
From: Gerstein, Terri (LABOR)
Sent: Friday, December 11, 2009 5:16 PM
To: Herman, Bruce (LABOR); Coleman, Karen (LABOR); Colavito, Maria L (LABOR)
Cc: Gardner, Colleen C (LABOR)
Subject: questions from UAW presentation today

I did a presentation before Regions 9 and 9a of the UAW today. There were a number of questions I could not immediately answer and so I pledged to learn the answers and get back to people.

Maria: questions 1 and 2 fall within your expertise.

Bruce and Karen: questions 3, 4, and 5 should be within your areas.

Can you let me know your answers to these issues when you have the chance? Thank you for any help you can give.

1. How does the WARN act apply when an employer initially lays people off thinking it will be temporary, and then over time it becomes clear based on the employer's finances that it will be permanent?
2. How does the WARN Act apply to part-time employees?
3. Are there any funds to help with incumbent worker training? (ongoing need for skill upgrades, in auto dealerships for example, can be very expensive. One dealer spent \$200K per year for incumbent skill training for 15 employees, and in this economic climate that can be the critical difference between staying afloat and not.
4. The NYS Green Jobs legislation: What money is available on the state level and what is happening with implementation? Also, many laid off UAW workers are eligible for TAA and thus would be good candidates for green job training requiring higher skill levels.
5. A comment/question: there needs to be a way for troubled companies to get money extremely quickly. Example of Oberdorfer in Syracuse: they had facility which had cash flow problem and the response from any potential state funding sources was so slow that it was useless. It takes a long time to get cash help for struggling companies. What can be done about this? Can we think of ideas to help these types of employers, who might need something like a bridge loan or very quick temporary cash assistance?

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snor, Shannon (LABOR)

Subject: Gerstein, Terri (LABOR)
FW: questions from UAW presentation today

Terri,
Apology for the delay in responding to your WARN questions. Here are the answers:

1. How does the WARN act apply when an employer initially lays people off thinking it will be temporary, and then over time it becomes clear based on the employer's finances that it will be permanent?

Where an employer lays off employees on a temporary basis and then it becomes clear over time that the layoffs are permanent, Section 921-3 of the WARN regulations applies. Subdivision 921-3.1 states : An employer that previously announced and carried out a short-term layoff of six (6) months or less which is being extended beyond six (6) months due to business circumstances (e.g., changes in price or cost) not reasonably foreseeable at the time the initial layoff must give notice required under the Act and this Part as soon as it becomes reasonably foreseeable that an extension is required. A layoff extending beyond six (6) months from the date the layoff originally commenced for any other reason other than unforeseeable business circumstances shall be treated as an employment loss from the date it originally commenced. For purposes of this section, the date the layoff originally commenced shall be the date on which the first employee was laid off. Therefore, an employer must provide notice as soon as reasonably foreseeable. This determination may be reviewed by the Department.

2. How does the WARN Act apply to part-time employees?

Part-time employees are "affected employees" under the State WARN Act and are entitled to WARN notice when an employer is required to provide notice to the requisite amount of full-time employees.

Part-time employees MAY be considered in the calculation to determine if a business entity meets the 50-employee threshold. A business entity is considered an employer under the WARN Act where the business entity (1) employs 50 or more full-time employees (part-time employees are not included) OR (2) employs 50 or more employees, including part-time employees, that work in the aggregate at least 2,000 hours per week.

Part-time employees are not included when the number of employees experiencing an employment loss is calculated.

Please let me know if you have any follow-up questions. Thank you.

Shannon J. Hesnor
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