Order Code RL31250

CRS Report for Congress

The Worker Adjustment and Retraining Notification Act (WARN)

Updated February 20, 2004

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Summary

In February 2004, S. 2090 (the Jobs for America Act) was introduced to amend the provisions of the Worker Adjustment and Retraining Notification Act (WARN) about giving advance notice of mass layoffs and plant closings in order to assist employees who lose their jobs as a result of offshore outsourcing (also referred to as offshoring) and to obtain statistics on job losses that result from U.S. companies sending work formerly performed by employees located in the United States to companies located in other countries. A few years earlier, the job losses associated with the September 2001 terrorist attacks and with the recession that ended in November 2001 combined to renew interest in the only piece of federal legislation — the Worker Adjustment and Retraining Notification Act — designed specifically for those who become unemployed as part of mass layoffs and plant closings.

Generally, the WARN Act requires employers to provide written notice to displaced workers or their representatives, state dislocated worker units, and the chief elected official of a unit of local government at least 60 days before a plant closing or mass layoff is expected to occur. Employers do not have to submit WARN notices to a central location (e.g., the U.S. Department of Labor). Shorter notice may be provided in three instances. There are a number of other exceptions to and exemptions from the law's notification requirement.

Relatively small employers and relatively small, short-term layoffs are not subject to the WARN Act. For-profit and non-profit employers with 100 or more employees, excluding part-time employees, must provide advance notice. Although part-time employees are not counted toward the threshold for determining employer coverage under the law, they nonetheless are due advance notice from covered employers. A plant closing is a shutdown of one or more employment sites or facilities or operating units within a single site that produces job losses for at least 50 employees, other than part-timers, within any 30-day period. A mass layoff is an employment loss at a job site, regardless of whether a unit is shut down, within any 30-day period affecting (1) 50-499 employees (excluding part-timers) if they make up at least 33% of an employer's active workforce (excluding part-timers), *or* (2) at least 500 employees (excluding part-timers). An employment loss must involve a layoff lasting at least 6 months, *or* a more than 50% reduction in employees' work hours (excluding overtime) during each month of any 6-month period.

Employees, their representatives, or units of local government can bring civil actions in federal district court against employers thought to have violated the Worker Adjustment and Retraining Notification Act. A court does not have the authority to stop a plant closing or mass layoff. The U.S. Department of Labor does not have any investigative or enforcement authority under the law. Employers' maximum liability is back pay and benefits for each day that notice was not provided, although the amount of the penalty may be reduced.

This report will be updated periodically.

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Legislation was first introduced at the federal level in 1973 to require, among other things, advance notice of plant closings and large-scale (mass) layoffs.[1] The issue proved to be contentious and more than a decade elapsed before the Congress enacted the Worker Adjustment and Retraining Notification Act (WARN, P.L. 100-379) in 1988, without President Reagan's signature.[2] The Act became effective in February 1989. It generated fairly little interest during a period marked by a brief, mild recession at the outset of the 1990s and then by the longest economic expansion in the nation's history (120 months).

In 2001, there was renewed interest in the mandated obligations of employers toward employees let go in mass layoffs and plant closings because the frequency and size of these events increased markedly during the latest recession, which ended in November 2001, and following the terrorist attacks of September 11, 2001.[3] More recently, legislation to amend the WARN Act has been introduced by policymakers trying to grapple with the issue of offshore outsourcing (also known as offshoring) whereby companies located in the United States send work that was being done, or that could have been done, by U.S. workers to companies located in other countries. S. 2090 (the Jobs for America Act), which was introduced in February 2004, would include under the Act employer actions that have the effect of creating, shifting, or transferring positions or facilities outside the United States and in so doing cause a job loss for at least 15 employees during any 30-day period. In addition to lengthening the notification period to 90 days and lowering the size-threshold for mass layoffs to those involving at least 50 employees, the bill also would amend the Act to require the Secretary of Labor to issue statistical reports based upon the written notices of plant closings, mass layoffs, and offshoring that covered employers would be required to provide to the Secretary. Under current law, employers do not provide the notices to the federal government.

