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New Illinois WARN Act Will Require Advance Notice Of Certain Reductions In Force Or Relocations Not Covered By The Federal WARN Act

Employers with operations in Illinois should be aware of a new state law requiring written notice 60 days in advance of a covered "mass layoff, relocation or employment loss." Approved by Governor Blagojevich on August 12, 2004, the Illinois Worker Adjustment and Retraining Notification Act ("Illinois WARN Law"), P.A. 93-0915, will take effect January 1, 2005. The Illinois WARN Law is patterned after the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109, but contains many key differences.

The Illinois WARN Law applies to some small employers that are not subject to the federal WARN Act. Specifically, while federal WARN applies to "business enterprises" with 100 or more employees (not counting part-time employees), the Illinois WARN Law applies to "business enterprises" with 75 or more employees (excluding part-time employees).

The Illinois WARN Law also defines notice-triggering events differently than federal WARN. For example, a covered "mass layoff" under Illinois WARN is a reduction in force ("RIF") at a single site of employment that is not the result of a "plant closing" and results in employment losses during any 30-day period (or, in some cases, during any 90-day period) for ***at least 33% of the employees and at least 25 employees, or at least 250 employees regardless of the percentage***. In contrast, under federal WARN, a covered "mass layoff" occurs when a RIF affects at least ***33% and 50*** employees, ***or 500*** employees regardless of the percentage. The new Illinois statute also requires 60-days advance notice of a "relocation," but the term "relocation" is not expressly defined. "Relocation" is not a notice-triggering event under federal WARN.

Another difference is enforcement. Under federal WARN, compliance is not policed by an administrative agency, and alleged violations may lead to civil lawsuits brought by affected employees or their representatives in federal court. In contrast, the Illinois WARN Law provides that the Director of the Illinois Department of Labor is to make rules with "provisions that allow the parties access to administrative hearings for any actions of the Department under this Act." Further, in "any investigation or proceeding under this Act," the Director has authority to "examine the books and records of an employer" in order "to determine whether a violation of this Act has occurred."

The damages and penalties for failure to comply with the Illinois WARN Law generally track the damage provisions of federal WARN, i.e., back pay and the value of employee benefits for each affected employee for up to 60 days, as well as a "civil penalty" of not more than $500 for each day of violation. Unlike federal WARN, however, there is no express provision in the Illinois WARN Law allowing a reasonable attorney's fee for the "prevailing party."

In summary, the notice requirements in Illinois have become increasingly complex, and any covered employer with Illinois operations considering business restructuring will need to take into account the new Illinois WARN Law.

Seyfarth Shaw's Business Restructuring and Transactional Employment (BRTE) Group will continue to monitor further developments under the Illinois WARN Law, including any rule-making that the Illinois Department of Labor may conduct. The BRTE Group, whose work includes managing the labor, employment, employee benefits, and other legal issues associated with business deals and all types of restructuring situations, has substantial experience assisting employers in federal WARN compliance, as well as compliance with comparable state laws.

If you have any questions or would like additional information, please contact your Seyfarth Shaw attorney, or any member of the Seyfarth Shaw BRTE Group.