

Illinois Worker Adjustment and Retraining Notification Act

On August 12, 2004, Governor Blagojevich signed the Illinois Worker Adjustment and Retraining Notification Act (“IWARN”) into law. The new law, which is similar to the federal Worker Adjustment and Retraining Notification Act (“WARN”), becomes effective January 1, 2005.

COMPARISON OF IWARN AND WARN		
	IWARN	WARN
<u>Employers Covered:</u>	Applies to employers with seventy-five (75) or more full-time workers or those employers that employ seventy-five (75) or more employees who in the aggregate work at least 4,000 hours per week (exclusive of overtime).	Employers are generally covered if they have one-hundred (100) or more employees, not counting employees who have worked less than six (6) months in the last 12 months or who work an average of less than twenty (20) hours per week, or those employers that employ one-hundred (100) or more employee, including part-time employees, who in the aggregate work at least 4,000 hours per week (exclusive of overtime).
<u>Definition of Employment Loss:</u>	Employment loss includes 1) an employment termination, other than a discharge for cause, voluntary departure, or retirement; 2) a layoff exceeding six (6) months; or 3) a reduction in hours of work of more than fifty percent (50%) during each month of any six-month period.	Same as IWARN.
<u>Definition of Mass Layoff:</u>	A reduction in force which: 1) is not the result of a plant closing; and 2) results in an employment loss at the single site of employment during any 30-day period for: a) at least thirty-three percent (33%) of the full-time employees and at least twenty-five (25) employees; or b) at least two-hundred fifty (250) full-time	A reduction in force which: 1) is not the result of a plant closing; and 2) results in an employment loss at the single site of employment during any 30-day period for: a) at least thirty-three percent (33%) of the full-time employees and at least fifty (50) employees; or b) at least five-hundred (500) full-time

	employees.	employees.
<u>Definition of Part-Time Employee:</u>	An employee who is employed for an average of fewer than twenty (20) hours per week or who has been employed for fewer than six (6) of the twelve (12) months preceding the date on which notice is required.	Same as IWARN.
<u>Definition of Plant Closing:</u>	The permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for fifty (50) or more full-time employees.	Same as IWARN.
<u>Notification Requirements:</u>	An employer may not implement a mass layoff, relocation, or employment loss (defined as an employment termination, other than a discharge for cause, voluntary departure, or retirement, a layoff exceeding six (6) months or a reduction in hours of work of more than fifty percent (50%) during each month of any 6-month period) unless, sixty (60) days before the action takes effect, the employer gives written notice to: 1) the affected employees and representatives of affected employees; 2) the Department of Commerce and Economic Opportunity; and 3) the chief elected official of each municipal and county government within which the employment loss, relocation or mass layoff occurs.	An employer may not implement a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order to: 1) each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and 2) the State dislocated worker unit; and 3) the chief elected official of the unit of local government within which such closing or layoff is to occur. If there is more than one such unit, the employer shall notify the unit of local government to which the employer pays the highest taxes for the year preceding the year for which the determination is made.
	An employer may either mail the notice to the employee's last known address or include the	Same as IWARN.

	notice in the employee's paycheck.	
<u>When Notice is Not Required:</u>	An employer is not required to provide notice if a mass layoff, relocation, or employment loss is necessitated by a physical calamity or an act of terrorism or war.	Notice is not required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the nation's farmland.
<u>Notification Requirements In Case of Sale:</u>	Where part of all of an employer's business is for sale, the seller is responsible for providing notice for any plant closing or mass layoff up to and including the effective date of the sale. After the sale of part or all of an employer's business, the purchaser is responsible for providing notice for any plant closing or mass layoff. A full-time employee of the seller as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.	Same as IWARN.
<u>Exceptions:</u>	In the case of a plant closing, an employer is not required to comply with the notice requirement if the Illinois Department of Labor ("IDOL") determines: 1) the employer was actively seeking capital or business at the time the notice would have been required; 2) the capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination; and 3) the employer reasonably and in good faith believed that giving the required notice would have precluded it from obtaining the needed capital or business; or 4) the need for notice was not reasonably foreseeable at the time the notice would have been	An employer may implement the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time the notice would have been required: 1) the employer was actively seeking capital or business which, 2) if obtained would have enabled the employer to avoid or postpone the shutdown; and 3) the employer reasonably and in good faith believed that giving the required notice would have precluded it from obtaining the needed capital or business.