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[1] The Trade Act of 1974 (Title II, Section 283 of P.L. 93-618) *asked* firms that planned to move operations outside the United States to provide at least 60 days' advance notice to employees likely to be adversely affected by their actions as well as to the Secretaries of Labor and Commerce.

[2] For more information see U.S. House of Representatives, Committee on Education and Labor, *Legislative History of S. 2527, 100th Congress, Worker Adjustment and Retraining Notification Act, Public Law 100-379*, 100th Cong., 2nd sess., serial no. 101-K (Washington: GPO, 1990).

[3] For information on mass layoffs beyond those prompted by September 11, 2001 see CRS Report RL30799, *Unemployment Through Layoffs: What Are The Reasons?*, by Linda Levine.

This report describes the advance notice requirement contained in the only piece of federal legislation designed specifically for those who lose jobs as part of mass layoffs or plant closings. The magnitude of worker displacement in mass layoffs and closings that resulted from the terrorist attacks is analyzed in the report's Appendix.

Length and Intent of the Act's Advance Notice Requirement

Generally, the WARN Act requires employers to provide written notice to affected workers or their representatives at least *60 days* before a plant closing or mass layoff is expected to occur. Workers affected by a mass layoff would, for example, include those who might be "bumped" from their jobs by more senior workers whose positions had been eliminated.

State dislocated worker units must be forewarned as well, so that they may provide assistance under the Workforce Investment Act, for example. The chief elected official of a unit of local government also must receive notice 60 days before a plant closing or mass layoff is initiated. (See **Figure 1** for the three instances in which the advance notice period can be of shorter duration.)

The WARN Act does not supersede collective bargaining agreements or other laws whose terms concerning advance notice or related employee rights are superior to those of the Act (e.g., the provision of severance payments). If a state plant closing law requires employers to provide more than 60 days' advance notice, the federal law's notice period runs concurrently with the state's requirement.

P.L. 100-379's advance notice period is intended to afford employees time to find other jobs, obtain retraining, or otherwise adjust to their soon-to-be-changed employment situation. As opposed to the termination of a few employees, large numbers of workers released into a local labor market at approximately the same time would produce keen competition for job vacancies. The displaced workers' job-seeking efforts could be particularly difficult if they are released from a declining industry in which nearby firms producing similar goods or services can offer few employment opportunities. Similarly, a declining geographic area (i.e., one with a shrinking or stagnant job base) could have much more trouble absorbing many workers laid off at once as opposed to a few employees let go from time to time.

Figure 1. Three Reasons for a Notice Period of Less Than 60 Days

The faltering company exception: Employers can provide reduced notice for plant closings but not for mass layoffs, if they had been seeking financing or business for their faltering enterprises, thought they had a realistic chance of obtaining funds or new business sufficient to allow the facilities to remain open, and believed in good faith that giving notice would have prevented them from getting the capital or business necessary to continue their operations.

The unforeseeable business circumstances exception: Employers can provide reduced notice if they could not reasonably foresee the business circumstances that provoked the plant closings or mass layoffs. Dire circumstances that occurred without warning and that were outside the employer's control could include a major client terminating a large contract with the employer, a strike at a supplier of key parts to the employer, or the swift onset of a deep economic downturn, or a non-natural disaster (e.g., a terrorist attack).

The natural disaster exception: The occurrence of floods, earthquakes, droughts, storms, and similar effects of nature fulfill this exception to the 60-day advance notice requirement for plant closings or mass layoffs. If closings or layoffs are indirectly due to natural disasters, the exception would not apply; however, the unforeseen business circumstances exception might.

Whom Does the Act Cover?

Relatively small employers are not subject to the WARN Act. Private for-profit and non-profit employers with *100 or more employees* excluding part-time employees, or the hourly equivalent,[4] must provide notice of impending plant closings or mass layoffs. Neither federal, state, nor local governments are covered by P.L. 100-379, but public and quasi-public entities that engage in business and that function independently of those governments are covered if they meet the employer-size threshold.

Workers covered by the Act include hourly and salaried employees, managers, and supervisors on the employer's payroll. Persons who are temporarily laid off or are on leave but have a reasonable expectation of being recalled also are covered and counted toward the employer-size threshold. The law does not apply to an employer's business partners, contract employees who have an employment relationship with and are paid by another employer, and self-employed individuals.

