

# CHECKLIST | Complying With the WARN Act

Presented by TROXELL

The Worker Adjustment and Retraining Notification (WARN) Act is a federal law that requires employers with 100 or more employees to provide written notice at least 60 days before a plant closing or mass layoff unless an exception applies. This notice is intended to protect workers by giving them time to seek alternative jobs or obtain job training before their termination.

Employers who fail to comply with the WARN Act may be liable for back pay and benefits, in addition to civil monetary penalties, for the period in which notice was not given.

This checklist outlines key steps for complying with the WARN Act's advance notice requirement. Keep in mind that complying with the WARN Act can be complex and may involve additional steps depending on the facts of a specific situation. Also, many states have their own layoff notice laws, which are often referred to as "mini-WARN" laws. Employers will need to comply with WARN Act and any applicable state and local mini-WARN laws.

## Covered Employers

Is your company subject to the WARN Act?	Yes	No
<p>Select "yes" if your company meets either of the following:</p> <ul style="list-style-type: none"><li>• Your company has <b>100 or more full-time employees</b>, excluding employees who work fewer than 20 hours per week and employees who have been employed for less than six months.</li></ul> <p>OR</p> <ul style="list-style-type: none"><li>• Your company has <b>100 or more employees</b>, including part-time employees, who, in the aggregate, work at least <b>4,000 hours per week</b> (excluding overtime hours).</li></ul> <p><i>Note that the WARN Act applies to private for-profit and nonprofit employers as well as public and quasi-public entities that are engaged in business and are separately organized from regular government. The WARN Act does not apply to federal, state and local governments.</i></p> <p><i>If you answered "No," you can stop here. However, be sure to check any state and local mini-WARN laws that may apply to your company.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

## Events Triggering WARN Act Notice

Will your company experience a plant closing or mass layoff, triggering the WARN Act's 60-day advance notice requirement? <i>See important information below to help you answer the following questions.</i>	Yes	No
<p><b>Will there be a plant closing?</b> A “plant closing” means a permanent or temporary shutdown of a single site of employment (or one or more facilities or operating units within a single site of employment) that results in an <b>employment loss for 50 or more employees during any 30-day period</b> (excluding part-time employees).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Will there be a mass layoff?</b> A “mass layoff” means a reduction in force that is not the result of a plant closing and results in an employment loss at the single site of employment during any <b>30-day period</b> for:</p> <ul style="list-style-type: none"> <li>• At least <b>500 employees</b>, excluding part-time employees</li> <li>OR</li> <li>• At least <b>50 employees</b> and at least <b>33%</b> of the employer’s active employees, excluding part-time employees</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Will there be multiple small events triggering the WARN Act?</b> The WARN Act applies if an employer has a series of terminations or layoffs that occur over a rolling <b>90-day period</b> and add up to numbers that would require advance notice unless an employer can show that the individual events occurred as a result of separate and distinct actions and causes.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>If you answered “No,” to all the questions above, you can stop here. However, be sure to check any state and local mini-WARN laws that may apply to your company.</i></p>		
<p><b>Does either of the following exceptions apply?</b> The WARN Act does not apply when:</p> <ul style="list-style-type: none"> <li>• A temporary facility is closed (or a temporary project is completed), and the employees were hired with the clear understanding that their employment was temporary.</li> <li>• A facility or operating unit is closed due to a strike or lockout.</li> </ul> <p style="color: #c00000;"><i>If you answered “Yes,” to this question, you can stop here. However, be sure to check any state and local mini-WARN laws that may apply to your company.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

### Important Information

**Employees counted**—To determine if your company’s plant closing or layoff falls under the WARN Act’s requirements, the following employees are NOT counted:

- Part-time employees—this includes employees who work for fewer than 20 hours per week and employees who have been employed for less than six months.
- Workers who retire, resign or are terminated for cause.

- Workers who are able to transfer to another site of employment within a reasonable commuting distance if the closing or layoff is a result of relocation or consolidation of your business and the transfer does not involve a break in employment that is longer than six months.
- Workers who are offered a transfer to another site of employment that is not within a reasonable commuting distance if the closing or layoff is a result of relocation or consolidation of your business, the transfer does not involve a break in employment that is longer than six months and the worker accepts the offer within 30 days of the offer or the closing/layoff, whichever is later.

