



Status of Bill: On House Calendar  
Committee: Labor (16-0)  
Floor Manager: Representative Hunter  
Research Analyst: David Epley 515-281-6367  
david.epley@legis.state.ia.us

## BILL SUMMARY

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# Iowa Worker Adjustment and Retraining Notification (WARN) ACT HF 681

January 27, 2010

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### BACKGROUND ON FEDERAL WARN

Since 1989, there has been a federal Worker Adjustment and Retraining Notification (WARN) Act. Under the act, an employer must give a worker a written notice 60 days before the date of a mass layoff. A business must have 100 or more full-time workers (not counting workers who have less than 6 months on the job and workers who work less than 20 hours per week), or employ 100 or more workers who work at least a combined 4,000 hours a week. It applies to the private sector and quasi-public entities. If the employer does not provide the required notice, a worker may be able to seek damages for back pay and benefits for up to 60 days, depending on how many days' notice they received. The notice requirement is required if the employer lays off between 50 and 499 full-time workers at a single site of employment and that number is 33% of the number of full-time workers at the single site of employment; or the employer lays off 500 or more full-time workers at a single site of employment.

There are 57 Iowa companies that announced a WARN notice in calendar year 2009 that involved a layoff under the current regulations of 100 or more full-time workers. One of the latest companies to file a WARN notice to their workers in Iowa was the Morrell plant in Sioux City. Because of that notice, Workforce Development was able to deploy their Rapid Response Team to assist those workers in finding a new job, and will be able to meet with those workers prior to the actual lay off date.

### WHY THE NEED FOR AN IOWA LAW?

- Iowa is made up of a lot of small businesses that do not qualify for the Federal WARN Act requirement of 100 employees or more. This is compounded by the requirement that the layoff be 50 to 499 employees and 33% of the workforce.
- There are several employers in Iowa that have been able to beat the law by the percentage loop hole, or running out the clock by laying off people over an extended period of time.
- With tough economic times, HF 681 would cover more employees with a layoff notice so they can find new employment more quickly, and actually save Unemployment Trust Fund dollars. According to Workforce Development, the sooner an employee receives unemployment services, the more likely he or she is able to find new employment. In fact, there are times that the Rapid Response program has found that if they can get to a business before the layoff happens, the person ends up not even filing for unemployment, and goes directly to the new job after the current job is finished. They cannot do that without sufficient notice of the layoff.

- Workforce Development has found that there is a significant need for addressing Iowa’s skill shortage. Many people find that when they become unemployed, their skills are outdated for today’s workforce. The sooner the Rapid Response Team gets to these workers the better chance they have to figure out the new training they need.
- If there is a short notice of a large layoff, the department has a difficult time finding these people later. Before the layoff happens, they know where they are and can give them all information at the same time. This gives them time to do a survey on their skill levels, and then can market this group of people to other companies. A recent example where this happened really well was with the Pella Corporation layoff. A majority of these workers found a job almost immediately through the department marketing this group’s skills to other companies.
- Public sector employees are not covered in the federal law, but they would be in HF 681.

## **BILL SUMMARY OF HF 681**

HF 681 establishes an Iowa WARN Act. The bill requires employers to notify employees, or their representatives, and the department of workforce development of business closings that results in a layoff of 25 or more full-time employees and mass layoffs that are reductions in the workforce of at least 25 employees in a 30-day period.

### **Section 2, Definitions:**

**“Business Closing”** -- A permanent or temporary shutdown of a single site of employment of one or more facilities that will result in an employment loss of 25 or more employees. This does not include part-time employees.

**“Employer”** -- A person who employs 25 or more employees, excluding part-time employees. Note: the federal WARN Act does not include public employers. This definition is broad enough to include public employers.

**“Employment Loss”** -- An employment termination, that excludes a discharge for cause, voluntary separation, or retirement; a layoff exceeding six months; or a reduction in hours of more than 50% of the work of individual employees during each month of a six-month period. It also excludes instances when a business closing or mass layoff is the result of the relocation or consolidation of part or all of the employer's business and, before the business closing or mass layoff, the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a six-month break in employment.

