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WARN Act Compliance in the Age of Remote Work

As remote work arrangements proliferate, it's crucial for employers to remain compliant with legal obligations, including those outlined in federal and state WARN acts. State WARN acts are sometimes called "mini-WARN" laws. Generally, WARN laws require a covered employer to provide substantial (60 days for the federal statute) notice to employees, certain government units, and any bargaining representatives that it anticipates a plant/business closure, mass layoff, or substantial reduction in force.

Because WARN acts were mostly established long before remote work was commonplace, employers may struggle to determine how these laws apply in such a different place and time. Here are some unique considerations in applying the federal WARN requirements to a potentially triggering event involving a remote workforce.

- **Identifying the Single Site of Employment:** The federal WARN Act and DOL guidance require employers to assess which employees are included in the active workforce at a "single site" (and this likely extends to remote workers). The federal WARN provides that "for workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employer's sites (e.g. railroad workers, bus drivers, salespersons)," the single site of employment is determined by which location (1) is their home-base (2) provides their work assignment; or (3) they report to. While "remote" is not specifically mentioned in the act, this same analysis likely can be transferred to remote workers.

- **Providing Timely Notice:** Advanced written notice (60 days for the federal statute) must be served on remote employees by the same manner and means as non-remote workers (e.g., "any reasonable method of delivery . . . which is designed to ensure receipt of notice"). The statute does not address whether email is an appropriate method, but DOL guidance provides that a WARN notice sent via email (in the event of a business closure) must still be specific to the individual employee and comply with all requirements of the WARN statute and regulations.

- **ADA/Title VII:** Employers may be inclined to treat remote employees less favorably in a layoff on that basis alone. While this is facially non-discriminatory, it could have a statistically significant adverse impact on individuals working remotely as an accommodation for disability or pregnancy-related reasons, or it could be argued that the systematic elimination or adverse ranking of remote employees was a subterfuge to eliminate disabled or pregnant employees receiving an accommodation.

Given the complexities surrounding WARN compliance, including compliance with any applicable mini-WARN laws, some of which, like New York, have specific guidance for employers of remote employees, employers should consult legal counsel to ensure adherence to both federal and state laws in any substantial reduction in workforce, hours of work, facility closure, or department elimination.

If you have any questions or would like additional information, please contact McKenzie Meade at 205-323-9279 or mmeade@lehrmiddlebrooks.com.