[4] At least 100 full-time and part-time employees who in the aggregate work at least 4,000 hours per week exclusive of overtime hours (i.e., 4,000 hours/100 employees = 40 hours per week on average).

Part-time Employees

Part-time employees are defined as persons who, on average, work under 20 hours per week or who have been employed fewer than six of the 12 months preceding the date on which notice is required. Part-timers thus include individuals typically thought of as seasonal or part-year workers as well as some full-time employees (e.g., recent hires). *Although part-time employees are not counted toward the threshold for determining employer coverage under the law, they nonetheless are due advance notice from covered employers.*

Employees Not Entitled to Notice

Workers who are counted toward the employer-size threshold but are not entitled to advance notice include U.S. workers who are located at an employer's facility in a foreign country and individuals who are clearly told upon being hired that their employment would be temporary (e.g., limited to the time it takes to complete a specific project). For information on other exemptions see the section in this report entitled "Exceptions to or Exemptions from P.L. 100-379."

Closings and Layoffs to Which the Act Applies

A *plant closing* is defined as a permanent or temporary shutdown of one or more distinct sites of employment (e.g., an auto plant or each business in an office building) or facilities or operating units within a single site (e.g., a photocopying department) that produces an "employment loss" for at least 50 employees, other than part-timers, at the site within any 30-day period. An action is considered a plant closing if it effectively stops the work of a unit within the site, although a few employees may remain in the facility.

A *mass layoff* is defined as an "employment loss" — regardless of whether any units are shut down — at a single site within any 30-day period for

- 50-499 employees (excluding part-timers) if they make up at least 33% of an employer's active workforce (excluding part-timers),[5] *or*
- at least 500 employees (excluding part-timers).

P.L. 100-379 thus does not cover fairly small layoffs.

An employer may have to provide advance notice if multiple groups of workers are laid off over time but each group is smaller during any 30-day period than the employee-size triggers. If taken together the number of terminated workers exceeds one of the thresholds during any 90-day period, the action is considered a plant closing or mass layoff unless the employer proves that the employment losses are due

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[5] Actively working employees are persons currently on the employer's payroll and in pay status at the time of the mass layoff.

to "separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of" the WARN Act.

In order for the above-described plant closings or mass layoffs to trigger the advance notice requirement, the *employment loss* must involve

- a termination other than a discharge for cause, voluntary departure, or retirement,
- a layoff exceeding six months, *or*
- a more than 50% reduction in the work hours (excluding overtime hours) of individual employees during each month of any six-month period.

If an employer calls a layoff that is not expected to meet the Act's six-month threshold for providing advance notice and the employer subsequently extends the layoff beyond six months, an employment loss will have occurred unless the extension was due to "business circumstances not reasonably foreseeable at the time of the initial layoff." The employer must give employees advance notice when it becomes foreseeable that an extension of a short-term layoff is necessary. As in the case of multiple layoffs of small groups of employees, this provision is intended to prevent employers from evading the Act's notice requirement by prolonging a layoff that initially was too brief to meet the law's definition of employment loss.

Exceptions to or Exemptions from P.L. 100-379

The WARN Act contains several exceptions to or exemptions from its requirement that employers provide affected parties with 60 days' notice of an impending mass layoff or plant closing. For example, the legislation specifies three instances in which a shorter period of notice is allowed (see **Figure 1**). The exemption from the notice requirement of workers employed at temporary facilities or on temporary projects was previously mentioned in the discussion of who is counted toward the Act's employer-size threshold. Three other cases are taken up below.

Transfers or Reassignments

The extent of employment loss can be reduced — and hence, the need to provide notice can be minimized — under certain circumstances. If a closing or layoff takes place due to the relocation or consolidation of all or part of an employer's business, it is not considered an employment loss if, before the action,

(1) the employer offers to transfer an employee to another site within reasonable commuting distance and no more than a six-month break in employment occurs (regardless of whether the employee accepts or rejects the offer), *or*
(2) the employee accepts a transfer to another site, regardless of distance, with no more than a six-month break in employment, within 30 days of the employer's offer or of the closing/layoff, whichever is later.

