

Lawlor, Shannon (LABOR)

From: Lawlor, Shannon (LABOR)
Sent: Monday, May 04, 2009 3:23 PM
To: 'Rachel Ryan'
Cc: Faraone, Janet M (LABOR); Jones, Kevin E (LABOR); Colavito, Maria L (LABOR); Connell, Joan (LABOR); Hartnett, Timothy (LABOR)
Subject: RE: Question regarding NY Warn Act - Nonpublic educational institution

Hi Rachel,

The intent of the New York State WARN Act is to provide more workers with advance notice of plant closings and mass layoffs and a meaningful mechanism to enforce their rights under the law.

Specifically, the NYS WARN Act requires employers of 50 or more employees to provide 90-days notice to all affected employees when there is an employment loss by 25 or more employees. An "employment loss" is an employment termination, other than a discharge for cause, voluntary departure, or retirement. A "plant closing" is an employment loss when 25 or more employees are affected.

The Act and its regulations do provide an exception to the notice requirement for temporary employment. Notice is not required "if the closing or layoff results from the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking." 12 NYCRR 921-5.1(a).

However, that temporary employment exception may not apply to teachers, who typically expect to return to their jobs after the summer break. This reasonable expectation of returning to their jobs could take teachers out of the exception, since the teachers were likely not hired with the understanding that their employment was truly limited to only one year. Nevertheless, if the employer can demonstrate that the teachers clearly understood at the time of hire that the job was temporary, i.e. if the employer can demonstrate that each teacher was hired for the 2008-2009 school year with the understanding that their employment would end at the end of the school year or at the end of the summer, the teachers may fall within the temporary employment exception and no WARN notice would be required.

The 90-day notice should be provided 90 days prior to the last day the employee is able or permitted to work (essentially, this means while the employee is on the payroll). This date will be different for employees laid off at the end of the school year and those laid off at the end of the summer.

Please let me know if you have any other questions.

Shannon J. Lawlor
Attorney 1
Counsel's Office
New York State Department of Labor

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5/5/2009

From: Rachel Ryan [mailto:RRyan@icrh.com]
Sent: Friday, May 01, 2009 9:50 AM
To: Lawlor, Shannon (LABOR)
Subject: RE: Question regarding NY Warn Act - Nonpublic educational institution

Hi Shannon,

Yes.

Regards,
Rachel

From: Lawlor, Shannon (LABOR) [mailto:Shannon.Lawlor@labor.state.ny.us]
Sent: Friday, May 01, 2009 9:50 AM
To: Rachel Ryan
Subject: RE: Question regarding NY Warn Act - Nonpublic educational institution

Hi Rachel,
Just a threshold question: does this school employ at least 50 employees, excluding part-time employees?

Thanks.

Shannon J. Lawlor
Attorney 1
Counsel's Office
New York State Department of Labor

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From: Faraone, Janet M (LABOR)
Sent: Thursday, April 30, 2009 10:04 AM
To: Colavito, Maria L (LABOR)
Cc: Connell, Joan (LABOR); Lawlor, Shannon (LABOR); Jones, Kevin E (LABOR); Golden, Kenneth L (LABOR); Hartnett, Timothy (LABOR); Fellner, Janice (LABOR)
Subject: FW: Question regarding NY Warn Act - Nonpublic educational institution

May I request a legal opinion on the below inquiry regarding NYS WARN? Thank you for considering this request.

From: Rachel Ryan [mailto:RRyan@icrh.com]
Sent: Thursday, April 30, 2009 9:49 AM
To: Faraone, Janet M (LABOR)

5/5/2009

Subject: Question regarding NY Warn Act

Hi Janet,

Here is my question regarding the NY Warn Act:

I am working with a nonpublic educational institution that does not plan to re-open in September (although it does plan to run some summer programs). The majority of its staff include teachers or other employees who have one year contracts that expire at the end of the Academic School year. Does the WARN Act require that these employees be given 90 days notice? If so, when does the 90 day notice period run? Does the notice have to be given 90 days prior to the start of the next school year in September (start date of their new contract)? Any guidance you can provide would be appreciated. Please feel free to contact me if you need additional information.

Regards,
Rachel

Rachel Ryan, Esq.
Attorney

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**Iseman, Cunningham,
Riester & Hyde, LLP**
ATTORNEYS AND COUNSELORS AT LAW

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