New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

February 17, 2009

[redacted]

Re: Our File No. RO-09-0017

Dear [redacted]:

I am writing in response to your letter dated January 29, 2009, concerning the interpretation of the New York State Worker Adjustment and Retraining Notification (WARN) Act which took effect February 1, 2009. The State WARN Act is a Department of Labor legislative proposal recently enacted into law as chapter 475 of the laws of 2008. The Department also filed Emergency/Proposed regulations with the Secretary of State on January 30, 2009, to provide regulated parties with further guidance regarding enforcement and interpretation of the Act. These rules became effective immediately upon filing. You have requested clarification as to how the Act affects [redacted].

The WARN Act requires a 90-day notice to affected employees who may reasonably be expected to experience an employment loss. An employment loss occurs when there is a mass layoff of at least 250 employees. In your letter, you have stated that [redacted] employs 650 employees and lays off 500 of these employees for five months in the winter. [redacted] does meet the 250-employee numerical threshold for triggering the notice requirement; however, "employment loss" is defined in the WARN Act and regulations as:

(e) ***Employment loss.***

(1) The term *employment loss* means:

(i) An employment termination, other than a discharge for cause, voluntary departure, or retirement;

(ii) A mass layoff *exceeding six months*; or . . .

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The mass layoff by [redacted] is not covered by the WARN Act since it is only a five-month layoff and does not exceed six months.

Also, note that Section 921-5.1 of the regulations expounds on an exception to the notice requirement for temporary employment where the affected employees were hired with the understanding that their employment was temporary. Paragraph 921-5.1(c) speaks directly to the construction sector:

> **(c) Employment in agriculture for tasks such as harvesting or processing, or in construction *for work on a particular building or project*, may be considered temporary if the worker understood at the time of hire that the job was temporary. . .**

The construction exception mentioned above relates to temporary work when the individual is hired for a particular project. If [redacted] typically maintains a regular workforce throughout the building season vs. hiring individuals on a project by project basis, this exception would not apply.

If you wish to review the entire text of the regulations, they are available on the Department's website at www.labor.state.ny.us.

If you have any additional questions, please feel free to contact me.

Very truly yours,
Maria Colavito, Counsel

By: 
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