



HR-Alert: New York Amends WARN Act

The New York Worker Adjustment and Retraining Notification (NY WARN) Act requires private businesses with 50 or more full-time employees in New York state to provide 90 days' early warning of closing or layoff to affected employees. The WARN Act is triggered when a business closes a plant or when there is a layoff affecting 33% of the workforce or 250 employees at a single worksite. This is a state law and must be considered alongside the federal WARN Act.

Final Amended Regulations

The New York State Department of Labor (NYSDOL) published [updated regulations](#) concerning the NY WARN Act which are currently in effect. Amendments address remote employees, transfer of employees as a condition of a purchase agreement, and employer notices to additional entities.

Key Updates

Expanded Employer Coverage: In a post-pandemic workplace, the amended regulations clarify that employees “who work remotely but are based at the employment site” shall be counted toward the 50-employee threshold. This expanded definition could mean more employers with less than 50 employees working in New York, since you may need to count remote employees working outside New York, but report to a New York work site.

New Notice Requirements: The amended regulations clarify that notice may be sent electronically and added that notice must include specific content including employer contact, contact information for each affected employee, and total number of affected employees. Notice must also include information on severance packages or other incentives.

New Process for Claiming an Exception: Under the new amended regulations, there is a new process for employers to submit a request to the commissioner to be considered eligible for an exception. The request must be submitted within 10 business days of the required WARN notice being provided to the commissioner and must include various pieces of information such as a statement explaining the reasons for the layoff, closure, or hours reduction as well as other relevant documentation. An investigation would be conducted by the commission who will notify the employer of its findings and next steps.

Additionally, under the Act's exception rules allowing exempt employers to provide less than 90-days' notice remain in place, but with a few changes. The exception is now applicable only to plant closings, which follow the federal WARN Act; public health emergencies that result in a sudden closure would

qualify for this exception.

Sale of Business Provision: The amendments clarify the sales of business provision where sellers will not have an obligation to give WARN notice if the transfer of employees in the sale is a good-faith condition of the purchase agreement, and the purchasing employer does not uphold that condition. In that scenario, the purchasing employer would need to provide notice.

Employer Next Steps

- If your business is faced with a plant closing or mass layoff, it is important to review these requirements to ensure compliance with federal and state WARN laws
- A WARN portal was launched where employers may submit required notices

If you have any questions regarding this HR-Alert, please [email us](#).