



Chapter 8

Cite as 22 *Energy & Min. L. Inst.* ch. 8 (2002)

The Worker Adjustment and Retraining Notification Act

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¹ Mr. Heath is a regular speaker on WARN Act requirements and argued the precedent-setting case of *UMWA v. Clinchfield Coal Co.*, 124 F.3d 639 (4th Cir. 1997), before the United States Court of Appeals for the Fourth Circuit.

§ 8.01. Introduction.

On its face, application of the Worker Adjustment and Retraining Notification (WARN) Act appears simple. The Act requires 60 days' advance notice of covered mass layoffs and plant closings. In practice, application of the statute to employment events is often confusing, with no clear answers to serious questions. This chapter examines the history of WARN, provides an overview of its requirements, and examines the significant cases. The chapter also addresses two unresolved and developing issues under WARN: single sites of employment and damages.

§ 8.02. WARN Act Background.

The WARN Act² became law on August 4, 1988, and became effective six months later on February 4, 1989. The stated purpose of the WARN Act was to provide advance notice of closings, allowing communities and employees to plan for job losses.³ The Act provides for notice to state and local government officials, as well as individual workers or their collective bargaining representatives, 60 days prior to a closing or mass layoff.

[1] — Who Is Covered?

“Employers” must give 60 days' advance notice of a “plant closing” or “mass layoff.” An employer is defined as any business enterprise that employs 100 or more employees.⁴ In determining the number of employees, the regulations implementing the Act look at both the number of employees at all operations throughout the country and those laid-off employees who have a reasonable expectation of recall.⁵ The regulations are broader than the Act by their inclusion of laid-off employees in establishing the total number of affected employees. Neither the Congressional debate on the Act nor the statute authorizes laid-off employees to be counted in establishing the jurisdictional requirement of

² 29 U.S.C. § 2101 *et seq.*

³ 20 C.F.R. § 639.1(a).

⁴ 20 C.F.R. § 639.3(a).

⁵ 20 C.F.R. § 639.3(a)(ii).