

EARLY QUESTIONS AND ANSWERS

The following questions and answers are intended to provide some consistency of services for workers impacted by airport security transitions.

Question #1: Are contractors required to issue WARN notices?

Response: This requires a three-part answer:

Part 1--*What WARN covers.*

WARN covers two kinds of events: a "plant closing" and a "mass layoff." A plant closing occurs when an employer, within a 30-day period, terminates or lays off at least 50 workers (not counting "part-time" workers) at a "single site of employment" or an "operating unit" within a single site of employment. It is not necessary that all the affected workers work in the same single site of employment or operating unit if the closing of the single site of employment or operating unit directly results in other layoffs or terminations.

For example, if the contractor closes its Scranton airport operations and lays off 40 workers, and, because of the closing of the payroll office, also lays off or terminates 10 clerical workers who provided support to the airport operations but were not part of it, that would be a covered plant closing. By the same token, if a contractor closes an airport operation and lays off or terminates 50 workers and, because of bumping rights, some of the laid off workers bump workers in another company site who lose their jobs, that still counts as a plant closing if the net result is that 50 full-time workers lose their jobs.

A mass layoff occurs when 500 or more workers (excluding any "part-time" workers) are laid off or terminated at a "single site of employment" during a 30-day period; or 50-499 workers (excluding any part-time employees) are laid off or terminated at "a single site of employment" and that number of workers represent 33% of the total workforce (excluding "part-time" workers) at the "single site of employment."

If all workers at a particular airport are terminated by the contractor, it is probably a plant closing for purposes of WARN. Workers who are hired by the Department of Transportation (DOT) will not count in determining the number of "affected employees." The workers who were terminated or laid off would be considered voluntary quits. Thus, if a contractor had 100 employees at an airport and the DOT hired 49 of them, there would be a plant closing for WARN purposes. If DOT hires 51 workers there would not be a covered plant closing. The fact that the employer may not know exactly who will be laid off and who will be hired by DOT does not change the obligation to provide a WARN notice.

Part 2--Notice the Employer Is Required to Give Affected Employees

WARN requires employers to provide at least 60 calendar days advance written notice of a plant closing or mass layoff unless certain exceptions apply. The only exception that might be applicable to the airport security companies is the “unforeseeable business circumstances” exception which would not appear to be applicable in this case, since the plan for the Federal takeover has been known for some time. This is not a “business circumstance that is caused by some sudden, dramatic, and unexpected action or conditions outside the employer’s control” as required by Section of 639.9(b) of the WARN Act.

Part 3--If An Employer is Unable To Identify Affected Employees

Notice is required to be given to employees who may reasonably be expected to experience an employment loss. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. The problem here is that DOT will not make its decisions on who they will hire until after notice must be provided. In this particular case, if, at the time notice is required to be given, the employer cannot identify those employees who will be offered Federal employment, the employer must provide notice to all workers since, apparently, all workers who are not hired by DOT will be terminated. We would recommend, however, that if the employer gives notice to all workers, it include some information about the DOT hiring process to reduce alarm among its workers.

Question #2: Are public announcements of layoffs by the contractor in the community where the layoffs will occur sufficient to initiate rapid response assistance?

Response: Yes.

Question #3: What employees are eligible to participate in rapid response assistance?

Response: All employees covered by the WARN notice or other announcements.

Question #4: Do workers need to have an individual layoff notice prior to receipt of rapid response?

Response: No. A public announcement of a layoff or WARN notice triggers rapid response assistance to all workers who may be impacted.

Question #5: When can other services such as core, intensive and training commence?

Response: As quickly as workers who will not be hired into federal jobs are identified. This identification can be in the form of a Notice of Expected Separation.

Question #6: What are the minimum requirements for a Notice of Expected Separation from the employer?

Response: The name of the worker and the date of the expected layoff. One letter may be prepared covering a large number of workers, if appropriate.

Question #7: Can other services, including training, commence prior to layoff date?

Response: Yes. Individualized assistance can commence as soon as a layoff notice or a notice of expected separation is issued to the worker by the employer.

Question #8: Does this mean workers can still be employed in their old job – or even in a new job for temporary income support purposes – and still be eligible for services under the WIA dislocated worker program?

Response: Yes.

Question #9: A determination on eligibility for UI will not have been completed until a worker is laid off. How is that to be handled?

Response: The definition of an eligible dislocated worker in WIA 101(9) includes individuals who have received a notice of layoff or a notification of a closure. For individuals affected by layoff notices only (and not a part of a plant closure), workers may be eligible for unemployment compensation or employed for a duration which shows attachment to the workforce. In the case of airport screeners who are being laid off as a result of federal actions, it is expected that their employment with the contractor would show attachment to the workforce.

Question #10: Is there a waiting period between the time core services, intensive services and training services commence?

Response: No. WIA regulations require that at least one core service and one intensive service be received prior to receipt of training. This could be individual assessment (core service) and development of an individual service plan (intensive service) which document the need for intensive and training services and identify the areas of training required to compete for airport security jobs or other jobs in the community. No specific time periods are required.

Question #11: If a current worker does not qualify for the new federal security jobs due to education or training and is a U.S. citizen, could he/she receive training that would qualify for a federal job?

Response: Yes.

Question #12: How does this response relate to “unlikely to return to previous occupation or industry.”

Response: The workers affected are those who do not meet the newly implemented federal requirements; thus, without additional training many (if not most) workers will not qualify for jobs in their previous occupation or industry (airport screeners). Other workers who will not qualify for federal jobs should be offered training to permit workers to qualify for jobs that are at least commensurate with layoffs jobs in terms of pay and benefits given that these individuals have lost their jobs as a result of federal actions.

Question #13: If the state does not have sufficient dislocated worker resources to serve these workers, can NEG funds be requested?

Response: In view of the timeframes involved and the urgency of the need for assistance, we expect that services (beyond rapid response assistance) will begin with formula funds. If the state and local WIBs determine that additional resources are required, a NEG application may be submitted to the Department for layoffs of more than 50 individuals.

Question #14: Is basic education or GED classes considered intensive or training services?

Response: Training.

Question #15: If a person does not have a permit to work in the United States, is he or she eligible for core, intensive or training services under WIA?

Response: WIA itself does not permit nor require the provision of services to individuals based upon their immigration status. The Department of Labor interprets WIA Section 188(a)(5) as a non-discrimination provision and not as an eligibility provision. What this means is that states and local areas cannot discriminate against persons who fall into one of the citizenship categories specified in that section. It does not mean that WIA forbids states and local areas from serving individuals outside those categories. On the other hand, WIA does not require that states and local areas serve individuals outside those categories. This being said, states and local areas will need to consider, in developing a policy in this area, the extent to which limited training resources should be used to serve workers who may not be able to produce the documentation required by law for employment.