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## GOVERNOR NEWSOM EASES—BUT DOES NOT COMPLETELY REMOVE—REQUIREMENTS OF CALIFORNIA’S WARN ACT FOR EMPLOYERS FACING COVID-19 LAYOFFS

As more and more California employers are forced to reduce their workforce or even close their businesses entirely in response to the COVID-19 public health emergency, California has suspended the bulk of the California WARN Act requirements. Certain requirements remain, however, and are discussed here.

### WHAT IS THE CALIFORNIA WARN ACT?

The California Worker Adjustment And Retraining Notification (“WARN”) Act requires covered employers to provide advance notice to employees affected by plant closings and mass layoffs. WARN requires employers to give a 60-day notice to the affected employees and both state and local representatives prior to a plant closing or mass layoff. This advance notice is meant to provide employees and their families time to transition and adjust to the prospective loss of employment, time to seek alternative jobs, and, if necessary, time to obtain skills training or retraining to successfully compete in the job market. Failure to provide the necessary notice can result in a civil penalty of \$500 a day for each day of violation plus back pay, medical expenses that would have been covered under an employee benefit plan, attorneys’ fees, and potentially civil penalties under the Private Attorneys’ General Act (“PAGA”).

### WHAT EMPLOYERS ARE COVERED?

The California WARN Act applies to any “covered establishment” that employs or has employed in the preceding 12 months, 75 or more full and part-time employees.

### WHAT LAYOFFS OR CLOSINGS REQUIRE WARN NOTICE?

California WARN requires notice in the case of a layoff of 50 or more employees within a 30-day period. Notice is also required in the event of a “termination” by a covered establishment. “Termination” means the cessation or substantial cessation of industrial or commercial operations of a covered establishment. The completion of a particular construction project does not trigger WARN as long as the employees were hired with the understanding that the employment was limited to the duration of that project.

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## **ADVANCE NOTICE UNDER THE CALIFORNIA WARN ACT IS SUSPENDED DURING COVID-19 EMERGENCY**

On March 17, 2020, Governor Gavin Newsom issued an Executive Order suspending the 60-day advance notice portion of the California WARN Act. This suspension will remain in place for the duration of the current COVID-19 emergency. The Governor recognized the dilemma employers are facing about complying with the normal WARN requirements when they are forced to massively change, reduce or even close their businesses entirely in a matter of days in response to the public health emergency. Under the Executive Order, employers must still give written notice of mass layoffs, terminations, or relocations, but only as much notice as practicable. The notice must provide brief statements of the basis for reducing the notification period, and must contain the following statement: "If you have lost your job or been laid off temporarily, you may be eligible for unemployment insurance (UI). More information on UI and other resources available for workers is available at <https://www.labor.ca.gov/coronavirus2019>." The mass layoff, relocation, or termination

must be caused by COVID-19-related "business circumstances that were not reasonably foreseeable as of the time that notice would have been required."

The Executive Order puts the California WARN Act more in line with its federal counterpart which already has an exception for "unforeseen business circumstances" when workforce reductions result from a "sudden, dramatic, and unexpected action or condition outside the employer's control." The COVID-19 emergency undoubtedly falls directly into that exception.

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