



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

February 3, 2009

[REDACTED]

Re: Our File No. RO-08-0163

Dear [REDACTED]:

I am writing in response to your letter of December 22, 2008, concerning the New York State Worker Adjustment and Retraining Notification (WARN) Act which took effect February 1, 2009. The State WARN Act is a Department of Labor legislative proposal recently enacted into law as chapter 475 of the laws of 2008. You have asked whether New York intends to promulgate a regulation equivalent to 20 C.F.R. 639.10 under the Federal WARN Act. 20 C.F.R 639.10 requires additional notice if the plant closing or mass layoff extends "beyond the date or the ending date of any 14-day period announced in the original notice . . ."

On January 30, 2009, the Department filed an Emergency/Proposed rule governing WARN with the Secretary of State. The regulations were effective immediately upon filing. These regulations require additional/supplemental notice for the postponement of an event that triggers the notice requirement. The regulations provide that, if, after notice has been given, an employer decides to postpone a triggering event, e.g., plant closing, mass layoff, relocation, or covered reduction in work hours, for less than ninety (90) days, additional notice shall be given as soon as possible after the decision to postpone. The notice of postponement shall include reference to the earlier notice, the date (or fourteen-day period) to which the planned action is being postponed, and the reasons for the postponement and shall otherwise meet all the requirements of the original notice as to form, delivery, and parties entitled to notice. If the postponement is for ninety (90) days or more, a new notice which otherwise complies with all the requirements of the Act and the regulations shall be provided.

Similar to the Federal WARN regulations, rolling notice, in the sense of routine periodic notice, given whether or not a plant closing, mass layoff, relocation, or covered reduction in work hours is impending, and with the intent to evade the purpose of the Act shall constitute a violation of the Act and regulations.

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Should you wish to view the complete text of the regulations prior to the publication of the rulemaking in the February 11, 2009 volume of the New York State Register, they are available on the Department of Labor's website at www.labor.state.ny.us. If you have any additional questions, please feel free to contact me at (518) 457-4380.

Sincerely,
Maria Colavito, Counsel

By: 
Shannon Lawlor
Attorney I

MLC:sl