CLIENT ALERT: The New Hampshire WARN Act to Take Effect on January 1, 2010

Employers doing business in New Hampshire must now be aware of a state law requiring employers to provide written notice to employees in advance of a mass layoff or plant closing. The New Hampshire Worker Adjustment and Retraining Notification Act ("NH WARN Act"), takes effect on January 1, 2010. *See* RSA 275-F:1, *et seq*. The NH WARN Act is patterned after the Federal WARN Act; however, there are some important differences between the two laws. For example, the NH WARN Act applies to employers who employ 75 or more employees, whereas the Federal WARN Act applies to employers who employ 100 or more employees.

The NH WARN Act requires covered employers to give 60 days advance, written notice to employees if there is an employment loss at a single site during a 30 day period of at least 250 employees or at least 25 employees if that constitutes 33% of the full-time employees. Employers must also give notice if there is a permanent or temporary shutdown of a single site of employment in New Hampshire if the shutdown results in a loss of 50 or more full-time employees. Employers must give notice to the affected workers, their union, the chief elected official of the municipality in which the mass layoff or plant closing occurs, the New Hampshire Attorney General, and the New Hampshire Commissioner of Labor. The NH WARN Act provides limited exceptions to the notice requirement in the following circumstances: (1) the employer is a faltering company and was actively seeking capital; (2) the need for notice was not reasonably foreseeable; (3) the plant closing is the result of completion of a particular project and the employees were hired knowing that their employment was limited; (4) the mass layoff or plant closing was necessitated by a natural disaster, act of terrorism, or physical calamity; or (5) the layoff or closing constitutes a strike or lockout not intended to evade the NH WARN Act.

An employer who fails to give proper notice is liable to each employee who lost his or her employment for back pay, the value of the cost of any benefit that the employee would have been entitled to, including the cost of medical expenses incurred, that would have been covered under an employee benefit plan, and attorneys' fees. In addition, the Commissioner of Labor may asses a civil penalty of up to $2,500 and/or $100 per employee for each day of noncompliance. Lastly, unlike the Federal WARN Act, failure to provide sufficient notice under the NH WARN Act allows state officials to place liens on the business revenues and real and personal property of violators.

Employers must carefully review the requirements of the Federal WARN Act and state plant-closing laws, including the NH WARN Act, when determining the proper course of action during a mass layoff or closing of a facility. Please contact your MBJ attorney with any questions you have concerning these requirements.

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