediate path of the hurricane, any attempt to notify them will be difficult at best. But the law suggests that notice may be effectuated through written correspondence to their last known address. Employers may additionally provide notice electronically if employees have email access.

What if our business was *indirectly* impacted by the hurricane?

Businesses that are indirectly impacted may still benefit from the “unforeseeable business circumstances” exception. This exception is limited in that an employer relying upon it must still provide “as much notice as is practicable, and at that time shall give a brief statement of the basis for reducing the notification period.” In other words, once you are in a position to evaluate the immediate impact of the disaster upon your workforce, you must then provide specific notice to “affected employees” and certain government agencies, along with a statement explaining the failure to provide the full 60-day notice, which in this case would obviously be tied to the unforeseeable nature of the hurricane and its aftermath.

What if my workforce is unionized?

In the case of bargaining unit employees, notice is far simpler, though you may also have a duty to bargain under the NLRA over the effects of the layoffs or terminations. You will need to work closely with the union representative to determine and follow best practices in accordance with existing contracts and expectations.

Will the government really enforce this law in light of a catastrophe?

In the aftermath of hurricanes, and extent to which the Department of Labor will focus upon enforcement of the WARN Act, is always uncertain. Nonetheless, the law provides stiff penalties for non-compliance, including up to 60 days of back pay and benefits, along with a civil penalty of up to \$500 per day. More importantly, it provides for a private cause of action in federal court, meaning that employers may face lawsuits arising under the WARN Act regardless of the enforcing agency’s official position.

Best practice is that you evaluate your current situation to ascertain whether the most recent disaster has triggered a WARN Act qualifying event. If so, the best approach is to work through counsel to arrive at a safe but practical solution to a potentially problematic situation for employers who are impacted by the disaster, either directly or indirectly.