

Insights: Alerts

California WARN Act

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic is dynamic and continues to develop. Please monitor this site and/or your email for updates.

The coronavirus is having a substantial impact on the global economy and individual businesses. As affected employers look ahead, many are engaging in contingency planning. This includes looking at the potential need to lower labor costs, and may result in layoffs, furloughs or even plant closures. Many laws affect such decisions. Such laws include federal and state Worker Adjustment and Retraining Notification (WARN) Acts.

Federal and California WARN Acts require covered employers who are considering Mass Layoffs or plant closures to provide notice to their employees, collective bargaining representative of the affected employees, and certain state and local officials. Covered employers under the California WARN Act include every facility that employs or employed 75 or more persons within the last 12 months. In addition, the cessation or substantial cessation of industrial or commercial operations at a facility may trigger California WARN Act's notice requirements regardless of the number of employees affected. Under both the Federal WARN Act and California WARN Act, an employer is required to provide at least 60 days' notice. If an employer fails to provide the required notice, they may be liable for back pay, all benefits, and civil penalties. In California, failure to provide the requisite notice exposes an employer to liability for up to 60 days of wages, an amount equal to the employee's benefits AND medical expenses incurred if the employee was not covered by insurance during the 60 period after being furloughed or laid off. In addition, under California law, there is authority that may require an employer to provide final pay in the event an employee is not brought back to work within the same pay period.

California's WARN Act differs from the Federal WARN Act in certain key respects that affect an employer's flexibility to take quick action without running afoul of the statute. Some of these differences include:

1. Under California law, short-term furloughs would likely be considered a layoff, triggering the CA WARN Act. (The Federal WARN Act does not apply where a layoff lasts less than 6 months.)
2. CA WARN Act applies to layoffs of 50 or more employees regardless of the percentage of the workforce. (Federal WARN applies to layoffs of more than 500 employees or layoffs of 50 or more employees if it is 1/3 of the workforce.)
3. Instead of the unforeseen business circumstance exception that applies to the Federal WARN Act, the CA WARN Act applies the more stringent "physical calamity" exception. Until California agencies provide

additional guidance, it is unclear whether the physical calamity exception applies to the current coronavirus pandemic.

On March 17, 2020, Governor Newsom signed Executive Order No-31-20 to give employers more flexibility by providing an unforeseen business circumstance exception to the requirement to give CA WARN notice, largely tracking the Federal WARN Act. Executive Order No-31-20 suspends the 60 day notice requirement and applies retroactively from March 4, 2020. However, employers are still required to provide “as much notice as is practicable and, at the time notice is given, provide a brief statement of the basis for reducing the notification period.” In addition, as part of the notice, an employer is required to include specific language directing affected employees to unemployment insurance. Executive Order No-31-20 also makes an express finding that the current coronavirus pandemic qualifies as unforeseeable business circumstance to meet the exception under the Federal WARN Act, which similarly requires that an employer must give as much notice as practicable and state the basis for reducing the notification period. Governor Newsom also ordered the Labor and Workforce Development Agency to provide additional guidance on how to implement his recent executive order regarding the WARN Act. The Agency is ordered to provide additional guidance by March 23, 2020.

Should an employer find themselves in a situation where immediate mass layoffs or furloughs may be required, they should seek counsel to help them navigate the WARN Acts and other applicable laws.

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