



## *The Role of Worker Notification in a New Economic Strategy for New York*

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To turn around the upstate New York economy after years of neglect, the state needs nothing short of a new economic strategy that thoroughly overhauls economic development programs like Empire Zones and Industrial Development Agencies,<sup>1</sup> re-focuses on the manufacturing sector (still the linchpin of the upstate economy), and makes good jobs the centerpiece of retaining and attracting a highly skilled workforce. This policy brief focuses on the importance of timely notification to workers and communities in the event of plant closings and large layoffs.<sup>2</sup> Advance notification of worker dislocation would benefit not only the upstate economy but also the downstate New York economy now being buffeted by massive layoffs in the financial sector.

The sudden loss of a job brings enormous upheaval and stress to workers and their families, subjecting them to financial hardship and uncertainty. The impact is magnified when a firm lays off large numbers of workers at a single plant or worksite. Mass layoffs can inflict devastating economic and social tolls on communities, as well as adversely affecting local businesses and straining local government finances.

New York's manufacturing sector, in particular, has been hit by substantial layoffs over the past decade. Over 250,000 manufacturing jobs have been lost over the past decade, a massive decline of almost 32 percent. New York has done very little to staunch this erosion and assist workers and communities in averting these layoffs, or if those efforts fail, to better adjust through retraining.<sup>3</sup>

In response to the plant closures and mass layoffs of the 1980s, Congress enacted the Worker Adjustment and Retraining Notification (WARN) Act, which took effect in 1989. The act requires companies to provide workers and their communities 60 days' notice before a plant shutdown or mass layoff, the intention being to allow workers and their communities some advance warning and time to prepare before jobs are lost. The law applies to employers with 100 or more full-time employees and generally covers layoffs and plant closures involving 50 or more workers within a 30-day period.

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<sup>1</sup> See Fiscal Policy Institute, "Getting bang for our buck: Economic development in New York State," February 11, 2008, [http://www.fiscalpolicy.org/publications2008/FPI\\_EconDevtBrief\\_Feb2008.pdf](http://www.fiscalpolicy.org/publications2008/FPI_EconDevtBrief_Feb2008.pdf).

<sup>2</sup> See Fiscal Policy Institute, *One New York: An Agenda for Shared Prosperity*, November 2006, (<http://www.fiscalpolicy.org/OneNewYork~FPI.pdf>) for a discussion of other elements of a new economic strategy to revitalize upstate New York.

<sup>3</sup> By contrast, the State of Pennsylvania worked with the Steel Valley Authority to create a Strategic Earning Warning Network to identify opportunities to aid manufacturing businesses through a variety of measures from financial restructuring, to helping with owner succession, improving product development or marketing, or raising productivity. Pennsylvania also has an extensive system of industry partnerships that provides the basis for addressing competitive challenges facing multiple firms on a sectoral basis. See Steel Valley Authority (<http://www.steelvalley.org/>).

With more notice of pending job dislocation, workers and communities can better adapt. Among other things, advance notification should allow time for state officials to provide information about skill training and retraining services before the layoff or closure occurs. In one of the leading empirical studies of the difference that advance notification makes, economists Paul Swaim and Michael Podgursky concluded: “advance knowledge significantly accelerates reemployment following displacement for white-collar and service workers and blue-collar males.”<sup>4</sup>

In many ways, though, the federal WARN Act has proved a disappointment. Many workers in small- and medium-sized businesses are not protected, and the legislation does not provide an enforcement mechanism. The federal WARN Act only applies to firms with 100 or more fulltime employees. In New York, 973 firms that laid off workers over the past year but were not subject to federal WARN notice requirements would have been required to notify workers had the coverage threshold been set at 50 employees rather than 100.<sup>5</sup> Each of these firms laid off 25 to 49 workers, so the number of affected workers was between 24,000 and 48,000.

The Government Accountability Office (GAO) examined data on mass layoffs and plant closures that occurred nationally in 2001, a year in which 1.75 million workers lost jobs. The GAO study found that employers provided notification to workers in only about one third of the situations that appeared to warrant WARN notices.<sup>6</sup> Workers who do not receive the legally mandated notification are forced to sue their former employers in federal courts, and there is no guarantee of timely relief. In what has proven to be a major shortcoming of the federal WARN Act, the federal Labor Department was not given responsibility for enforcement.

In recent years, dissatisfaction with the federal WARN Act has led a growing number of states—including California, Illinois, and New Jersey—to adopt their own WARN legislation to supplement the federal law. A state WARN act can extend coverage for notification requirements to businesses employing fewer than 100 fulltime workers and reduce the number of workers that must be subject to layoff for notification to be required. A state WARN act can provide for better enforcement by empowering labor commissioners to assess penalties against employers who fail to comply with the act’s notification requirement thereby providing better recourse to workers who believe that their employer did not properly provide advance notice of a layoff. This creates a much greater incentive for employers to provide the required notification than currently exists under the federal legislation.

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<sup>4</sup> Paul Swaim and Michael Podgursky, “Advance Notice and Job Search: The Value of an Early Start,” *The Journal of Human Resources*, vol. 25, no. 2 (Spring 1990, pp. 147-178).

<sup>5</sup> New York State Department of Labor, “Number of Firms with 25-49 Original Claims in Any 30-Day Period Ending April 1, 2007, through March 31, 2008 by Industry,” April 2008.

<sup>6</sup> General Accountability Office, “The Worker Adjustment and Retraining Notification Act: Revising the Act and Educational Materials Could Clarify Employer Responsibilities and Employee Rights,” September 2003, <http://www.gao.gov/new.items/d031003.pdf>.

While the federal WARN Act only requires 60 days' notice, a state WARN act can increase the notice requirement. Time is critical when workers and their communities are facing mass job loss. Workers need time to plan for the impending reductions in their incomes, to look for other jobs, and possibly to seek job training. Social service providers and workforce development agencies need time to identify and contact affected workers and to gear up to provide services. Local governments need to prepare for the economic and social impact of the layoffs. Finally, advance notification of a planned layoff may even allow workers and local governments to take action to avert a plant closure or mass layoff.

Establishing a state WARN Act, such as that proposed by A.10847/S.8212, a bill introduced in both houses of the New York legislature at the request of the Department of Labor, would significantly improve upon the protections provided to workers and their communities by the federal WARN Act. For example, if enacted into law, A.10847/S.8212 would:

- Lower the number of workers that must be subject to layoff for notification to be required. For a layoff, the federal WARN Act only applies when at least 50 employees constituting at least one third of the workforce at a single site are to lose their jobs. A.10847/S.8212 would require notification in the case of layoffs of at least 25 workers representing at least one third of the workforce at one site.
- Empower the State Labor Commissioner to assess penalties against employers who fail to comply with the act's notification requirement.
- Increase the mandated notice period from 60 days to 90 days.