

Client Alert

New York DOL Advises that Exception to State’s WARN Act Includes Consequences of Coronavirus

March 20, 2020

Yesterday, the New York State Department of Labor (DOL) issued guidance explaining that the impact of COVID-19 a/k/a Novel Coronavirus (“Coronavirus”) qualifies for the “unforeseeable business circumstance” exception under the New York State Worker Adjustment and Retraining Notification (WARN) Act.

By way of background, New York’s WARN Act requires private employers of 50 or more employees to provide at least 90 days’ advance written notice to workers in the event of a mass layoff or business closure affecting 25 or more employees at a single location. The new DOL guidance explains that employers are still required to abide by the State’s WARN Act law, but notes that the law acknowledges that businesses cannot predict sudden and unexpected circumstances beyond an employer’s control, such as government-mandated closures or reduced workforces due to the Coronavirus. In other words, employers may provide notice within the 90-day window, *i.e.*, on less than the 90 days’ notice required by the law, where the mass layoff or business closure results from the consequences of Coronavirus.

Employers covered under New York’s WARN Act should nevertheless provide notice of a qualifying mass layoff or business closure due to Coronavirus as soon as practicable. Notice to the DOL should include as much information as possible regarding the circumstances of such layoff or closure to ensure that the employer qualifies for the “unforeseeable business circumstance” exception to the WARN Act. In fact, many employers choose to give notice prior to deciding on the final headcount of any reduction in force simply to ensure early and compliant notice. If you wish assistance in crafting a compliant WARN Act notice or have any other questions about

New York's WARN Act or any other labor and employment issue, particularly with respect to layoffs or furloughs as a result of Coronavirus, please feel free to contact us.

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Morrison Cohen LLP has also created the COVID-19 Resource Taskforce, a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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