



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

---

February 17, 2009



Re: Our File No. RO-09-0010

Dear [REDACTED]:

I am writing in response to your letter dated January 27, 2009, concerning the interpretation of the New York State Worker Adjustment and Retraining Notification (WARN) Act which took effect February 1, 2009. On January 30, 2009, the Department filed an Emergency/Proposed rulemaking for publication in the February 11, 2009, issue of the New York State Register. A copy of the Emergency/Proposed rule can also be found on the Department's website, [www.labor.ny.us](http://www.labor.ny.us). You have requested advice as to whether a layoff of fifty-plus (50+) employees [REDACTED], out of a total of three hundred and seven full-time employees would require [REDACTED] to comply with the notice requirements of the State WARN Act.

You are correct in stating that the State WARN Act requires notice when a layoff reaches the threshold of 25 employees that constitute at least 33% of the employees. An important qualifier of this requirement is that the 25/33% requirement applies to a single site of employment. The regulations define "single site of employment" as follows:

*Single site of employment.*

*(1) For the purposes of this Part, the following shall apply to the determination of whether an employment loss involves a single site of employment:*

*(i) Several single sites of employment within a single building may exist if separate employers conduct activities within the building. For example, an office building housing fifty (50) different businesses will contain fifty (50) single sites of employment.*

*(ii) A single site of employment may refer to either a single location or a group of contiguous locations in proximity to one another even though they are not directly connected to one another. For example, groups of structures which form a campus or industrial park or separate facilities across the street from one another*

Phone: (518) 457-3665 Fax: (518) 457-1164  
W. Averell Harriman State Office Campus, Bldg. 12, Room 508, Albany, NY 12240

*owned by the same employer may be considered a single site of employment.*

*(iii) Separate buildings or facilities which are not directly connected or are not in proximity to one another may be considered a single site of employment if they are in reasonable geographic proximity, are used by the employer for the same purpose, and share the same staff or equipment. An example is an employer who manages a number of warehouses in an area, but who regularly shifts or rotates the same employees from one building to another.*

*(iv) Contiguous buildings occupied by the same employer that have separate management, produce different products, and have separate workforces would not constitute a single site of employment.*

*(v) The single site of employment for workers whose primary duties require travel from point to point, who are out-stationed, or whose primary duties involve work outside any of the employer's regular employment sites (e.g., railroad workers, bus drivers, salespersons), shall be the site to which they are assigned as their home base, from which their work is assigned, or to which they report.*

*(2) The application of the definition of single site of employment by an employer in order to evade the purpose of the Act shall constitute a violation under this Part.*

If all of the fifty (50) [REDACTED] employees to be laid off are from a single site of employment, notice is not required. However, the numbers will change if the employees are being laid off from different sites of employment. For example, if twenty-five (25) of the employees are to be laid off from a site employing fifty (50) people, notice *will be* required for the affected employees at that site.


In the event that a given layoff is insufficient to trigger the Act, the Department still encourages employers to give their employees as much notice of planned plant closings and mass layoffs as possible. By requiring more advance notice of plant closings and mass layoffs to workers and to the Department, the WARN Act gives the Department the opportunity to provide unemployment insurance, job retraining, and reemployment information to the employees who will be losing their jobs so that they can return to work as early as possible following their loss of employment. Your cooperation in working with the Department to achieve this goal is always appreciated, regardless of whether you are obligated to provide the notice required under the WARN Act.

If you have any additional questions, please feel free to contact me.

Very truly yours,

Maria Colavito, Counsel

By:

  
Shannon J. Lawlor  
Attorney 1