**Employment loss**—This includes all of the following:

- An employment termination (other than a discharge for cause, voluntary departure or retirement)
- A layoff exceeding six months
- A reduction in hours of work of more than 50% during each month of any six-month period

### Advance Notice Requirement

WARN Act Notice	No	Yes	Date(s) of Notice
<p><b>Will you provide written notice at least 60 calendar days before the plant closing or mass layoff?</b></p> <p><i>When all employees are not terminated on the same date, the date of the first individual termination within the 30-day (or 90-day) period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of employees are entitled to a full 60 days' notice.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	
Exceptions to Timing Requirement			
<p><b>If you will not provide the full 60 days' advance notice, do any of these exceptions apply?</b></p> <p><i>Note that even when an exception applies, the notice must be provided as soon as practicable, and the employer must explain why the notice is not being provided 60 days in advance.</i></p>	<p>Before the plant's closing, your company is actively seeking capital or business that would allow it to avoid or postpone the shutdown for a reasonable period, and your company reasonably and in good faith believes advance notice would jeopardize its ability to obtain the new capital or business.</p>		<input type="checkbox"/>
	<p>The closing or mass layoff is caused by unforeseeable business circumstances</p>		<input type="checkbox"/>

	(for example, the unexpected cancellation of a major order).	
	The plant closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought, storm, tidal wave or similar event of nature. In this case, notice may be given after the event.	<input type="checkbox"/>
<b>Notice Recipients</b>		
<p><b>Did you provide the WARN Act notice to the required recipients?</b></p> <p><i>Note that “affected employees” are those who may reasonably be expected to experience an employment loss. They may be hourly or salaried workers, part-time workers, managerial and supervisory employees and employees who will likely lose their jobs because of bumping rights.</i></p>	Affected employees (nonrepresented)	<input type="checkbox"/>
	Union representative(s) of affected employees	<input type="checkbox"/>
	State Dislocated Worker Unit	<input type="checkbox"/>
	Chief elected official of the local government where the plant closing or layoff is to occur	<input type="checkbox"/>
<b>Notice Contents</b>		
<b>Notice to nonrepresented affected employees</b>	Whether the planned action is expected to be permanent or temporary	<input type="checkbox"/>
	If an entire plant will be closed, a statement to that effect	<input type="checkbox"/>
	The expected date when the plant closing or mass layoff will begin and the date when the affected employee will be laid off or terminated	<input type="checkbox"/>
	An indication of whether bumping rights exist	<input type="checkbox"/>
	The name and telephone number of a company official who can be reached for further information	<input type="checkbox"/>

<b>Notice to union representatives</b>	The name and address of the employment site where the plant closing or mass layoff will occur	<input type="checkbox"/>
	The name and telephone number of a company official who can be reached for further information	<input type="checkbox"/>
	Whether the employment loss will be temporary or permanent	<input type="checkbox"/>
	If an entire plant will be closed, a statement to that effect	<input type="checkbox"/>
	The expected date of the first job losses, along with a schedule of any additional job losses	<input type="checkbox"/>
	The job titles of positions that will be affected and the names of workers currently holding those jobs	<input type="checkbox"/>
<b>Notices to state dislocated worker unit and chief elected official</b>	The name and address of the employment site where the plant closing or mass layoff will occur	<input type="checkbox"/>
	The name and telephone number of a company official who can be reached for further information	<input type="checkbox"/>
	Whether the employment loss will be temporary or permanent	<input type="checkbox"/>
	If an entire plant will be closed, a statement to that effect	<input type="checkbox"/>
	The expected date of the first job losses, along with a schedule of any additional job losses	<input type="checkbox"/>
	The job titles of positions that will be affected and the number of affected employees in each job category	<input type="checkbox"/>

	An indication of whether bumping rights exist	<input type="checkbox"/>
	The name of each union representing affected employees and the name and address of the chief elected officer of each union	<input type="checkbox"/>

Use this checklist as a guide when reviewing your company's compliance with the WARN Act. For assistance, contact TROXELL.