

PUBLICATION

American Apparel to Send 3,500 Workers Home: What You Need to Remember About the WARN Act

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In the fallout of American Apparel's planned Chapter 11 bankruptcy, the clothing manufacturer warned almost 3,500 employees in its California locations that they may be laid off come the first of the year. Documents published by California's Employment Development Department show that in early November, the company sent the 3,500 workers the 60-day notice required by the Worker Adjustment and Retraining Notification (WARN) Act.

American Apparel has received national attention in the past couple of years for firing its long-time CEO, Dov Charney, in the wake of numerous sexual harassment, discrimination and assault allegations against him. The brand has also gained notoriety for its controversial clothing ads. This is the second time the company has filed for bankruptcy, the first filing having occurred almost a year ago. At the time it first filed for bankruptcy, American Apparel had 110 stores in more than 20 states and employed approximately 8,500 workers worldwide. In addition to the California stores, the company plans to close stores in Seattle, Atlanta, Dallas and Memphis.

Among the many lessons you can take from American Apparel's debacle is that WARN Act statutes often present another potential litigation trap in the midst of layoffs. The federal WARN Act requires employers with 100 or more employees to provide notice 60 days in advance of covered plant closings and mass layoffs. A mass layoff is defined as employment loss at an employment site during any 30-day period for 500 or more employees or for 50 – 499 employees if they make up at least 33 percent of the employer's active workforce. In determining whether an employer has enough workers to be covered by the Act, the Act considers only employees who have been employed for at least six months of the 12 months preceding the date of the required notice.

Under the WARN Act, an employer must give written notice to either the affected employees or their representatives, as well as the appropriate local government unit. Notably, for violations of WARN Act requirements, employee representatives and local governments may bring individual or class action suits in the United States district courts. Further, if an employer loses a WARN Act case, it may be required to pay the other side's attorneys' fees.

Additionally, many states, including California, Illinois, Maryland, New Jersey, New York, Tennessee and Wisconsin, have their own state versions of the WARN Act and these state acts may vary from the requirements of the federal WARN Act. For instance, California's WARN Act differs in the following ways: covers employers with 75 or more employees; requires notice for layoff or relocation of 50 or more employees regardless of percentage of work force; and permits aggrieved parties to file lawsuit in any court of competent jurisdiction. Even if your state does not have its own version of the WARN Act, you may still be covered by the federal statute. Given the potential consequences for failing to adhere to WARN Act requirements, prudent employers would do well to keep it in mind during any significant facility changes.