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Efforts to Expand Mini-WARN Acts' Requirements Underscore the Importance of Knowing State-Level, Post-Sale Obligations Relating to a Plant Closing or a Mass Layoff

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In this article, the authors discuss mini-WARN Acts, which provide obligations – in addition to the obligations under the WARN Act – that could arise upon the sale of a business that results in a reduction in force.

One often-forgotten consideration in many mergers and acquisitions is the federal Worker Adjustment and Retraining Notification Act of 1988 (WARN Act), which generally requires covered employers to provide 60 days' written advance notice to affected employees and certain public officials in the event of a plant closing or a mass layoff. Buyers and sellers also should be aware of "mini-WARN Acts": state or local mass-layoff statutes or regulations providing more obligations that could arise upon the sale of a business that results in a reduction in force.

MINI-WARN ACT IN THE SALE OF A BUSINESS

Under the federal WARN Act, is it the buyer or the seller that is required to provide notice to affected employees? Generally, if a plant closing or mass layoff occurs before or upon the acquisition closing, the seller must

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provide the required notice. If the plant closing or mass layoff occurs after the acquisition becomes effective, the buyer must satisfy the WARN Act's obligations.

The mini-WARN Acts in Illinois, Iowa, New Hampshire, Vermont, Maryland, and Wisconsin affirm this rule in some form or fashion. The Hawaii mini-WARN Act does not explicitly address this issue, but the state's Department of Labor and Industrial Relations has ruled that a buyer in a stock purchase of the controlling interest of a covered establishment may be responsible for providing notice to affected employees if the layoffs (1) occur after the stock purchase, and (2) result from the stock purchase.

Employers should, however, be aware of several states that have unique obligations in this respect. Connecticut, for one, does not have a mini-WARN Act, but its state law requires certain businesses that are sold to give written notice to their retired employees and the Connecticut Department of Labor at least 30 days before the intended sale. The notice must specify the retired employees' post-sale health and life insurance benefits.

Furthermore, while the New York mini-WARN Act follows the general rule regarding notice obligations outlined above, if the transfer of employees is a good-faith condition of the purchase agreement and that condition is not upheld by the purchasing employer, the purchasing employer is obligated to provide notice and the selling employer is relieved of such obligation.

EXPANDED OBLIGATIONS UNDER MINI-WARN ACTS THROUGHOUT THE COUNTRY

In addition to knowing who is responsible for providing notice under states' mini-WARN Acts, buyers and sellers should be aware of other obligations arising after the sale of a business that results in a plant closing or a mass layoff. State mini-WARN Acts and similar regulations generally expand upon or add to the federal WARN Act's directives. However, the scope of obligations varies from state to state, with the differences between the federal WARN Act and states' mini-WARN Acts generally falling into four categories.

First, there are the mini-WARN Acts that expand notice obligations to more employers with fewer employees, including those in California, Illinois, Delaware, Hawaii, Iowa, Maryland, New Hampshire, New York, Tennessee, Vermont and Wisconsin.

Second, some mini-WARN Acts, including those in California, Illinois, Iowa, New Hampshire, New Jersey, New York, Vermont and Wisconsin, reduce the number of affected employees necessary to constitute a covered mass layoff. For example, in New York, the sale of a business resulting in layoffs of 300 full-time employees constituting less than 33 percent of the full time workforce at a single site would not require advance

notice under the federal WARN Act (which sets the number at 500 full-time employees or 50 or more full-time workers who constitute at least 33 percent of the employer's workforce) but would require it under New York's mini-WARN Act (which sets the number of full-time employees at 250 or 25 if such number represents at least 33 percent of the workforce).

Third, some mini-WARN Acts expand temporal notice requirements for employers. The Maine, New Jersey and New York mini-WARN Acts require 90 days' notice to affected employees and government parties rather than the federal counterpart's requirement of 60 days' notice. And in Illinois, an owner of an investor-owned electric generating plant or a coal-mining operation is subject to a staggering two-year written notice requirement.

Fourth, some states, including Hawaii, Maine and New Jersey, impose severance or similar obligations on businesses following a plant closing or a mass layoff. For example, employers in Maine must pay affected employees severance pay equal to one week's pay per year of employment and partial pay for any partial year. And in New Jersey, severance obligations are the greater of one week of pay per year of employment or the severance pay to which they are entitled under a collective bargaining agreement or other employer policy.

Finally, some states impose civil penalties that surpass those provided under the federal WARN Act, which can be up to \$500 per day for noncompliance. Maryland's mini-WARN Act, for example, subjects non-compliant employers to civil penalties of up to \$10,000 per day. And if a Maine-based employer fails to pay affected employees the above-referenced severance following a mass layoff, it could be subject to a civil penalty of \$1,000 per violation, in addition to a \$500- per-day penalty should the employer fail to provide the required notice.

Given this patchwork of laws and regulations expanding WARN Act-type obligations on employers, it is important for buyers and sellers to know the lay of the land in each state where they intend to transact business so that they can determine early on whether certain obligations could materially impact a deal.

STATES' EFFORTS TO EXPAND MINI-WARN ACT OBLIGATIONS

Looking forward, in addition to being cognizant of state mini-WARN Acts and similar regulations already in place, buyers and sellers should follow developments in this space as they plan for future deals.

Just a few months ago, New York Governor Kathy Hochul announced that she will direct the New York Department of Labor to amend the New York mini-WARN Act regulations to require that employers disclose in their state WARN notices whether artificial intelligence (AI) automation played a role in reaching a business decision that led to a mass

layoff or a plant closing. This requirement would be the first of its kind as it pertains to state-level WARN regulations.

The state of Washington is currently considering a bill (SB5525)¹ that would enact its first mini-WARN Act covering employers with 50 or more full-time employees. And earlier this year, a member of the Illinois General Assembly introduced House Bill 3820,² which would amend the Illinois mini-WARN Act to require employers to provide to an employee affected by a plant closing or a mass layoff severance pay equal to one week of pay for each full year of employment. House Bill 3820 would also require Illinois employers to compensate affected employees with an additional four weeks of pay if the employer fails to give the notice to affected employees required under the Illinois mini-WARN Act.

Employers can expect continued efforts to change state-level obligations resulting from a plant closing or a mass layoff, especially as local jurisdictions grapple with continued disruptions to the workplace, such as with AI automation and the COVID-19 pandemic's lasting impact on work culture.

IN SUMMARY

- Most states' mini-WARN Acts follow the general rule that, if a plant closing or mass layoff occurs in conjunction with the sale of a company, affected employees must be notified by the seller when the plant closing or mass layoff occurs before or upon closing, and by the buyer when it occurs after closing.
- State and local laws and regulations generally expand the federal WARN Act's notice obligations to more employers and may provide for increased penalties for noncompliance.
- In response to artificial intelligence automation, the economic downturn caused by the COVID-19 pandemic and the anticipated diminishment of federal regulations in the workplace, states are adding more protections for affected employees to already complex mini-WARN Act obligations.

NOTES

1. Since this article was written, Governor Ferguson signed the bill into law and its effective date is 7/27/25, <https://app.leg.wa.gov/BillSummary/?BillNumber=5525&Year=2025&Initiative=false>.

2. <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3820&GAID=18&DocTypeID=HB&SessionID=114&GA=104>. Since this article was written, the Illinois legislature decided to not move forward with HB 3820.

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