

2009 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers: Plant Closing Notification / Layoffs (WARN Act) [Federal]¹

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Purpose

To provide employees with notification of intended layoffs or shut-down.

Covered employers must notify workers of intent to shut down work or discontinue employment for fifty or more workers at a single job site for a period of thirty days or more.

Program / Employer Coverage

In 1988, Congress passed the Workers Adjustment and Retraining Notification (WARN) Act, also known as the *Plant Closing Act*. The WARN Act covers employers with (a) 100 or more employees, excluding part-time employees or (b) 100 or more employees who, in the aggregate, work at least 4,000 hours per week.

There are no seasonal or agricultural exemptions under the WARN Act. Seasonal agricultural workers can be exempted from the above mentioned time provisions only if the workers are notified at the time of hiring that the work is temporary.

Notification Process

- Employers of 100 or more workers must give at least sixty days' advance notice to their employees of a plant closing or mass layoff.

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- In addition to notifying employees, employers must notify the workers' collective bargaining agent(s) or representatives (if any) and the state dislocated workers unit, plus the appropriate state and local governmental agencies of closings or layoffs.

Penalties

If an employer fails to provide the appropriate notification, the employer may be required to pay lost wages and benefits to all laid off employees for a period of up to sixty days.

Definitions

- *Employer*. Any business enterprise that employs:
 - 100 or more employees, excluding part-time employees.
 - 100 or more employees who, in the aggregate, work at least 4,000 hours per week.
- *Plant closing*. The permanent or temporary shutdown of a single site of employment or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at a single site of employment during any thirty-day period for fifty or more employees.
- *Employment loss*. This includes:
 - An employment termination other than a discharge for cause, voluntary departure, or retirement.
 - A layoff exceeding six months.
 - A reduction in work hours of more than fifty percent during each month of any six-month period.
- *Plant*. The term *plant* is *not* synonymous with the word *building*, nor is it necessarily a horticultural term.

Information Required for WARN Notice

Notice under the WARN Act must contain the following information:

- A statement as to whether the planned action is expected to be permanent or temporary.
- If the entire plant is to be closed, a statement to that effect.
- The expected date when the plant closing or mass layoff will commence and the expected date when the individual employees will be separated.
- An indication of whether or not bumping rights exist.
- The name and telephone number of a company official to contact for further information.

Joint Employment Situations

Where farm employers also have farm labor contractors (FLC), the 100-worker threshold can be breached in cases of joint employment. In this situation, the number of workers is measured by adding the number of permanent and seasonal workers directly unemployed by the farmer to the number of workers in the FLCs' crews.

Note to Seasonal Agricultural Employers

For covered agricultural employers, it is suggested that signed releases be obtained at the time of hiring, making it clear to employees that the work is seasonal in nature and that the jobs will end at the conclusion of the task (planting, harvesting, etc.).

Responsible Agency

U.S. Department of Labor

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