**From:** McManus, Mary E (LABOR)   
**Sent:** Friday, April 23, 2010 9:13 AM  
**To:** 'jodea@sapirfrumkin.com'  
**Cc:** Faraone, Janet M (LABOR)  
**Subject:** New York WARN Act Interpretation  
**Importance:** High

Dear Mr. O’Dea:

This is in response to your April 14, 2010 email to Janet Faraone of the Department in which you requested an interpretation of the New York State WARN Act, specifically Labor Law §860-b(5).

You state that you have a client who is in the process of selling its entire business, that the client has no plans to do any type of mass layoff before the sale, and that the purchaser has indicated that they do not plan to do a mass layoff or plant closing following the purchase.  You asked whether there is any requirement for the seller to provide any sort of notice that would cover potential layoffs done by the purchaser following the effective sale date of the business.

Pursuant to Labor Law §860-b(5), the selling employer is responsible for “providing notice for any plant closing or mass layoff in accordance with this section, up to and including the effective date of the sale.  After the effective date of the sale … the purchaser shall be responsible for providing notice for any plant closing or mass layoff in accordance with this section.”  *See also, 12 NYCRR  §921-2.1(b).*Under the State WARN Act, an employer must give employees 90 days notice of a mass layoff, relocation or employment loss.  *See, Labor Law §860-b(1).*

You state in your email that “[i]t appears from the statute that the seller would only be responsible for providing notice for any layoff that would occur prior to the date of sale. .. .”  The answer to that question would depend upon the terms of the sales contract between the seller and  the buyer.

Under the WARN Act, if the seller has a reasonable expectation that **it** will lay off its own employees within 90 days, the selling employer must provide notice to its employees.  The buyer has a similar responsibility once it takes possession of the business.  The problem occurs when the buyer wishes to lay off employees after taking control of the company, but before the 90-days has run.  If this is the case, providing the required notice should be addressed in the purchase agreement.  To do otherwise would make it impossible for the buyer to perform a mass layoff or plant closing until at least 90 days after it takes possession of the business.  Accordingly, this is a matter which should be discussed and addressed by the parties as a part of their sale negotiations, and the seller and purchaser should continue to communicate regarding any possibility of layoffs until the sale is completed.

Nonetheless, if the selling employer does not provide notice in anticipation of a subsequent purchaser layoff/plant closing, no liability attaches to the seller under the WARN Act for not providing such notice.

I hope that this answers your question.  Please let me know if you have any further questions regarding this.

Mary McManus  
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New York State Department of Labor  
ph (518) 457-6526

**From:** John O'Dea [mailto:JODea@sapirfrumkin.com]   
**Sent:** Wednesday, April 14, 2010 11:12 AM  
**To:** Faraone, Janet M (LABOR)  
**Cc:** William Frumkin  
**Subject:** New York WARN Act Interpretation

Good Morning,

This e-mail is sent as a follow up to my question regarding interpretation section 860-b(5) of the New York WARN Act. I have a client who is in the process of selling its entire business and it is unclear whether the seller has an obligation to give any notice to its employees in accordance with the Act given the particular circumstances of the sale.

In this case, the seller has no plan to do any type of mass layoff or plant closing prior to the effective sale date and the buyer has stated that they do not plan to do any mass layoff or plant closing following the sale. It appears from the statute that the seller would only be responsible for providing notice for any layoff that would occur prior to the date of sale and any notice for a layoff taking place after the sale date would be the responsibility of the purchaser, but we want to make sure that there is no requirement for the seller to provide any sort of notice that would cover potential layoffs done by the purchaser following the effective sale date of the business.

One of our main concerns is that we don't want to send out a notice of a potential layoff, one that we don't even believe will even happen, that might cause our employees to panic. Additionally, since the purchaser has indicated that he's not planning on any reduction in force, we don't want to send out a notice that might have a negative effect on our dealings with them.

Any guidance on this issue would be greatly appreciated. Please do not hesitate to contact me if you have any questions.

Regards,

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