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

February 12, 2009

[redacted]

Re: Request for Opinion
WARN/Labor Law § 860
RO-09-0019

Dear [redacted]:

I am writing in response to your letter dated February 2, 2009, concerning interpretation of the New York State Worker Adjustment and Retraining Notification (WARN) Act which became effect February 1, 2009. You have requested clarification as to whether anticipated layoffs will give rise to obligations under the Act for a New York company and two wholly owned subsidiaries (described as "Companies A, B, and C," respectively) represented by your firm. The Department of Labor has recently filed proposed regulations which may provide further guidance regarding interpretation and enforcement of the Act. These rules became effective immediately upon filing with the New York Secretary of State on January 30, 2009. If you wish to review the entire text of the regulations, they are available on the Department of Labor's website, www.labor.state.ny.us.

The WARN Act requires, inter alia, notice when there is a layoff of 25 employees which make up at least 33% of the employees at a "single site of employment." The new 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:

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(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 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.

Under the fact situation you have described, Company A and Company B occupy the same premises, company B is fully owned by company A, and both are presumably engaged in the same business enterprise. Unfortunately, this is not enough information for us to determine if this is a single site of employment or several sites—a fact necessary to a determination of whether the Act is triggered. Nevertheless, when considered as a single site of employment, the projected layoffs would not meet the 33% threshold mandating notification under the Act (60 out of 508, or approximately 12%). If the companies were viewed as separate employers, since Company A would not be laying off 33% of its workforce at that site (35 out of 466, or approximately 7.5%), and Company B employs fewer than 50 employees, neither company would trigger the Act.

It is possible that even within company A there might be more than one site of employment. However, we do not have sufficient information to address that possibility.

Accordingly, we do not have sufficient information to make a definitive determination of the situation you have described. If you would like to provide additional details, that may be enough for us to provide a more definitive statement.

Finally, the proposed layoffs at Company C would not require notification under the New York WARN Act, since it appears to involve a work site in the State of Georgia only, and thus it is outside the jurisdiction of the New York law. Under the proposed regulations, "Employer" is defined as "any business enterprise, whether for-profit or not-for-profit, that employs fifty (50) or more employees within New York State.

We hope this is responsive to your inquiry. Should you have any additional questions, please feel free to contact me.

Very truly yours,

Kenneth L. Golden

Kenneth L. Golden
Senior Attorney

KLG:da
cc: Timothy Hartnett, WFD