

The W.A.R.N. Act - Mass Layoffs or Business/Plant Closings

YOUR LEGAL RIGHTS

1. Can my employer lay me off without any warning?

Maybe. The WARN (Worker Adjustment and Retraining Notification) Act requires businesses who employ over 100 workers to either give their employees 60 days' notice in writing of a mass layoff or plant closing, or to pay the employees if they fail to give the notice.

The WARN Act requires advance notice of loss of employment so workers have time to look for another job or receive training in another occupation.

2. What if my employer doesn't give me notice of the layoff?

If you are entitled to this notice and your employer fails to provide it, you may be due back pay and benefits that you would have earned during that 60 days as if the layoff had not occurred.

3. How do I know if I was part of a "mass layoff?"

A mass layoff occurs under the WARN Act when:

- at least 50 employees are laid off during a 30-day period, if the laid-off employees made up at least one third of the workforce;
- 500 employees are laid off during a 30-day period, no matter how large the workforce; or
- an entire work site is closed down and at least 50 employees are laid off during a 30-day period.

4. Is my employer covered by the WARN Act?

A business is covered if it employs at least 100 full-time employees *or* a combination of at least 100 part-time and full-time employees who work a total of 4000 hours per week. (Note: A part-time employee is someone who works fewer than 20 hours each week, or who has been employed fewer than six months before the date the notice should have been issued.)

5. I only worked for my employer for 1 month. Am I still entitled to benefits under the WARN Act?

A covered employee is normally entitled to 60 days' notice (or pay in lieu of notice). But if you were employed less than 120 days, then you get the lesser of 60 days' notice or half the number of days you were employed. In your case, you would be entitled to 15 days' notice or pay (half of one month of employment).

6. I was laid off without notice right before a holiday that I was scheduled to work. Am I entitled to the extra money I would have made?

A covered worker is entitled to any pay she would have earned in the covered period. For instance, if you earn tips or overtime pay on a regular basis, your employer may have to compensate you for those earnings, too.

Holiday pay is also covered, though you would also need to prove that you would have worked that holiday if you had not been laid off.

An employer also is required to pay for retirement benefits during the covered period, and for any medical expenses that would have been covered under the medical insurance plan.

7. My employer cut my wages and then laid me off without notice. Can he pay the WARN Act compensation at the lower rate?

Payment is calculated at either the average wage you received over the last three years of employment, or the last rate you received, whichever is *greater*. So in your case, the pay might be the average you received over the last three years.

8. I was working as a temp and then laid off. Am I covered?

The WARN Act does not protect employees who were hired with the understanding that the position was temporary, so temp workers generally would not be covered.

9. My employer laid me off when she moved the business to another city. Am I entitled to notice or pay?

If the layoff is due to the business relocating, the workers are not covered if the new worksite is within reasonable commuting distance, and the employer offers the employees the chance to transfer to the new site. If the site is not within reasonable commuting distance and the employee decides to transfer there anyway, the employee also is not entitled to notice or payment.

10. I was laid off because the business unexpectedly lost a huge customer. Am I still entitled to notice or payment?

Under certain conditions, the notification period can be reduced:

- if the layoff is due to a natural disaster;
- if the business closes due to circumstances that the employer could not reasonably have foreseen 60 days ahead of time;
- if the employer was trying to avoid or postpone the layoff by obtaining capital, and he believed that giving notice would have jeopardized the funding.

However, the employer is still required to give as much notice as possible under all of the above circumstances.

11. How do I file a claim against my employer for not giving me enough notice?

The WARN Act is enforced by lawsuits to collect back pay and penalties when an employer does not give notice. You will therefore have to file your claim against your employer in federal court.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.