

# **Oilfield Layoffs – Employers May Have a Duty to WARN<sup>1</sup>**

In less than a year, crude oil fell from more than \$100 per barrel to around \$50 per barrel. Some analysts believe crude oil could fall to lower than \$35 a barrel before the end of the year.<sup>2</sup> As oil prices fall, energy companies are forced to lay off more and more workers. For example, in the last month Apache Corp. laid off 5% of its workforce, Schlumberger cut 9,000 workers,<sup>3</sup> Graves & Co., laid off more than 14,000 oil field workers, and Key Energy Services cut 25% of its staff.<sup>4</sup>

If crude oil stays at \$50 a barrel or lower, most, if not all, of the energy companies will continue the trend of employee layoffs. As energy companies continue to lay off employees, both the employers and the employees need to be aware of the notice requirements set forth in the WARN Act and the penalties associated with not following the Act.

## **The WARN Act and Layoff Notice Requirements**

The Worker Adjustment and Retraining Notification Act (WARN Act) is a federal law requiring some employers to give advance notice of significant layoffs to the employees.<sup>5</sup> These notice requirements are intended to protect not only the employees but their families and the community. The WARN Act is designed to give employees a transition period to adjust to losing their jobs, to obtain other work, or to pursue training for new work.

The WARN Act requires employers to provide 60 days' notice in advance of covered mass layoffs or worksite closure based on the following conditions:

- Employers must have 100 or more employees.
- Excluded from the 100-employee trigger level are employees who have worked less than 6 months in the last 12 months or employees who work less than 20 hours a week, although they are still due notice.
- All employers are covered, except Federal, State and local government entities.

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<sup>1</sup> <http://www.doleta.gov/programs/factsht/warn.htm>

<sup>2</sup> <http://economictimes.indiatimes.com/industry/energy/oil-gas/crude-demand-to-stay-muted-price-may-dip-to-35-40-per-barrel-says-fereidun-fesharaki/articleshow/46280860.cms>

<sup>3</sup> <http://www.forbes.com/sites/christopherhelman/2015/01/14/layoffs-hit-the-oilpatch-with-worst-yet-to-come/>

<sup>4</sup> <http://fuelfix.com/blog/2015/02/19/three-more-oil-service-firms-cutting-hundreds-of-jobs-wages/>

<sup>5</sup> <http://www.doleta.gov/programs/factsht/warn.htm>

- Employers must provide 60 days' notice if they lay off 500 or more employees in a 30-day period at a particular work site
- For layoffs of 50-499 employees the employer must still provide 60 days' notice if the employees make up at least 33% of the employer's active workforce.
- An employer is also required to give 60 days' notice to its employees if an employment site will be shut down, and the shutdown will result in an employment loss for 50 or more employees during any 30-day period.

### **WARN Act Notice Requirements**

All notices must be in writing, although no specific format has been defined. Further, the notices must state whether the layoffs are expected to be temporary or permanent, must set forth the expected date when layoffs will begin, and set forth the date when the employee will receive a termination letter.

### **Penalties for Violating the WARN Act**

What happens if an employer violates the WARN Act? What can an employee recover?

An employer who violates the WARN notice provisions can be held liable to each aggrieved employee for the amount of each employee's back pay and benefits for the period of violation, up to 60 days. In addition, the court has the discretion to award the employee all of his or her attorneys' fees.

When you consider the fact that energy companies are laying off tens of thousands of employees, the implications are not following the WARN Act notice requirements could exceed hundreds of millions of dollars.

### **Employers and Employees Need to Know their Rights**

Navigating the WARN Act can be complicated and difficult. If you are a company considering laying off employees or you are an employee who has been laid off, you both have one thing in common: you need to talk to a lawyer.

For more information about the WARN Act or if you need help navigating through the issues related to this matter, please contact Daniel Dutko at 713-522-9444 or [ddutko@hanszenlaporte.com](mailto:ddutko@hanszenlaporte.com).