FENWICK & WEST LLP

COMPARISON OF FEDERAL AND CALIFORNIA WARN LAWS

		FEDERAL WARN	CALIFORNIA WARN
COVERED EMPLOYERS	**TOTAL # OF EMPLOYEES** (Only count those who have been employed for at least 6 of the 12 months preceding the date of required notice).	100 or more (excluding part-time) *OR* 100 or more (including part-timers) working at least 4000+ hours (non-overtime) per week.	75 or more.
	PART-TIME EMPLOYEES INCLUDED IN COUNT?	No. Employees who work fewer than 20 hours per week are not counted.	Yes.
	TEMPS HIRED THROUGH STAFFING AGENCY INCLUDED?	No.	Probably yes, if otherwise meet definition of employee (i.e. employed for at least 6 of the 12 months preceding the date of required notice).
	INDEPENDENT CONTRACTORS?	No (unless misclassified).	No (unless misclassified).
TRIGGERING EVENT	**PLANT CLOSING (FEDERAL WARN)** **TERMINATION (CAL WARN)**	Plant Closing: Permanent or temporary shutdown of a single site of employment or facility (or operating unit within a single site of employment) that involves 50 or more employees during a 30-day period.	Termination: A cessation or substantial cessation of industrial or commercial operations in a covered establishment. There is no numerical threshold of affected employees.
	MASS LAYOFF	Employment loss at the single site of employment during any 30-day period involving: • At least 50 employees (excluding part-timers) *and* if the number affected is at least 33% of the workforce; or • At least 500 employees (excluding part-timers).	Layoff of 50 or more employees during any 30-day period regardless of percentage of work force.

		FEDERAL WARN	CALIFORNIA WARN
TRIGGERING EVENT	**RELOCATION**	*See* Business Relocation/Consolidation Combined with Offer of Transfer below.	Removal of all or substantially all of industrial or commercial operations to a different location 100 miles away or more. There is no numerical threshold of affected employees.
	AGGREGATE EMPLOYMENT LOSSES WITHIN 90 DAYS?	Yes. Employment losses within 90 days will be aggregated to meet the definition of a triggering event unless the employer can show that the losses resulted from distinct causes and were not an attempt to evade the statute's requirements.	Uncertain. Cal. WARN does not expressly call for 90 day aggregation. This is an uncertain area and employers should consult counsel about aggregation under Cal. WARN.
NOTICE REQUIREMENTS	**WHO MUST RECEIVE NOTICE?**	• The affected employee (or the employee's union representative) (Note: While part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, affected part-time employee must receive notice once WARN is triggered.) • The State dislocated worker unit (e.g. the EDD in California) • The chief elected official of the local government within which such closing or layoff is to occur.	• The affected employee. (Note: Unlike federal WARN, Cal. WARN does not expressly permit notice to the union representative in lieu of employees.) • EDD (Workforce Services Division in CA) • The local Workforce Investment Board • The chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.
	TIMING OF NOTICE	At least 60 calendar days in advance unless qualify under an exception below.	At least 60 calendar days in advance unless qualify under an exception below.
	PAY IN LIEU OF NOTICE?	Yes.	Yes.

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EXCEPTIONS TO NOTICE REQUIREMENTS	**FALTERING COMPANY EXCEPTION**	Only applicable to plant closing (not applicable to mass layoff). Employer may provide less than 60 days notice if it was taking specific action to procure financing or business that would have enabled it to avoid or postpone the shutdown, relocation, or termination and the employer reasonably believed in good faith that giving notice would have precluded the employer from obtaining the necessary capital or business. The employer must provide notice as soon as practicable.	Only applicable to termination or relocation (not applicable to mass layoff). Same standard as under federal WARN, but Cal WARN also requires employers to provide documentation to the Department of Industrial Relations (DIR) and DIR must conclude that the employer was actively seeking capital or business, and a WARN notice would have precluded the employer from obtaining the capital or business.
	UNFORESEEN BUSINESS CIRCUMSTANCES EXCEPTION	Yes.	Not applicable.
	NATURAL DISASTER EXCEPTION	Yes. Notice not required if plant closing or mass layoff is directly caused by a natural disaster, such as flood, earthquake, or drought.	Yes. Notice not required if mass layoff, relocation, or termination is caused by a physical calamity or act of war.
	BUSINESS RELOCATION/CONSOLIDATION COMBINED WITH OFFER OF TRANSFER	A relocation or consolidation of part or all of the employers' business and prior to the closing or layoff: (i) 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 (ii) 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 of the closing or layoff, whichever is later.	Not applicable.

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EMPLOYER LIABILITY	**CIVIL PENALTY**	A possible civil penalty of $500 a day for each day of violation.	A possible civil penalty of $500 a day for each day of violation.
	BACK PAY	Back pay up for each day WARN was violated.	Back pay up for each day WARN was violated.
	BENEFITS	Only ERISA benefits, and actual medical costs.	All benefits (includes non-ERISA benefits—e.g., stock options).
	CAPS ON BACK PAY AND BENEFITS?	Yes, back pay and benefits capped at lower of 60 days or half the number of days the individual was employed.	Yes, back pay and benefits capped at lower of 60 days or half the number of days the individual was employed.
	ATTORNEYS FEES	Yes.	Yes.
	INDIVIDUAL OFFICER & DIRECTOR LIABILITY?	No.	Probably yes.