

# PUBLICATION

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## Once Encouraged, Now Mandatory – Maryland's New Mini-Warn Act Takes Effect October 1, 2020

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Effective October 1, 2020, employers in Maryland will be required to give advance, written notice of reductions in force – similar to the federal Worker Adjustment Retraining and Notification (WARN) Act. Currently, under the Maryland Economic Stabilization Act, employers are only encouraged to provide 90 days' advance notice of a layoff. As discussed below, that all changes during a time when many employers are facing difficult decisions regarding reductions in force, furloughs, and position eliminations. Importantly, employers who also are covered by the WARN Act must be sure to comply with both laws, which have different requirements regarding notice, coverage, triggering events, and employee thresholds.

### Which Employers are Covered?

Maryland's amended Economic Stabilization Act (the Amended Act) applies to employers with at least 50 employees operating an industrial, commercial, or business enterprise in Maryland for at least one year. Employees who work fewer than an average of 20 hours per week, or who have worked for the employer for less than six months in the immediately preceding 12 months, are not counted for purposes of the 50-employee threshold.

### Under What Circumstances Must Employers Give Advance Written Notice?

Notice obligations under the Amended Act are triggered when a covered employer implements a "reduction in operations," which is defined as:

- The relocation of part of an employer's operation from one *workplace* to another existing or proposed site; *or*
- The shutting down of a *workplace* or a portion of the operations of a workplace that reduces the number of employees by the greater of: (1) at least 25 percent; or (2) 15 employees, over any three-month period.

"Workplace" includes a factory, plant, office, or other facility where employees produce goods or provide services. "Workplace" does not include a construction site or other temporary workplace.

Importantly, the Amended Act does not apply to reductions in operations that result solely from labor disputes; occur in a commercial, industrial, or agricultural enterprise operated by the state or its political subdivisions; occur at construction sites or temporary workplaces; result from seasonal factors that are determined by the Maryland Department of Labor (Maryland DOL) to be customary in the industry; or occur when an employer files for bankruptcy under federal bankruptcy laws.

### When and How Much Notice Must Be Given, and Who Must Receive Notice?

Under the Amended Act, once notice obligations are triggered, a covered employer must provide at least 60 days' advance written notice of the reduction in operations to the following:

- All employees at the workplace who are subject to the reduction in operations, including employees working on average fewer than 20 hours per week and individuals who have worked for the employer for less than six months in the immediately preceding 12-month period (even though these employees are not counted for the 50-employee threshold, they must still receive written notice);
- Each exclusive representative or bargaining agency that represents employees at the workplace who are subject to the reduction in operations;
- The Maryland Workforce Development's Dislocated Worker Unit; and
- All elected officials in the jurisdiction where the workplace that is subject to the reduction in operations is located.

### **What Must Be Included in the Mandatory Notices?**

The mandatory written notice must include the following information:

- The name and address of the affected workplace;
- A supervisor's name, telephone number, and email address to contact for further information;
- A statement explaining whether the reduction in operations is expected to be permanent or temporary, and whether the workplace is expected to shut down; and
- The expected date when the reduction in operations will begin.

Unless any regulations that may be forthcoming provide for exceptions to the 60-day notice requirement, unlike the federal WARN Act, the Amended Act has no unforeseeable business circumstances, natural disaster, or faltering company exceptions to the notice requirements. These types of exceptions are especially important now in the midst of the pandemic and the continuing government orders restricting business operations, which are only now beginning to lift and may continue in some fashion for much of this year.

### **Will the Maryland DOL Provide Employers with Guidance?**

The Amended Act requires the Maryland DOL, in cooperation with the Workforce Development Board, to develop mandatory guidelines for employers facing a reduction in operations. According to the Amended Act, the guidelines must include information regarding a written notice and the continuation of benefits, such as health care, severance, and pension that an employer implementing a reduction in operations should provide to employees whose employment will be terminated. In addition, the guidelines must include specific mechanisms that employers may use to request assistance from Maryland's quick response program.

### **What are the Penalties for Violating the Amended Act?**

If the Maryland DOL determines that an employer has violated the Amended Act, it will issue an order compelling compliance, and it may assess a civil penalty of up to \$10,000 for each day an employer fails to comply. In determining the amount of the penalty, the Maryland DOL will consider the following factors:

- The gravity of the violation;
- The size of the business;
- The employer's good faith; and
- The employer's history of prior violations of the Amended Act.

The Amended Act does not address whether employees will have the right to file a lawsuit against their employers (as under the federal WARN Act).

Employers who may be facing a reduction in operations later this year should be certain to work with their employment counsel and adjust planning to comply with the Amended Act as well as the federal WARN Act, as applicable. Proper planning will help employers to avoid significant penalties and minimize the risk of possible administrative action or litigation.

Notably, along with the Amended Act, the state has enacted a number of other laws that impact employers operating in Maryland, such as a new salary history ban effective October 1, 2020. For additional information on other new Maryland laws, check out our May 21, 2020 Coffee Chat, available [here](#).