

Five Things to Know About Wisconsin's Business Closing and Mass Layoff Law

In addition to obligations under the federal Worker Adjustment and Retraining Notification Act (WARN), organizations with employees in Wisconsin also need to be aware of their obligations under the Wisconsin Business Closing and Mass Layoff Law (Wis-WARN). This article provides a general overview of some of the ways in which Wis-WARN is different from the federal WARN Act.

1. Wis-WARN applies to employers with 50 or more employees (excluding certain part-time employees and new hires) in Wisconsin. In contrast, the federal WARN Act applies to employers with 100 or more employees (also excluding certain part-time employees and new hires) located anywhere in the United States. Therefore, many small employers will be subject to Wis-WARN, even though they are not subject to the federal WARN Act.
2. Under Wis-WARN, a "business closing" is defined as a permanent or temporary shutdown of (a) an employment site, or (b) one or more facilities or operating units at an employment site or within a *single municipality*, that affects 25 or more employees (excluding new or low-hour employees). Therefore, if a shutdown occurs at multiple employment sites within a single municipality, it is possible that notice obligations could be triggered under Wis-WARN, even though they may not be triggered under the federal WARN Act.
3. Wis-WARN defines a "mass layoff" as a reduction in an employer's workforce that is not the result of a business closing that affects the following numbers of employees at an employment site or within a *single municipality* (excluding new or low-hour employees): (a) at least 25% of the employer's workforce or 25 employees, whichever is greater, or (b) at least 500 employees. Again, because Wis-WARN, unlike the federal WARN Act, includes the term "single municipality" in the definition of "mass layoff," it is possible that notice obligations could be triggered under Wis-WARN, even though they may not be triggered under the federal WARN Act.
4. Under Wis-WARN, the notice must provide the employee with the contact information of Wisconsin's dislocated worker's unit. This requirement does not exist under the federal WARN Act.
5. Notice may be triggered under Wis-WARN in connection with the sale of all or part of a business—even if no employees actually experience a loss of

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employment. In order to be relieved of notice obligations in this context, the purchaser must agree, in writing, as part of the purchase agreement, to hire "substantially all" of the affected employees, with not more than a six-month break in employment. "Substantially all" is defined as the number of affected employees who, if hired (or offered transfer), would keep the total number of affected employees experiencing a loss of employment under the statutory thresholds for a business closing or mass layoff. Therefore, employers should ensure the purchase agreement adequately protects their interests against Wis-WARN liability.

Given the current economic climate, it is important for lenders to be aware of their potential obligations under this statute. For example, if a lender is acting as an employer of a business by controlling the operation and decision making of the business and supervising its employees, a court may find that the lender is the "employer" and therefore responsible for providing WARN notice upon a mass layoff or business closing.

Under federal law, employers that violate WARN's notice provisions are generally liable to each affected employee for back pay and benefits for 60 days, or one-half the number of days the employee was employed by the employer, whichever is less. In contrast, under Wis-WARN, employers that violate the notice provisions are liable to each affected employee for back pay and benefits for 60 days. Employers may also be liable to the local unit of government within which the facility is located for \$500 for each day of the violation.

If you have any questions regarding the federal WARN Act or Wis-WARN, please contact your Reinhart attorney or any member of Reinhart's Labor and Employment group.

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