

Q&A on the WARN Act and Georgia Mass Separations:
Understanding state and federal regulations when laying off large groups of employees.
Compiled with assistance from Constangy, Brooks, Smith & Prophete, LLP

In 1988, Congress passed the Worker Adjustment and Retraining Notification (WARN) Act to provide workers with sufficient time to prepare for the transition between the jobs they currently hold and new jobs in the event of mass layoffs. As an employer, understanding your obligations under WARN is important. Your filing of an official WARN notice is typically the impetus for starting the Rapid Response process to assist the employees who might be affected.

If your business is laying off 25 or more people there are state regulations that must be followed, if you are laying off 50 or more people you may be regulated by the federal and state WARN Act and regulations. *Failure to follow these regulations may open your business to lawsuits from former employees and government-imposed penalties.*

• **Am I required to provide WARN notification?**

- A WARN notice is required when a business with 100 or more full-time workers (not counting workers who have fewer than 6 months on the job and workers who work fewer than 20 hours per week) or employs 100 or more workers who work at least a combined 4,000 hours per week is laying off (creating **employment loss**) at least 50 people at a **single site of employment**.
- The WARN Act requires employers to provide written notice at least 60 calendar days in advance of covered **plant closings** and **mass layoffs**. An employer's notice assures that assistance can be provided to affected workers, their families, and the appropriate communities through the **State Rapid Response Dislocated Worker Unit**. The advance notice allows workers and their families transition time to seek alternative jobs or enter skills training programs.

• **What is a "single site of employment"?**

- A single location or a group of contiguous locations. A corporate campus, industrial park, or separate facilities across the street from one another may be considered a single site of employment. For workers who primarily travel it is a home base from which work is assigned or a home base to which workers report.

• **What is "employment loss"?**

- The term "employment loss" means an employment termination, other than a discharge for cause, voluntary departure, or retirement; a layoff exceeding 6 months; or a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period.
- An exception to this definition of employment loss is a case where a worker is reassigned or transferred to employer-sponsored programs, such as retraining or job search activities, and the reassignment does not constitute an involuntary termination or a constructive discharge, and the employee continues to be paid.

- **What is a “plant closing”? Does it only apply to factories and manufacturing?**
 - “Plant closings” do not only include factories and/or manufacturing. A plant closing is the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding part-time employees. All of the employment losses do not have to occur within the unit that is shut down. For example, if the 45-person accounting department in a firm is eliminated and, as a result of the accounting department’s closing, five positions in the clerical support staff are eliminated, a covered plant closing has occurred.
- **What is a “mass layoff”?**
 - The term “mass layoff” means a reduction in force that, does not result from a plant closing and does result in an employment loss at the single site of employment during any 30-day period for:
 - At least 50-499 employees if they represent at least 33% of the total active workforce, excluding any part-time employees.
 - 500 or more employees (excluding any part-time employees).
- **Do we have an obligation to provide notice under the federal WARN Act if we are forced to suspend operations on account of the coronavirus and its aftermath?**
 - Yes. The federal WARN Act imposes a notice obligation on covered employers who implement a “plant closing” or “mass layoff” in certain situations, even when they are forced to do so for economic reasons. Generally speaking, employers must provide at least 60 calendar days of notice prior to any covered **plant closing** or **mass layoff**.
 - However, the WARN Act provides a specific exception when layoffs occur due to unforeseeable business circumstances or are the result of a natural disaster. These provisions **may** apply to the COVID-19 coronavirus. But these exceptions are limited, and employer 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.”
- **What must the notice include?**
 - Notice to individual employees must be written in clear and specific language that employees can easily understand and must contain at a minimum the following requirements:
 - A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect.
 - The expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated.
 - An indication as to whether or not bumping rights exist.
 - The name and telephone number of a company official to contact for further information.
 - The notice may include additional information useful to the employees such as available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.



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- **Who must receive notice?**

- Affected employees.
- Representatives of affected employees (i.e. labor unions).
- The state dislocated worker unit.
- The chief elected official of local government (i.e. the mayor or county commissioner).

- **What are the penalties for non-compliance?**

- 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, suggesting that employers may soon be responding to lawsuits arising under the WARN Act regardless of the enforcing agency's official position.

- **What are the Georgia Mass Separations requisites?**

- A mass separation is 25 or more workers separated on the same day, for the same reason, and the separation is permanent, for an indefinite period or for an expected period of at least seven days. When this occurs, the employer is required to provide the Department with forms DOL-402, Mass Separation Notice, and DOL-1 402A, Mass Separation Notice (Continuation Sheet), per Georgia Department of Labor (GDOL) Rule 300-2-4-.10 (1).

- **Where can I find more information?**

- The Georgia Department of Labor's guidance is available [here](#). You can access the Georgia Department of Labor's (GDOL's) self-service WARN entry notice [here](#). You can send questions about WARN and its requirements to GaWARN@gdol.ga.gov.
- Federal guidance on the WARN Act can be found [here](#).

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