

DEALER WARN ACT Q AND A

The Worker Adjustment and Retraining Notification (WARN) Act generally requires dealers with 100 or more employees to provide notice 60 calendar days in advance of a dealership closing or mass layoff. Advance notice gives workers and their families time to adjust to the employment loss, to seek other jobs, or to enter training or retraining. Most dealership employees are entitled to notification, as are employee representatives, local chief elected officials, and state dislocated worker units. Notices of less than 60 days may be given under certain circumstances.

I. What Is A Covered Dealership Closing Or Mass Layoff?

Dealership Closing: Generally, when a dealership location (or one or more facility or operating units at a dealership location) is to be shut down for more than 6 months, resulting in an employment loss for 50 or more employees in any 30-day period.

Mass Layoff: Generally, a layoff of 6 months or longer affecting either:

1. 500 or more workers; or
2. At least 33 percent of the workforce, if it affects between 50 and 499 workers. The number of affected workers is the total number laid off during a 30-day period.

When determining coverage, do not count employees who have worked less than 6 of the last 12 months, or who work less than 20 hours a week, on average.

Notice also must be given if the combined employment loss for 2 or more groups of workers reaches one of the threshold levels during a 90-day period, unless the result of separate and distinct actions/causes.

II. What If The Covered Dealership Is Being Sold?

If part or all of a covered dealership is being sold, the following requirements apply:

1. If the sale will result in a closing or mass layoff, at least 60 days notice must be given.
2. The selling dealer must provide the notice if the closing or mass layoff occurs up to and including the date/time of the sale.
3. The buyer must provide the notice if the closing or mass layoff occurs after the sale.
4. Employees of the selling dealer on the date/time of the sale become, for purposes of WARN, employees of the buyer immediately following the sale.

III. What is An “Employment Loss”?

“Employment loss” includes:

1. Employment termination, but not discharge for cause, voluntary departure, or retirement;

2. A layoff exceeding 6 months; or
3. An hours of work reduction of more than 50% in each month, for any 6-month period.

“Employment loss” does *not* include employees who:

1. Refuse to transfer to a different site within reasonable commuting distance.
2. Accept a transfer outside a reasonable commuting distance, within 30 days after it is offered, or within 30 days after the covered closing or mass layoff, whichever is later.

In either case, the transfer offer must be made before the closing or mass layoff, there must be no more than a 6 month break in employment, and the new job must not be deemed a constructive discharge. These “employment loss” exceptions apply only if the closing or mass layoff results from a relocation or consolidation of the dealership.

IV. Who Must Receive Notice?

Written notice must be given to:

1. Employees reasonably expected to experience an employment loss.
2. The chief elected officer of the exclusive representative(s) or bargaining agency(s), if any, of affected employees.
3. Employees who may lose employment due to “bumping” or displacement by other workers, to the extent they can be identified when notice is given.
4. The state dislocated worker unit and chief elected official of the local government where the dealership is located.

V. When Must Notices Be Given?

Notices generally must be timed to reach the above parties at least 60 days before a closing or mass layoff. When employment separations for a closing or mass layoff occur on more than one day, notices are due to the representative(s), state dislocated worker unit, and local government official at least 60 days before each separation. If the workers are not represented, notices are due at least 60 days before each worker's separation.

The exceptions to 60-day notice are:

- (1) A faltering dealership. This narrowly construed exception covers situations where new capital or business is being sought in order to stay open, and giving a notice would ruin the opportunity to get such new capital or business. It applies only to plant closings;
- (2) Unforeseeable business circumstances. This exception applies to closings and mass layoffs caused by business circumstances not reasonably foreseeable at the time a notice would otherwise have been required; and
- (3) Natural disaster. This exception applies where a closing or mass layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm.

Dealers providing less than 60 days advance notice based on one of these exceptions bear the burden of proving that necessary conditions have been met. Give the notice as far in advance as practicable with a statement of the reason for reducing the notice period.

VI. What is the Required Form and Content of the Notice?

No particular notice form is required, but notices must be specific and in writing. Any reasonable delivery method designed to ensure receipt 60 days before a closing or mass layoff is acceptable. Notices may be conditioned upon the occurrence or non-occurrence of an event when the event is definite and its occurrence or nonoccurrence will result in a covered employment loss less than 60 days after the event.

For specifics of what must be included in a WARN notice, see www.dol.gov/dol/allcfr/ETA/Title_20/Part_639/20CFR639.7.htm

Additional information is required if the date(s) or 14-day period(s) for a planned plant closing or mass layoff are extended beyond the those announced in the original notice.

VII. Is Recordkeeping Required?

No particular recordkeeping is required, and information used to determine whether, to whom, and when notice must be given is usually kept in the ordinary course of business.

VIII. Are Their Penalties and Enforcement for Noncompliance?

Violations of WARN requirements risk potential liability including back pay and benefits for aggrieved employees for the period of violation (up to 60 days). Any potential liability may be reduced by wages paid during the violation period and by other voluntary and unconditional payments made. Failing to provide a local government notice may trigger a civil penalty of up to \$500/day. This penalty may be avoided if the liability to aggrieved employees is satisfied within 3 weeks after a closing or mass layoff is ordered. Violations are subject to civil enforcement. Also, workers, employee representatives, and units of local government may bring individual or class action suits where the court, in its discretion, may award reasonable attorney's fees and costs to prevailing parties.

IX. Further Information

For further information, call DOL at: 877.872.5627 or go to:

1. WARN compliance: www.doleta.gov/layoff/pdf/EmployerWARN09_2003.pdf
2. State laws and assistance: www.doleta.gov/layoff/rapid_coord.cfm
3. Unemployment insurance: www.workforcesecurity.doleta.gov/unemploy/

If it appears a WARN notice may be required, dealers are advised to contact local or labor counsel.