The Workers Adjustment and Retaining Notification (WARN) Act requires employers with over 100 employees to follow certain notice requirements when laying off employees. 20 C.F.R. 693.6. WARN requires employers with 100 employees or more to give affected workers at least 60 days' notice of any plant closing or mass layoff, with exceptions for, among others, “unforeseeable business circumstances.”

However, states can enact their own “mini-WARN” laws if the laws are (1) more protective to employees; (2) apply to smaller businesses; or (3) do not conflict with the federal requirements. Twenty states* have chosen to develop their own requirements that may track or modify the federal requirements: California, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Tennessee, and Wisconsin.

A selection of these states’ requirements are below; however, this list is not exhaustive and you should always make sure to confer with your outside counsel regarding your state’s specific requirements.

California: California’s “CA-WARN” has substantial differences from its federal counterpart: it applies to employers of 75 persons instead of 100, is required when 50 or more employees are laid off in a 30-day period (regardless of the percentage of the workforce) and does not have a “temporary facility closing” exception. However,
in light of the COVID-19 crisis, California has temporarily suspended its 60-day notice requirement.

**Connecticut:** Connecticut’s law requires only that a closing employer continue its employee’s health insurance for 120 days; it does not add on any additional notice requirements.

**Illinois:** Illinois’ notice requirement is applicable to employers who have more than 75 employees (exclusive of part-time employees) or more than 75 employees who work at least 4,000 hours per week in the aggregate (exclusive of overtime). These employers must give notice if they are laying off 33 percent of their workforce (at least 25 employees) or 250 employees (all excluding part-time workers).

**Maryland:** Businesses who employ one individual in the state of Maryland must follow Maryland’s “mini-WARN” requirement. Employers must give statutory notice when separating 25 or more employees for the same reason around the same time for a period that is “permanent, indefinite, or expected to exceed seven days.”

**New York:** New York’s notice requirement is applicable to employers who have more than 50 employees or 2,000 hours per week in the aggregate. However, these employers may not have to give notice unless they are separating a certain amount of employees, determined by the reason for the separations (plant closing, layoff, relocation or a reduction in hours). Employers required to give notice must do so 90 days before any lay-offs, which can be reduced if the criteria for “faltering business, unforeseeable business circumstances or natural disaster exceptions” is met.

**New Jersey:** As we’ve covered, New Jersey recently modified its notice requirements, which will go into effect on July 19, 2020. Severance pay is now guaranteed to terminated employees. Notice requirements are triggered when a transfer or termination of operations results in the loss of 50 or more employees.

**Ohio:** Ohio's mini-WARN statute applies to employers with at least one employee and requires notice when 50 or more employees are laid off in a seven-day period. Employers must provide three working days’ notice before the layoff instead of the federal 60 day requirement.

*Kansas does not have its own law, but any mass layoff requires Secretary of Labor approval. Additionally, Pennsylvania does not have its own requirement but the City of Philadelphia does.

*Given the speed with which COVID-19 has prompted a wide-range of legal action at the federal, state and local governmental levels, this blog article is not exhaustive. Things are changing quickly and there is no clear-cut authority or bright line rules. This is not an unequivocal statement of the law, but instead represents our best interpretation of where things currently stand. This post does not address the potential impacts of the numerous other local, state and federal orders that have been issued in response to the COVID-19 pandemic.*

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