

## **Lawlor, Shannon (LABOR)**

---

**From:** Lawlor, Shannon (LABOR)  
**Sent:** Tuesday, April 07, 2009 1:47 PM  
**To:** 'mbryans1@verizon.net'  
**Cc:** Jones, Kevin E (LABOR); Hartnett, Timothy (LABOR)  
**Subject:** New York State WARN Act

Mr. Bryans:

Please see the answers to your questions about the New York State WARN Act below. Let me know if I can be of further assistance.

Thank you.

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

This message may contain confidential and/or legally privileged information. Confidential information may not be used or disclosed except for the express purpose for which it was sent. Forwarding of privileged communications will compromise its privileged nature.

If you are not the intended recipient, you are hereby notified that disclosure, dissemination, copying or distribution of this transmission or its attachments is strictly prohibited; please notify the sender immediately by return e-mail and delete the transmission and its attachments.

---

**From:** mbryans1@verizon.net [mailto:mbryans1@verizon.net]  
**Sent:** Wednesday, April 01, 2009 9:35 PM  
**To:** labor.sm.NYSOL  
**Subject:** I Need clarification to help understand the WARN Act!!!!

Hi,

On Friday March 20th I was informed by upper management of my operation that we would be essentially closed and relocated to several facilities outside of the Buffalo area. I currently am employed as a mid-level manager in this facility. As I know it, 40 jobs will be affected by this immediately out of a total of 57 at this location. It's important to note that until April 2nd I cannot speak about this publicly. I do know that severance packages will be prepared and that several people will be offered relocation to Toronto, Ontario Canada.

Many of these severance packages will be around 2 months in duration although some people will see more based on lengths of service with the company up to 34 weeks.

I have several questions:

1- Does the WARN Act apply? The WARN Act applies when there is a plant closing, or a relocation of greater than 50 miles, affecting 25 or more non-part-time employees. We would need more information to determine if there is a violation in this instance. For instance: Are any of these employees part-time? Have the employees been given notice? What is the anticipated date of the plant closing? Are the relocations to facilities greater than 50 miles from the current plant? What is the nature of the

4/7/2009

relocations? What are the operations that are being moved? Will the employees be moved to similar existing operations near Buffalo or with the units be moved intact. Will the operations that the individuals are being moved to similar to the operations they will leave in Rochester? How many of the individuals, do you think, are likely to accept the relocations?

2- For people getting longer severance packages, are they still entitled to 90 days notice with Pay? The 90 days notice is supposed to all occur while the employees are still working, so yes – they must be paid. If the employer fails to give notice, and the employer was required to do so, the employer will be required to pay the employee up to 60 days of wages and benefits during the “violation period” (i.e. the period between the date of layoff and the date that falls 90 days after the date of notice). Under 12 NYCRR 921-7.3, the employer's liability can be reduced by certain types of payments. Accordingly, the liability may be reduced by the payments made in a severance package if the severance was voluntary and unconditional, and not required to satisfy any pre-existing legal obligations. Future promises of a severance package will not be credited against liability.

3- For relocation offers, is Canada considered reasonable? The transfer of a job to Canada does not automatically make the transfer beyond a reasonable commuting distance. The distance to the new location from each individual's residence would be considered. Nonetheless, if the employee lived in the Rochester area, and their job was moved to Toronto, this would not be a reasonable commuting distance. However, if the employee accepts the relocation, it is not a violation with regard to that employee.

4- Does the WARN Act (if applicable) also cover health benefits, 401k, LTD, etc..... while it's being imposed? I am unsure what you mean by “while it's being imposed.” However, under 12 NYCRR 921-7.3(a)(2), affected employees are entitled to: the value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost during the violation period, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan, if the employer does not continue to provide such benefits during the 90-day notice period. Note: employees who did not regularly receive such benefits are not due those benefits under WARN. Such benefits include, but are not limited to: health benefits, private disability coverage, life insurance, employer paid retirement contributions, and vacation leave.

Unfortunately, I will be staying on with the company to help transition the operation out of Buffalo so I am not doing this for myself, but I would like to help ensure the employees working for me as well as others in the building are taken care of as much as possible.

Based on that, any assistance you can offer is greatly appreciated.

Best Regards  
Mark