



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

February 17, 2009

[REDACTED]

Re: Our File No. RO-09-0015

Dear [REDACTED]:

I am writing in response to your letter dated February 2, 2009, concerning the interpretation of the New York State Worker Adjustment and Retraining Notification (WARN) Act which took effect February 1, 2009. The State WARN Act was recently enacted into law as chapter 475 of the laws of 2008. The Department also filed Emergency/Proposed regulations with the Secretary of State on January 30, 2009, to provide regulated parties with further guidance regarding enforcement and interpretation of the Act. These rules became effective immediately upon filing. If you wish to review the entire text of the regulations, they are available on the Department's website at www.labor.state.ny.us.

You have requested clarification as to how the Act affects [REDACTED]. The WARN Act requires a 90-day notice to affected employees who may reasonably be expected to experience an employment loss. An employment loss occurs when there is a mass layoff of at least 25 employees and those 25 employees constitute 33% of the employees at a single site of employment. Such mass layoff must exceed six months in duration. In your letter, you have stated that [REDACTED] employs 59 employees and lays off 90% of the workforce during the months of July and August. [REDACTED] does therefore, meet the 25/33% numerical threshold to trigger a WARN notice requirement; however, since the mass layoff by [REDACTED] is only a two-month layoff and does not exceed six months, it is not covered by the WARN Act.

Also note that Section 921-5.1 of the regulations expounds on an exception to the notice requirement for temporary employment where the affected employees were hired with the understanding that their employment was temporary. Paragraph 921-5.1(c) speaks directly to the agricultural sector:

(c) Employment in agriculture for tasks such as harvesting or processing, or in construction for work on a particular building or project, may be

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considered temporary if the worker understood at the time of hire that the job was temporary. . .

You may wish to review the regulations further to determine whether this language also applies to your situation.

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

Very truly yours,

Maria Colavito, Counsel

By: 
Shannon Lawlor
Attorney I

MLC:SL:cmh