
Hughes Hubbard & Reed

California Suspends Penalty Portions of California WARN Act in Response to COVID-19

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notices-methodologies>.

March 24, 2020 - The California WARN Act provides protection for employees of certain businesses engaging in layoffs and closures. Chief among these protections is the requirement that businesses with 75 or more employees in California provide their employees with at least 60 days' advance notice before taking action that would result in the temporary or permanent loss of employment for 50 or more employees within a 30-day period. To provide businesses with some relief from the unprecedented actions being taken to combat the spread of COVID-19, California Governor Gavin Newsom, by executive order issued on March 17, suspended certain provisions of the California WARN Act (<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-EO-motor.pdf>). As of March 4 (the date that a State of Emergency was declared in California) and lasting "through the end of this emergency," the order suspends penalty provisions of the California WARN Act, including the noncompliance remedies of back pay, other damages, and civil penalties. Employers still must provide "as much notice as is practicable."

The suspension applies only to employment actions caused by COVID-19-related "business circumstances that were not reasonably foreseeable as of the time that notice would have been required." Furthermore, suspension is expressly conditioned on compliance with the following obligations:

1. Employers must provide written statutory notice of mass layoffs, relocations or termination to (1) the affected employees; (2) California's Employment Development Department (EDD); (3) the local workforce investment board; and (4) the chief elected official of each city and county government where the termination, relocation or mass layoff occurs.
2. The notice must contain the information required by the federal WARN Act.
3. Employers must provide "a brief statement of the basis for reducing the notification period."
4. The notice must contain the following statement: "If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at <https://www.labor.ca.gov/coronavirus2019/>."

On March 23, EDD and California’s Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) issued guidance on this conditional suspension (<https://www.dir.ca.gov/dlse/WARN-FAQs.html>). Presented in the form of FAQs, the guidance provides little in the way of specific direction beyond the content of the March 17 executive order itself. The agencies do state in the guidance that notice to employees by “any reasonable method of delivery that ensures receipt of notice is acceptable (e.g., first class mail, personal delivery with optional signed receipt, electronic mail, etc.).”

Governor Newsom’s executive order does not affect the obligation to pay out PTO to terminated employees. Neither, of course, does the order affect applicability of the federal WARN Act. However, the federal statute includes an exception for “unforeseeable circumstances”; that exception logically would include the COVID-19 pandemic, although to date there has been no judicial or legislative interpretation so holding. Given the fact-specific analysis required under the federal statute and the significant potential for litigation, the business case for layoffs on shortened notice should be thoroughly documented internally.

[Click here to go to our COVID-19 Resource Center for more advisories, articles and other content related to the coronavirus pandemic.](#)

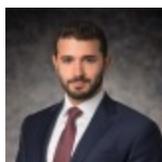
Related People



Rita M. Haeusler



Ross Lipman



Robby Naoufal

Related Areas of Focus

[Employee Benefits & Executive Compensation](#)

[Employment & Unfair Competition](#)

[Corporate Reorganization & Bankruptcy](#)