

# LONG ISLAND BUSINESS NEWS

## New York Employees Get More Time to Empty their Desks

By: Claude Solnik

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Nobody likes to hear they've been laid off, but employees will soon have the right to find out the unpleasant news farther in advance.

A new state law increases the requirement for companies to give notice of mass layoffs and relocations, providing workers with more time to prepare and opening the door to litigation.

New York state law, in effect this coming February, will require companies with 50 or more full-time employees to give 90 days notice of layoffs, rather than the 60 days notice required of companies with 100 or more employees under the federal [Worker Adjustment and Retraining Notification Act](#).

"The state's casting a wider net," said Ellen Storch, an attorney at Garden City's Moritt Hock Hamroff & Horowitz. "The New York state WARN Act is geared to include more employers than the federal law. And it has greater requirements and provides more protections than the federal act."

Jonathan Farrell, head of Mineola-based Meltzer Lippe Goldstein & Breitstone's labor group, said changes will not only provide greater protection, but could prompt more litigation.

"It covers much smaller employers, gives longer notice periods and lowers thresholds," Farrell said. "What happens if you lose a big order? We're talking companies with 50 or more employees."

Companies must give notice only if the cuts are foreseeable. But Farrell said attorneys could argue firms should have known.

"Then you have litigation," Farrell said. "Is it unforeseen? You knew the economy was tanking. You knew there was a problem in the derivatives market. You knew about the economy. He told you six months ago you might lose the order."

Storch said executives can argue they took measures they hoped would avoid layoffs.

“Let’s say the employer is trying to stay in business,” Storch said. “They’re trying to get capital, some cash infusion or new business at the time they should’ve given the notice. They’re thinking if they got that money, they wouldn’t have to relocate or do the layoffs.”

But even that claim could lead to litigation over whether they should have “reasonably foreseen” the need for layoffs. Sudden changes, such as the loss of major customers, could shield companies from notification requirements.

“They may not be liable under the act if they can prove there was no way they could have anticipated the layoffs,” Storch said.

The state version, one of more than a dozen “mini-WARN acts” nationwide, also has other provisions not included in the federal version.

For plant closings for instance, federal law applies to the loss of 50 jobs at a single site over 30 days, while New York state law applies to 25 jobs at a single site.

Federal law defines a mass layoff as the termination of 500 employees companywide or 50 if they constitute 33 percent of the workforce at a single site over 30 days.

State law defines a mass layoff as the termination of 250 full-time employees or 25 employees constituting at least 33 percent of the workforce at single site.

New York state law also requires notice be given to any workers affected by relocations of 50 miles or more.

“If you don’t comply, there are penalties,” Storch said. “Any employee who doesn’t get the notice may get up to 60 days of back pay and benefits under both laws.”

Federal law allows only employees to sue employers for failure to comply, but now the state can file suit. “Not only is there a private right of action, but the New York State Department of Labor can come after employers,” Storch said.

Farrell said 90 days might create a long lame duck period for workers, hurting firms and creating an uncomfortable workplace atmosphere.

“Ninety days is a very long period of time. That’s a financial quarter,” Farrell said. “You tell the employee in 90 days he’s going to be laid off. They could start doing their resume. There are natural behaviors people do to survive. There’s a natural decline in productivity.”