

The WARN Act and Considerations for Broadcasters

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The Worker Adjustment and Retraining Notification Act (the WARN Act), 29 U.S.C. §§ 2101–2109 (1988), requires employers to notify their employees at least sixty (60) calendar days prior to a plant closing or a mass layoff in order to allow employees and their families a transition period between jobs. For most broadcasters, a *plant closing* or *mass layoff* could occur in connection with the sale of a station.

Employers subject to the WARN Act's notification requirements are business enterprises that employ (i) 100 or more employees, excluding part-time employees, or (ii) 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

A “plant closing” is defined as the following:

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 during any 30-day period at the single site of employment for 50 or more employees, excluding any part-time employees. An employment action that results in the effective cessation of production or the work performed by a unit, even if a few employees remain, is a shutdown. A temporary shutdown triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding six months, or reductions in hours of work as specified under the definition of employment loss.

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A “mass layoff” is defined as the following:

[...] a reduction in force which first, is not the result of a plant closing and second, results in an employment loss at the single site of employment during any 30-day period for:

- At least 33% of the active employees, excluding part-time employees, and
- At least 50 employees, excluding part-time employees.

Where 500 or more employees (excluding part-time employees) are affected, the 33% requirement does not apply, and notice is required if the other criteria are met. Plant closings involve employment loss that results from the shutdown of one or more distinct units within a single site or the entire site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

If an employer meets the definitional requirements set forth above, it must provide notice to its employees. Although there is no set form of notice, it must be in writing, and the content of the notice will depend on to whom the notice is sent. For example, if the notice is sent to the representative(s) of the affected employees, it must contain the following:

- Name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;
- Statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;
- Expected date of the first separation and the anticipated schedule for making separations; and
- Job titles of positions to be affected and the names of the workers currently holding affected jobs.

If the notice is sent directly to the affected employees, it must be in a language understandable to the employees and contain the following:

- Statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;
- Expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated;
- An indication whether or not bumping rights exist; and
- Name and telephone number of a company official to contact for further information.

The WARN Act does not supersede an agreement or other laws that require the employer to provide notice sooner or under different circumstances. For example, there are several states that have WARN Act equivalents (often referred to as mini-WARN Acts). These states include California, Illinois, Maryland, New Jersey, New York, Tennessee and Wisconsin. If the stations being sold are located in one of these states, the seller/employer should confirm that its state's mini-WARN Act is no more stringent than the WARN Act (for

example, New York's mini-WARN Act covers employers with 50 or more full-time workers in New York State and the employer must provide 90 days notice to the affected employees).

The WARN Act (and the mini-WARN Acts) is applicable to employers in all industries; however, there are considerations broadcasters, in particular, should think about in the context of the sale of stations. For example, given the sometimes uncertain timing of the FCC consent (due to petitions, complaints, etc.), when should an employer send the 60-day notice to its employees? One way a seller/employer may protect itself is to build a provision into the purchase and sale agreement that states the seller may postpone closing without liability until the applicable notice period under the WARN Act has expired. Also, the hiring process by the buyer may need to be completed sooner rather than later so the employer has at least 60 days prior to the closing to provide the WARN Act notice to the employees the buyer will not retain. This issue may also be addressed in the purchase and sale agreement by providing that the buyer will offer employment to all of the seller's employees. Another consideration, although more of a business consideration than a legal one, is how the seller/employer should handle its employees if the closing does not occur.