

Hesnor, Shannon (LABOR)

From: Hesnor, Shannon (LABOR)
Sent: Monday, November 16, 2009 11:50 AM
To: 'S.Elliott@powerdrives.com'
Cc: Faraone, Janet M (LABOR)
Subject: FW: NY WARN Notice

Ms. Elliot,

Your reading of the New York State Worker Adjustment and Retraining Notification (WARN) Act and regulations is correct.

A reduction in hours of work of more than 50% during each month of any consecutive six-month period is an employment loss under the WARN Act. The regulations clarify that a reduction of hours has not occurred during any week that an employee is receiving unemployment insurance benefits as a partial wage replacement for lost hours of work through the employer's participation in a shared work program. Therefore, each employee receiving partial wage payments under the shared work program will not be included when determining the number of employees experiencing employment losses.

However, the regulations emphasize that when the shared work program expires or an employee has received his or her maximum benefits, and the threshold for requiring WARN notice is then met, all affected employees are entitled to as much notice as is practicable accompanied by a statement of the basis for reducing the notice period. Under the shared work program, only 20 weeks of benefits can be paid in a benefit year (even though a shared work program may be approved for up to 53 weeks).

If you have any further questions, please do not hesitate to e-mail or call me at 518-457-4380. Thank you.

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

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From: Faraone, Janet M (LABOR)
Sent: Friday, November 06, 2009 3:56 PM
To: Colavito, Maria L (LABOR)
Cc: Jones, Kevin E (LABOR); Golden, Kenneth L (LABOR); Balzer, Kristen L (LABOR); Hesnor, Shannon (LABOR); Osta, William G (LABOR); Connell, Joan (LABOR); Hartnett, Timothy (LABOR); Grossi, Richard (LABOR); Fellner, Janice (LABOR)
Subject: FW: NY WARN Notice

Maria, may I request a legal opinion on the below. Thanks.

From: Suzanne Elliott [mailto:S.Elliott@powerdrives.com]
Sent: Friday, November 06, 2009 3:48 PM

To: Faraone, Janet M (LABOR)
Subject: NY WARN Notice

Dear Janet,

33% of our employees will be impacted by layoff or a 50% reduction in hours of work for a consecutive six months. However, the employees experiencing a 50% reduction in hours have been approved for the NYS Work Share program. Under the regulations it appears that the employees who are approved for the work share are not considered part of the "affected employee" group.

Can you please confirm if we are reading the following regulation correctly?

Kind Regards,
Suzanne Elliott
716-512-7789

LAW: An employment loss is:

1. An employment termination other than a discharge for cause, voluntary departure or retirement;
2. A mass layoff exceeding six months;
3. A reduction in hours of work of more than fifty percent during each month of any consecutive six-month period.

REGS:

Employment loss.

(1) The term *employment loss* means:

(i) An employment termination, other than a discharge for cause, voluntary departure, or retirement;

(ii) A mass layoff exceeding six months; or

(iii) A reduction in hours of work of more than fifty percent (50%) during each month of any consecutive six-month period. For purposes of this provision, a reduction in hours of work shall not be deemed to have occurred during any week that the employee is receiving unemployment insurance benefits as a partial wage replacement for lost hours of work through the employer's participation in a shared work program under Article 7-A of Article 18 of the New York Labor Law, provided however, that should the employer become aware at any point in the duration of the shared work program that an employment loss not subject to this exception will occur, the employer shall provide as much notice as is practicable accompanied by a statement of the basis for reducing the notice period.

(2) Where a termination, layoff, or covered reduction in hours of work is involved, an employment loss does not occur when an employee is reassigned or transferred to an employer-sponsored program, such as retraining or job search activities, as long as the reassignment does not constitute a constructive discharge or other involuntary termination.

(3) *Employment loss* does not include instances where the plant closing, layoff, or covered reduction in hours of work is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or, the employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.