

SQUIRE
SANDERS

LEGAL
COUNSEL
WORLDWIDE



LABOR AND EMPLOYMENT ALERT

January 2009

www.ssd.com

Be Fore"WARN"ed: Newly Enacted New York WARN Act Expands Employers' Obligations When Considering Reductions in Force

The New York Worker Adjustment and Retraining Notification Act (NY WARN Act), effective February 1, 2009, imposes requirements in addition to those under the current federal WARN Act, with wide-reaching implications for employers facing downsizings of New York-based employees. Additions include:

- **Expansion of the definition of employer and further advance notice required.** The NY WARN Act applies to private sector employers of **50 or more full-time employees**, while the federal WARN Act covers employers of 100 or more employees. The NY WARN Act requires **90 days' advance written notice** of a mass layoff, plant closing or relocation to affected employees, their representatives, the New York State Department of Labor and local workforce partners, while the federal law requires only 60 days' advance notice to affected employees.
- **Broadening of events triggering the NY WARN ACT requirements.** A "plant closing" triggering the new requirements occurs when as few as **25 employees are affected** compared to 50 employees under the federal WARN Act. A "mass layoff" triggering the new requirements occurs when there is **at least a 33 percent loss of work force of only 25 employees or if at least 250 total employees are affected**. The federal WARN Act is triggered when there is at least a 33 percent loss of work force of 50 or more employees or if at least 500 or more employees are affected. A "relocation" triggering the new requirements occurs when **substantially all operations of an employer's plant is relocated at least 50 miles away**. The federal WARN Act has no such triggering event.

Founded in 1890, Squire, Sanders & Dempsey L.L.P. has lawyers in 32 offices and 15 countries around the world. With one of the strongest integrated global platforms and our longstanding one-firm philosophy, Squire Sanders provides seamless [legal counsel worldwide](#).

Contacts:

[D. Lewis Clark Jr.](#)
+1.602.528.4065
+1.614.365.2703
+1.212.407.0124

[Susan C. Hastings](#)
+1.216.479.8723

[William A. Nolan](#)
+1.614.365.2784

[Steven Skulnik](#)
+1.212.872.9836

Squire Sanders publishes on a number of other topics. To see a list of options and to sign up for a mailing, visit <http://www.ssd.com/subscribe>

[Unsubscribe](#)

Cincinnati · Cleveland · Columbus · Houston · Los Angeles · Miami · New York · Palo Alto · Phoenix · San Francisco · Tallahassee · Tampa · Tysons Corner · Washington DC · West Palm Beach | Bogotá+ · Buenos Aires+ · Caracas · La Paz+ · Lima+ · Panamá+ · Rio de Janeiro · Santiago+ · Santo Domingo · São Paulo | Bratislava · Brussels · Bucharest+ · Budapest · Dublin+ · Frankfurt · Kyiv · London · Moscow · Prague · Warsaw | Beijing · Hong Kong · Shanghai · Tokyo | +Independent network firm

- **There are greater enforcement mechanisms and penalties.** Although a New York employee can bring a private right of action under the NY WARN Act, just as an employee can under the federal WARN Act, *the New York State Department of Labor has the authority to enforce the statute administratively.* Also, an employer who violates the NY WARN Act can be required to pay *civil penalties of up to US\$500 each day* a violation occurs in addition to back pay and the cost of benefits for the time period of the violation, up to a maximum of 60 days.

Although these new requirements come at a time when many employers are facing tough economic and restructuring decisions, the NY WARN Act does allow employers to shorten the notice period if the mass layoff or plant closing was not reasonably foreseeable; the loss of workforce is a result of terrorism, a natural disaster, or a strike or lockout; the facility to be closed was temporary pending the completion of a project; or if the employer was actively seeking new capital or business in an attempt to prevent the layoff or closing, but was unsuccessful in obtaining such capital or business.

For further information regarding the New York WARN Act or for assistance with reductions in force or downsizing, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

©Squire, Sanders & Dempsey L.L.P.
All Rights Reserved
January 2009