

**Lawlor, Shannon (LABOR)**

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**From:** Lawlor, Shannon (LABOR)  
**Sent:** Monday, June 29, 2009 4:31 PM  
**To:** 'Bpine@andersonkill.com'  
**Cc:** Faraone, Janet M (LABOR); Hartnett, Timothy (LABOR)  
**Subject:** FW: Question Under new NYS WARN Act

Dear Mr. Pine,

In the situation you describe below, to avoid liability under the New York State WARN Act, an employer would be required to retain its employees for the remainder of the 90-day period. As "affected employees," they would be entitled to 90 days notice.

Under the New York State WARN Act, "[a]n employer may not order a mass layoff, . . . , unless at least ninety days before the order takes effect, the employer gives written notice of the order to . . . affected employees . . ." "Affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed mass layoff.

The determination of whether notice is required is made 90-days before the notice-triggering event takes place. Any change in circumstances that occurs after that point is irrelevant. If the 25-employee threshold is reasonably met 90-days prior to the triggering event, every affected employee is entitled to 90 days of notice before being laid off.

Please let me know if you have any questions. Thank you.

Shannon J. Lawlor  
Attorney 2  
Counsel's Office  
New York State Department of Labor

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**From:** Faraone, Janet M (LABOR)  
**Sent:** Tuesday, May 05, 2009 9:23 AM  
**To:** Colavito, Maria L (LABOR)  
**Cc:** Connell, Joan (LABOR); Lawlor, Shannon (LABOR); Jones, Kevin E (LABOR); Golden, Kenneth L (LABOR); Hartnett, Timothy (LABOR); Grossi, Richard (LABOR); Fellner, Janice (LABOR)  
**Subject:** FW: Question Under new NYS WARN Act

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

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**From:** Pine, Bennett [mailto:Bpine@andersonkill.com]

6/29/2009

**Sent:** Monday, May 04, 2009 5:30 PM  
**To:** janet.faraone@labor.stateny.us  
**Subject:** Question Under new NYS WARN Act

Ms Faraone,

Here is the question I have been discussing with "Debbie" of your office:

Assume that an Employer provides the 90 day written notice required under the NYS WARN act because BELIEVES it will have a mass layoff of at least 25 employees comprising over 33% of its workforce. Shortly after providing the written notice, the Employer determines that it will fall below the threshold required for giving the notice. ---so that it will actually be laying off only 20 employees, rather than the 25 originally foreseen. In that instance, must the Employer wait the full 90 days before laying off the affected employees? Even though, since it is below the 25 and therefore would not have been required to provide the 90 day WARN notice in the first place?

Any prompt guidance you can provide would be greatly appreciated . Thank you , Bennett Pine



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6/29/2009