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A Littler Mendelson **Time Sensitive** Newsletter

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As of January 1, 2005 Illinois employers will be subject to a new state Worker Adjustment and Retraining Notification Act which mirrors the federal Worker Adjustment and Retraining Notification Act but contains several critical differences.

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Midwest Edition

A Littler Mendelson Midwest-specific Newsletter

New Illinois WARN Act Imposes Additional Requirements on Illinois Employers

By John DiJohn and Melodie Craft

Beginning January 1, 2005, Illinois employers will need to comply with a new state law requiring 60 days advanced notice of a "mass layoff, relocation or employment loss." The new law, known as the Illinois Worker Adjustment and Retraining Notification Act ("Illinois WARN" or "the Act"), mirrors in many respects the federal Worker Adjustment and Retraining Notification Act (WARN). Illinois WARN, however, differs from the federal WARN Act in five critical ways. This article explores those differences and provides practical advice on how to handle them.

The first critical difference is that the Illinois WARN has a lower "total employee" threshold for its application than the federal WARN Act. Illinois WARN applies to employers who employ 75 or more full-time employees or 75 or more employees who work at least a combined 4,000 hours per week (exclusive of overtime). The federal WARN Act applies only to employers with 100 or more full-time employees, or 100 or more employees who work at least a combined 4,000 hours per week (exclusive of overtime). Thus, Illinois WARN will apply to more employers than the federal WARN Act. Illinois employers with between 75 and 99 employees will need to comply with Illinois WARN even though they are exempt from complying with the federal WARN Act.

Secondly, Illinois WARN uses a lower threshold for defining what constitutes a "mass layoff" thus triggering the statute's requirements. The federal WARN Act's definition of a "mass layoff" requires a layoff affecting: (1) at least 33% of active full-time employees and at least 50 full-time employees, or (2) 500 full-time employees. Illinois WARN sets a lower trigger for mass layoffs, requiring: (1) at least 33% of full-time employees and at least 25 full-time employees or (2) at least 250 full-time employees. It reduces by one-half the number of employees necessary to trigger notice requirements for a mass layoff.

Third, Illinois WARN requires that employers give advance notice of a "relocation," whereas a "relocation" is not an event that triggers notice requirements under the federal WARN Act's obligations. Illinois WARN, however, does not define the word "relocation." Employers may be forced to look to the federal WARN Act's definition of "relocation and consolidation" for guidance. At present, it is not clear how the word "relocation" will be defined for purposes of implementing Illinois WARN.

Fourth, Illinois WARN contains broader notice requirements than federal law. Under both the Illinois and federal WARN Acts, an employer is required to provide the required written notice to affected employees and their unions, the state dislocated worker unit (the Illinois Department of Commerce and Economic Opportunity) and the chief elected official of the unit of local government within which a closing or layoff is to occur. Illinois WARN goes on to require any Illinois employer that receives state or local economic development incentives to provide additional notice to other government officials pursuant to the Business Economic Support Act (BESA). BESA generally requires employers to provide notice to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

The final difference worth noting concerns enforcement of the statutory requirements. Under the federal WARN Act, actions for

alleged noncompliance may be brought in a federal court by affected employees. Illinois WARN grants the Illinois Department of Labor the ability to promulgate rules with "provisions that allow the parties access to administrative hearings for any actions of the Department under this Act." Additionally, the Illinois Department of Labor has the authority to "examine the books and records of an employer" in connection with any investigation or proceeding under the Act to determine whether a violation of the Act occurred.

It is also important to note that Illinois WARN provides that information obtained from any employer regarding the books, records, or wages paid to workers shall be: (1) confidential, (2) not published or open to public inspection (and not subject to Illinois Freedom of Information Act requests); (3) not used in any court in any pending action or proceeding; and (4) not admissible in evidence in any action or proceeding other than one arising out of the Illinois WARN Act.

Illinois WARN will impose its requirements on employers that are not currently subject to the federal WARN Act. When making a downsizing decision, all Illinois employers must consider whether Illinois WARN applies to their particular circumstances. Please contact John DiJohn [jdijohn@litter.com] or Melodie Craft [mcraft@littler.com] if you have questions regarding the Act's applicability to your circumstances.