	required.	
	<p>An employer is not required to comply with the notice requirements if 1) the plant being closed is a temporary facility or the plant closing or layoff results from the completion of a particular project or undertaking and the employees were hired with the understanding that their employment would end when the project ended or facility closed, or 2) the closing or layoff constitutes a strike or lockout not intended to evade the requirements of the Act.</p> <p>An employer shall provide as much notice as is practicable and where the notification period is reduced, the employer shall provide a brief statement of the basis for the reduction.</p>	<p>Same as IWARN</p> <p>--</p>
	An employer is not required to serve written notice when it permanently replaces a person deemed to be an economic striker under the National Labor Relations Act.	Same as IWARN.
<u>Extension of Layoff Period:</u>	A layoff of more than six (6) months which, at its outset, was announced to be a layoff of six (6) months or less shall be treated as an employment loss under the Act unless: 1) the extension is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and 2) notice is given at the time it becomes reasonably foreseeable that the extension beyond six (6) months	Same as IWARN.

	will be required.	
<u>Determining Whether A Plant Closing or Mass Layoff Has Occurred or Will Occur:</u>	Employment losses for two (2) or more groups at a single site of employment, each of which is less than the minimum number of employees as stated in the definitions of plant closing or mass layoff, but which in the aggregate exceed that minimum number, and which occur within any 90-day period is considered a plant closing or mass layoff unless the employer demonstrates the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of the Act.	Same as IWARN.
<u>Enforcement of Act:</u>	The Director of Labor has the authority to examine an employer's books and records, but only to the extent to determine whether a violation of the Act has occurred.	Enforcement of WARN requirements is through the United States district courts. Workers, representatives of employees and units of local government may bring individual or class action suits. The court may, in its discretion, allow the prevailing party a reasonable attorney's fee as part of the costs.
	Information the Department obtains from any employer regarding the books, records, or wages paid to workers during the administration of the Act shall: 1) be confidential; 2) not be published or open to public inspection; 3) not be used in any court in any pending action or proceeding; and 4) not be admissible in evidence in any action or proceeding other than one arising out of the Act.	--
	The Director of Labor will prescribe rules necessary to carry	

	out the Act. The rules will include provisions that allow the parties access to administrative hearings for Department actions under the Act.	
<u>Employer Liability:</u>	An employer that fails to give the required notice before implementing a mass layoff, relocation, or employment loss is liable to each employee entitled to notice who loses his or her employment for: 1) back pay at the employee's average regular rate of compensation for the last three years of employment, or the employee's final rate of compensation, whichever is higher; 2) the value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.	Same as IWARN.
<u>Period of Liability:</u>	Liability is calculated for the period of the employer's violation, up to a maximum of sixty (60) days, or one-half the number of days the employee was employed by the employer, whichever period is smaller.	Up to a maximum of sixty (60) days, but in no event for more than one-half the number of days the employee was employed by the employer.
<u>Reduction of Liability:</u>	An employer's liability is reduced by: 1) wages, except vacation moneys accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation; 2) voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation; 3) any	An employer's liability is reduced by: 1) wages paid by the employer to the employee for the period of the violation – 2) and 3) are the same as IWARN - 4) any liability incurred with respect to a defined benefits plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the

	<p>payments by the employer to a third party or trustee, on behalf of and attributable to the employee for the period of the violation; 4) any liability paid by the employer under federal law.</p> <p>The Director may reduce the amount of liability if an employer proves that the act or omission that violated the Act was in good faith and the employer had reasonable grounds for believing the act or omission was not a violation of the Act.</p>	<p>violation.</p> <p>--</p>
<u>Civil Penalty:</u>	<p>An employer that fails to provide required notice to the Department of Commerce and Economic Opportunity and the chief elected municipal and county officials is subject to a civil penalty of not more than \$500 for each day of the violation. An employer is not subject to a civil penalty if the employer pays to all applicable employees the amounts for which the employer is liable within three (3) weeks from the date the employer implements the mass layoff, relocation, or employment loss.</p> <p>The total amount of penalties may not exceed the maximum amount of penalties under federal law for the same violation.</p> <p>Any penalty amount paid by the employer under federal law is considered a payment under IWARN.</p>	<p>An employer that fails to provide required notice to a unit of local government shall be subject to civil penalty of not more than \$500 for each day of the violation. An employer is not subject to a civil penalty if the employer pays to all applicable employees the amounts for which the employer is liable within three (3) weeks from the date the employer implements the shutdown or layoff.</p>
<u>Advisory Notice:</u>	<p>The Department of Commerce and Economic Opportunity, with the cooperation of the Department of Employment Security (“IDES”)</p>	<p>--</p>

	<p>shall, before September 30 of each year, shall issue a written report to each employer that reported to IDES that the employer paid wages to seventy-five (75) or more individuals with respect to any quarter in the immediately preceding calendar year. The notice must indicate the employer may be subject to the Act and must generally advise the employer about the Act's requirements and remedies provided for violations of the Act.</p>	
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