

Client Alert

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 MERITAS LAW FIRMS WORLDWIDE

Illinois Passes Act Increasing Employers' WARN Responsibilities

On August 12, 2004, Illinois joined more than a dozen other states, when it passed a law increasing certain federal WARN Act requirements for Illinois employers. The federal WARN Act, which took effect on February 4, 1989, requires employers with 100 or more workers to give 60 days advance notice of plant shutdowns affecting at least 50 employees and of mass layoffs (which are defined as layoffs affecting one-third of workers at a site or more than 500 employees, whichever is less).

The new Illinois WARN Act, which becomes effective on January 1, 2005, requires Illinois employers to provide 60 days advance notice of a "mass layoff, relocation and employment loss" not only to affected employees, but also to the Illinois Department of Commerce and Economic Activity (the "Department"), and county and municipal officials where the plant is located. Unlike the federal WARN Act, the Illinois WARN Act applies to employers who employ 75 or more employees (lowering the federal WARN Act threshold by 25 employees). Additionally, the Illinois WARN Act expands the situations when notices are required. For example, the Illinois WARN Act requires employers to give 60 days advance notice of mass layoffs, which it defines as "at least 33% of employees and at least 25 employees or at least 250 employees" (down from 50 and 500 in the federal WARN Act).

Possibly because the Illinois WARN Act was enacted without much debate or comment, there are ambiguities that appear on the face of the Act. For example, the Illinois WARN Act requires that the employer give notice to affected employees, the Department, and applicable county and municipal officials in the case of a "mass layoff, relocation or employment loss." "Affected employees," however, are only those employees who suffer an employment loss as a result of a plant closing or mass layoff, and do not include employees who suffer an employment loss as a result of a relocation. Therefore, an employee who may reasonably be expected to lose a job because of a relocation (which is not specifically defined by the Act) is not an affected employee and may not be entitled to Illinois WARN Act notice. This leads to a situation where an employer is apparently required to notify the Department and county and municipal officials of a relocation, but is not required to provide employees with any notice – a situation that may not have been intended by the legislature.

The Illinois Department of Labor has indicated that it is intending on creating regulations that interpret the Act. These regulations should help employers navigate the Act's requirements and clear up some of the Act's ambiguity. We will notify you when those regulations become available. In the meantime, if you have any questions regarding the new Illinois WARN Act, please feel free to contact Michael D. Karpeles at 312.201.3910 or michael.karpeles@goldbergkohn.com, Jon E. Klinghoffer at 312.201.3887 or jon.klinghoffer@goldbergkohn.com, or any one of Goldberg Kohn's labor and employment attorneys.