

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

*Our firm is a member of Meritas.
With 189 top-ranking law firms
spanning 97 countries, Meritas
delivers exceptional legal knowledge,
personal attention and proven
value to clients worldwide.*

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2020
Stradley Ronon Stevens & Young, LLP
All rights reserved.

Please click [here](#) to visit our **COVID-19 RESOURCE CENTER**

WARN Act, Layoffs and the COVID-19 Pandemic

During these uncertain times, employers must make difficult decisions to sustain their businesses in the midst of the COVID-19 pandemic, including potentially laying off employees. Large layoffs often implicate the 60-day notice requirement under the Worker Adjustment and Retraining Notification (WARN) Act. Although the COVID-19 pandemic presents circumstances that may trigger exemption from the WARN Act's 60-day notice requirement, employers subject to the WARN Act are well-advised to provide as much notice as practical to employees affected by impending layoffs.

The WARN Act is a federal statute that applies to employers with the equivalent of 100 or more full-time employees and imposes a 60-day notice requirement before an employer can implement a "plant closing" or "mass layoff." The WARN Act sets forth multi-faceted definitions for "plant closings" and "mass layoffs" that must be carefully considered by an employer before proceeding with layoffs, but the WARN Act's notice requirements can apply to layoffs impacting as few as 50 employees. If the WARN Act is triggered, an employer must, among other requirements, give at least 60 days' written notice to the affected employees and designated union representatives and government entities. If the employer fails to give the required notice, substantial penalties can be imposed, including the requirement to pay 60 days' back pay and benefits to impacted employees and fines of up to \$500 per day.

The WARN Act contemplates that there may be circumstances where an employer must order a plant closing or mass layoff before the conclusion of the 60-day notice period. Specifically, the WARN Act provides an exemption to the 60-day notice requirement where the plant closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time notice would have been required. The WARN Act specifically recognizes that "an unanticipated and dramatic major economic downturn might be considered a business circumstance that is not reasonably foreseeable." Although there is not clear guidance on whether a pandemic like COVID-19 triggers the exemption, the argument for applying the exemption is strengthened now that state and local governments are requiring businesses to shut down and forcing employees to stay home.

Importantly, even if the "unforeseeable business circumstances" exemption applies, an employer still must give as much notice as is practicable to affected employees (and others as required under the law) and provide a brief statement explaining why the notice period is being reduced. For this reason, employers should consider providing notice to employees facing layoffs as soon as possible. Moreover, as

the COVID-19 crisis continues, it will become less likely that the “unforeseeable business circumstances” exemption applies, as the economic reality facing businesses becomes more apparent.

In addition to the WARN Act, several states have “mini-WARN” laws that may impose different requirements, including longer notice periods and different exemptions. Be sure to consult applicable state laws to ensure compliance.



Jonathan F. Bloom



Melissa L. Perry

For more information, contact Jonathan F. Bloom at 215.564.8065 or jbloom@stradley.com or Melissa L. Perry at 215.564.2505 or mperry@stradley.com.

Stradley Ronon’s Employment & Labor Practice Group

Jonathan F. Bloom, <i>Chair</i>	jbloom@stradley.com	215.564.8065
A. Nicole Stover, <i>Vice-Chair</i>	nstover@stradley.com	856.321.2418
Danielle Banks	dbanks@stradley.com	215.564.8116
Chelsea Biemiller	cbiemiller@stradley.com	215.564.8550
Adam D. Brown	abrown@stradley.com	215.564.8729
Joseph W. Catuzzi	jcatuzzi@stradley.com	215.564.8680
Penelope Cilluffo	pcilluffo@stradley.com	484.323.6432
Adriel J. Garcia	agarcia@stradley.com	215.564.8022
Samantha Kats	skats@stradley.com	484.323.1354
Barry L. Klein	bklein@stradley.com	215.564.8715
Elizabeth A. Kuschel	ekuschel@stradley.com	215.564.8539
William E. Mahoney Jr.	wmahoney@stradley.com	215.564.8059
Francis X. Manning	fmanning@stradley.com	856.321.2403
Melissa L. Perry	mperry@stradley.com	215.564.2505
Ellen Rosen Rogoff	erogoff@stradley.com	215.564.8058
Amy E. Sparrow	asparrow@stradley.com	484.323.1353