



NATIONAL WORKRIGHTS INSTITUTE

Bringing Human Rights to the Workplace

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PLANT CLOSINGS AND MASS LAYOFFS THE RIGHT TO KNOW

Plant closings and mass layoffs have become increasingly common in recent years. According to the federal government's General Accounting Office, nearly 2 million employees lose their jobs every year to plant closings and mass layoffs.

The least an employer can do is tell employees that a plant closing or layoff is coming. Unfortunately, most employers don't. The result is that people have no opportunity to look for another job while they are still employed. They suddenly find themselves with no income to support themselves and their families. In many cases, they lose their medical care as well. The financial harm and emotional distress this inflicts is both enormous and unjustifiable.

Congress responded in 1988 by passing the WARN Act, which requires employers to give employees and the community 60 days notice that a plant is going to be closed or a major layoff is scheduled.

While WARN was a major step forward, it is not enough. A recent study by the United States General Accounting Office (GAO) found that most people who lose their jobs because of a plant closing or mass layoff still do not receive notice.

Most Plant Closings and Mass Layoffs are not Covered by WARN

One reason employees do not receive notice is that their situation is not covered by the WARN Act. WARN covers only employers with 100 or more employees. This eliminates any protection for the 36% of employees who work for companies with less than 100 employees.

In addition, WARN covers only plant closings or mass layoffs that affect 50 or more employees and at least one third of all employees. These restrictions reduce still further the number of employees who are protected. The General Accounting Office estimates that 75% of employees who lose their jobs because of plant closings or mass layoffs are not protected by the WARN Act, even in theory.

Most Employers Fail to Provide Legally Required Warnings

The GAO estimates that employers provided the legally required notice in only 36% of the 8,350 plant closings and mass layoffs that occurred in 2001. Several factors contribute to employers' widespread failure to follow the law. The first is that the penalties for violating the law are very low. Employers who violate WARN are only required to pay employees up to 60 days pay in lieu of the notice they did not receive. There are no provisions for emotional distress, punitive damages, or other penalties. Because employers profit by withholding notice, and the penalties for violating WARN are so small, there is little incentive to obey the law.

In addition, there is no government enforcement of WARN. The exclusive remedy is a private civil action. In many cases, however, the limited damages make it very difficult for employees involved in smaller plant closings/mass layoffs to afford counsel. Employers' awareness of this further reduces incentives to follow the law.

The combined impact of WARN's limited scope and employer non-compliance are enormous. The GAO found that only 9% of employees who lose their jobs because of a plant closing or mass layoff receive notice. The other 91% of employees WARN was intended to help receive no protection.

WARN Act Notice is Inadequate

Even when employees receive notice that they are losing their job, the notice is insufficient. According to the Bureau of Labor Statistics, the average duration of unemployment is approximately 65 days. WARN, however, provides employees with only 60 days notice. This means that a slight majority of employees, even if they receive notice, do not have time to find another job before they are fired. In some cases, the difference is relatively small. But approximately 35% of people who lose their jobs are unemployed for 100 days or more. For these people, 60 days notice is seriously insufficient.

Employees Cannot Collect what they are Owed

When employees are forced to bring legal action against their employer for violating WARN, the employer is frequently in bankruptcy. Even if they prevail, they must contend with other claims on the employers' assets. It is not clear that back-pay awards under WARN are entitled to priority treatment. This can result in employees being unable to collect their award.

WARN Act Reform

Because the WARN Act falls short of its goal, legislation has been introduced to strengthen it. The **FOREWARN Act** (S. 1792) was introduced in 2007 by Senator Sherrod Brown (D-Ohio).

FOREWARN addresses each of the problems with the WARN Act as follows:

Coverage

The number of employees required for an employer to be covered by is decreased from 100 to 50.

The number of employees who must lose their job for notice to be required is reduced from 50 to 25.

Length of Notice

The length of notice employers are required to provide is increased from 60 to 90 days.

Enforcement

The penalty for failing to provide notice is increased from one day's pay for each day of notice the employee did not receive to two days pay.

United States Department of Labor is given the authority to enforce WARN Act violations.

Enacting FOREWARN would provide employees for the first time with the notice they need to minimize the hardship caused by plant closings and mass layoffs.

NWI calls upon all who believe that people should not be kept in the dark when they are about to lose their job to write their Senator and urge him or her to support the FOREWARN Act (S. 1792). The NWI website (www.workrights.org) contains a sample letter.

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