

Lawlor, Shannon (LABOR)

From: Lawlor, Shannon (LABOR)
Sent: Friday, March 20, 2009 10:40 AM
To: 'rclarkscuba@yahoo.com'
Subject: FW: WARN response

Mr. Clark,
Please find responses to your questions below in red.
If you have any further questions, please let me know.

Shannon J. Lawlor
Attorney 1
Counsel's Office
New York State Department of Labor
State Office Campus
Building 12, Room 509
Albany, NY 12204
phone: 518.457.4380
fax: 518.485.1819

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: Ray Clark [<mailto:rclarkscuba@yahoo.com>]
Sent: Wednesday, February 11, 2009 6:45 AM
To: Onestop, WDTD (LABOR)
Subject: NY WARN Act

Ms. Coleman:

I am an attorney with clients in New York. I am writing to seek clarification of the provision of the NY WARN Act (the "Act") and the implementing regulations defining "employment loss" as "a reduction in hours of more than 50% during each month of any consecutive six-month period. . . ."

1. The work hours of many employees fluctuate from week to week based on fluctuating schedules, absences, leaves, etc. What standards will the NY Department of Labor ("DOL") apply in determining the number of hours an employee is deemed to work (for purposes of this provision) where the employee does not work a fixed number of hours each week? Is the employer to identify an average number of hours worked by its employees over some period of time and, if so, what period of time applies, e.g., the prior calendar year, the prior 12 months, etc.? The Department will calculate the average hours of work per week for each employee in the 90-days prior to his or her layoff.
2. Do reductions "in hours of more than 50%" for "part-time employees" as defined by the Act count as "employment losses"? No, part-time employees are not counted in the number of persons laid off; however, they are entitled to notice when notice is required.

I am also seeking clarification of the provisions of the Act and the implementing regulations stating that "no employer may order a . . . covered reduction in work hours unless, at least 90 calendar days prior to any planned employment loss, the employer provides" a WARN notice. With respect to "plant closings" and "mass lay-offs," NY WARN notices are required if "at least 33% of employees at the site (excluding part-time employees) and at least 25 employees (excluding part-time employees)" suffer employment losses at a single site of employment for any 30 day period.

1. With regard to a "covered reduction in work hours," what are the standards that trigger a required WARN Notice? Must

at least 33% of employees at the site (excluding part-time employees) and at least 25 employees (excluding part-time employees)" suffer "employment losses," i.e., a reduction of hours of at least 50% at a single site of employment for any 30 day period? Yes, the 25/33% threshold (or 250 employees) applies.

2. How will the DOL apply the "30 day period" standard? For example, as written a 30 period could begin and end at any time and this could result in confusion over whether the duty to furnish a WARN notice applies, at least with regard to the "covered reduction in work hours." The 30-day period refers to the month in which first covered reduction in work hours occurs. Therefore, if there is a reduction in hours of at least 50% for 25/33% employees (or 250 employees) for each calendar month in the six-month period, starting in the month of the first covered reduction, notice will be required.

Please feel free to email me or call me if you want to discuss this directly.

Ray Clark

cell (214) 797-4271