Sale of a Business

The sale of all or part of a business does not in itself produce an employment loss, as individuals who were employees of the seller through the sale's effective date are thereafter considered employees of the buyer. If a covered plant closing or mass layoff takes place up to and including the effective date of the sale, it is the responsibility of the seller to provide notice. If the seller knows the buyer has definite plans to initiate a covered plant closing or mass layoff within 60 days of the purchase, the seller may give notice to affected employees as an agent of the buyer if so empowered by the buyer. If not, the buyer becomes responsible for providing the requisite advance notice.

Strikes and Lockouts

Plant closings or mass layoffs that are the result of a strike or lockout are exempt from the notice requirement, unless employers lockout employees to evade compliance with the Act. "Economic strikers" whom employers permanently replace do not count toward the employee-size thresholds necessary to trigger the notice requirement.[6] Non-striking employees who experience an employment loss directly or indirectly associated with a strike and employees who are not members of the bargaining unit involved in the contract negotiations that prompted a lockout are entitled to advance notice.

Enforcement and Penalties

Employees, their representatives, or units of local government can bring civil actions in federal district court against employers thought to have violated the WARN Act. A court does not have the authority to stop a plant closing or mass layoff.

The U.S. Department of Labor does not have any investigative or enforcement authority under the law. It is authorized to write regulations and to provide assistance understanding them.

Employers who violate P.L. 100-379 are liable for *back pay and benefits* (e.g., the cost of medical expenses that would have been covered had the employment loss not occurred) to each aggrieved employee. The penalty is calculated for each working day that notice was not provided, up to a maximum of 60 days. In other words, the 60-day liability is reduced for each day that notice was provided. Maximum liability may be less than 60 days for those employees who had worked for the employer less than 120 days.

If any employer made "voluntary and unconditional payments" to terminated employees for failure to provide timely notice, the amount of the penalty may be

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[6] Economic strikers are those employees who go on strike over wages, hours, or other working conditions during contract negotiations.

reduced.[7] A court also may decrease the back-pay liability if an employer's failure to comply with the Act was in "good faith" with "reasonable grounds for believing" that its closure or layoff action did not violate the law. In addition, a court may reduce the $500 a day civil fine to which a unit of local government is entitled for an employer's violation of the WARN Act. An employer can avoid the civil penalty entirely if each aggrieved employee is paid the full amount owed within three weeks from the date of the plant closing or mass layoff.

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[7] In contrast, severance payments that the employer was legally obligated to make because of the employment loss do not diminish the employer's liability. Similarly, payments made by third parties to terminated employees (e.g., unemployment insurance benefits) do not limit the size of the employer's penalty.

Appendix: Layoffs Due to the September 11 Attacks

The U.S. Bureau of Labor Statistics (BLS) collects data on mass layoffs and extended mass layoffs. A mass layoff is defined as an event involving at least 50 workers from a single establishment who file initial claims for unemployment insurance (UI) benefits during a consecutive 5-week period. Although mass layoff data are released monthly, limited information is collected on these potentially brief events. The BLS subsequently obtains additional data — including the reason that prompted the action — for those mass layoffs that last longer than 30 days. The detailed information on extended mass layoffs is released on a quarterly basis.

To develop a statistical portrait of the impact on layoff activity of the September 11 terrorist attacks, the BLS began asking employers whether their decision to call a layoff was directly or indirectly prompted by the events of that day. In the interest of timeliness, these results were released each month. Although the series does not cover employees let go individually or in small groups or who were just briefly laid off, it was the only federal statistical program that tracked worker displacement linked to the terrorist actions of September 2001.

For the 18-week period between mid-September 2001 and mid-January 2002, employers reported that they called 430 extended mass layoffs that were directly or indirectly attributable to the attacks. The actions involved 125,637 employees. As shown in **Appendix Table 1**, the number of layoffs and workers displaced generally trended downward as time elapsed since the terrorists' actions.

