



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

May 11, 2009

[REDACTED]

Dear [REDACTED]:

I am writing in response to your letter, dated April 15, 2009, concerning the application of the New York State Worker Adjustment and Retraining Notification (WARN) Act to [REDACTED]. In your letter, you stated that [REDACTED] represents some of the employees employed by [REDACTED] at the [REDACTED] store located at [REDACTED]. Further, you indicated that [REDACTED] has closed its [REDACTED] without providing the required WARN notice.

Under the New York State WARN Act, private sector employers with 50 or more employees, excluding part-time employees, are required to provide at least 90 days notice to 1) affected employees, 2) representatives of affected employees, 3) the New York State Department of Labor, and 4) the applicable local Workforce Investment Board before implementing a plant closing, mass layoff, or a covered reduction in work hours that falls within the qualifying circumstances set forth in the WARN Act and corresponding regulations. A plant closing means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss during any 30-day period at such site for 25 or more employees, excluding any part-time employees.

A key issue in determining whether an employer is subject to the WARN Act for a plant closing is whether or not 25 employees, *excluding any part-time employees*, have suffered an employment loss. We understand that [REDACTED] is alleging that most of the employees who lost their jobs were part-time. The Department has sent [REDACTED] a letter requesting more information on the status of its employees at the [REDACTED] store. The Department will fully investigate this matter and determine whether or not the threshold requirements have been met. The Department will inform you of its findings when a determination has been made.


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If you have any questions, please do not hesitate to contact me at (518) 457-4380 or shannon.lawlor@labor.state.ny.us.

Very truly yours,

Maria L. Colavito
Counsel

By:


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