Appendix Table 1. Extended Mass Layoffs and Worker Separations Directly or Indirectly Related to the September 11 Attacks, by Time Elapsed

Weeks ending	Number of layoff events	Number of separated workers
September 15-October 13, 2001	283	87,257
October 20-November 17, 2001	96	24,345
November 24-December 15, 2001	23	2,574
December 22, 2001-January 12, 2002	28	11,461
Total	430	125,637

Source: U.S. Bureau of Labor Statistics. Mass Layoff Statistics series.

Although employers in 33 states said they released at least 50 employees for longer than 30 days as a direct or indirect result of the attacks, 72% of the layoffs and 63% of the worker separations took place in fairly few states. (See **Appendix Table 2.**) The seven states were California (98 layoffs and 23,516 workers), Florida (56 layoffs and 6,896 workers), Hawaii (25 layoffs and 3,495 workers), Illinois (21 layoffs and 11,320 workers), Nevada (42 layoffs and 14,943 workers), New York (47 layoffs and 10,765 workers), and Texas (21 layoffs and 8,839 workers).

Most extended mass layoffs due to the terrorist attacks were concentrated in two industry groups: (1) accommodation and foods services and (2) transportation and warehousing. Together they accounted for 268 (or 62%) of the large, long-lasting terrorist-related layoffs and 92,224 (or 73%) of the employees displaced by those events. In particular, 100 (or 23%) of the layoffs took place at hotels and motels, excluding casino hotels, within the broader accommodation and food services industry group. Non-casino hotels/motels let go 18,703 employees in the actions, or 15% of all separated workers. Another 37 layoffs (or 9% of the total) were at casino hotels, and 14,100 workers (or 11% of all separated workers) were let go in the actions. The 30 remaining layoffs in the accommodation and food services industry group (or 7% of all layoffs) that led to the termination of 7,544 workers (or 6% of all separated employees) involved such firms as restaurants, cafeterias, fast-food establishments, and caterers that felt the effect of reduced tourism brought about by travelers' fears over the events of September 11, 2001. Thus, the accommodation and food services industry group as a whole experienced 39% of all large, long-lasting layoffs (167 events) directly or indirectly connected with the terrorist actions and released 32% (40,347) of all separated workers. In comparison, the scheduled air transportation industry called many fewer actions (69 or 16% of the terrorist-related layoffs), but it terminated a somewhat larger number of employees (44,861 or 36% of the total). The other 32 extended mass layoffs in the transportation and warehousing industry group (or 7% of the total) likely involved nonscheduled air carriers and sightseeing or charter bus operators. An additional 7,016 workers were displaced by these employers (or 6% of all separated workers). The entire transportation and warehousing industry group thus accounted for 101 (or 23%) of the terrorist-related layoffs and 51,877 (or 41%) of all separated workers.

Appendix Table 2. Extended Mass Layoff Events and Worker Separations for the Weeks Ending September 15, 2001-January 12, 2002, Directly or Indirectly Attributed to the September 11 Attacks

State	Number of layoff events	Number of separated workers
Total	430	125,637
Arizona	5	505
California	98	23,516
Colorado	5	1,624
Connecticut	4	726
Florida	56	6,896
Georgia	5	4,141
Hawaii	25	3,495
Illinois	21	11,320
Indiana	[a]	[a]
Iowa	[a]	[a]
Kansas	[a]	[a]
Kentucky	3	268
Louisiana	8	1,888
Maine	[a]	[a]
Maryland	5	1,579
Massachusetts	14	3,679
Michigan	[a]	[a]
Minnesota	5	5,979
Missouri	[a]	[a]
Nevada	42	14,943
New Jersey	9	1,660
New York	47	10,765
North Carolina	8	5,318
North Dakota	[a]	[a]
Ohio	5	711

State	Number of layoff events	Number of separated workers
Oklahoma	4	367
Oregon	[a]	[a]
Pennsylvania	4	962
Tennessee	6	1,256
Texas	21	8,839
Utah	4	870
Virginia	6	1,584
Washington	8	7,225

Source: U.S. Bureau of Labor Statistics. Unpublished data from the Mass Layoff Statistics series.

a. Although extended mass layoffs attributable, directly or indirectly, to the September 11, 2001 terrorist attacks occurred in these states, the actions were too few in number to meet BLS or state agency disclosure standards (i.e., fewer than three events).