**“Mass Layoff”** -- a reduction in employment force that is not the result of a business closing and results in an employment loss at a single site of employment during a 30-day period of 25 or more employees, other than part-time employees.

**“Single Site Employment”** -- A single location or group of contiguous locations, such as a group of structures that form a campus or business park, or separate facilities across the street from each other.

### **Section 3, Notice Requirements:**

An employer, who plans a business closing or a mass layoff, cannot order such action until the end of 30-days, which begins after the employer serves a written notice of such action to the affected employees or their representatives and to the department of workforce development. If there is an appli-

cable collective bargaining agreement that designates a different notice period, the notice period in the collective bargaining agreement shall govern. In those cases, the employer will provide the notice to the department.

An employer, who previously announced and carried out a short-term mass layoff of six months or less, and the layoff is now extended beyond six months due to business circumstances not reasonably foreseeable at the time of the initial mass layoff, is required to give notice when it does become reasonably foreseeable that the layoff will extend beyond six months. A mass layoff extending beyond six months from the date the mass layoff commenced, for any other reason, is treated as an employment loss from the date the mass layoff started.

In the case of the sale of part or all of a business, the seller is responsible for providing notice of any business closing or mass layoff which will take place up to and on the effective date of the sale. The buyer is responsible for providing notice of any business closing or mass layoff that will take place thereafter.

Notice from the employer to the affected employees or their representatives and to the department is required to be in written form and contain the following:

- 1) The name and address of the employment site where the business closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information.
- 2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire business is to be closed, a statement to that effect.
- 3) The expected date of the first employment loss and the anticipated schedule for employment losses.
- 4) The job titles of positions to be affected and the names of the employees currently holding the affected jobs. The notice to the department shall also include the addresses of the affected employees. The department is required to keep confidential the names and addresses of employees received by the department.

The notice may include additional information useful to the employees, such as information about available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known. Any reasonable method of delivery to the affected employees or their representatives and the department is acceptable. In the case of notification directly to affected employees, insertion of notice into pay envelopes is a viable option.

#### **Section 4, Exemptions and Special Circumstances**

**“Strike or Lockout”** -- If a business closing or mass layoff constitutes a strike or lockout not intended to evade the state WARN Act, notice is not required to be given by the employer. An employer is not required to give notice when permanently replacing an employee is deemed to be an economic striker under the federal National Labor Relations Act, and HF 681 is not to be deemed to validate or invalidate any court cases relating to the hiring of permanent replacements for economic strikers under the federal National Labor Relations Act. If an employer hires temporary workers to replace employees during the course of a strike or lockout, and later terminates these temporary workers at the conclusion of the strike or lockout, an employer is not required to serve notice to the terminated temporary workers.

**“Rolling Layoffs”** -- In the circumstance where employees will not be terminated on the same date, the first individual employment loss within the 30-day notice period triggers the notice requirement. The employee’s last day of employment is considered the date of the layoff. The first and later groups of terminated employees are entitled to a full 30-days notice.

If there are two or more aggregated actions by the employer within 90-days that result in 25 or more employees laid off, then the notice will be required to be provided. The employer is not required to give notice if one action within 30-days does not result in 25 or more employees laid off. The actions of the employer will not be considered aggregated if the employer can demonstrate that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

**“Extended Notices”** -- If the layoff continues beyond the ending date designated in the original notice, an additional notice is required. If the ending date postponement is beyond the 30-days, then the additional notice will be treated as a new notice. If it is less than 30 days, the additional notice that meets the requirements of the original notice will be given by the employer as soon as possible, and it is required to give reference to the original notice. The reference would include the date the planned action is postponed to and the reason for the postponement.

**“Faltering Company”** -- A business closing, but not mass layoff, is given an exception to the state WARN Act for a faltering company. To be considered a faltering company, an employer must have been actively seeking capital or a significant new business transaction or commerce at the time of the required 30-day notice. This could be seeking financing or refinancing through the arrangement of loans or the issuance of stocks, bonds, or other methods of internally generated financing, or seeking additional money, credit, or business through any other commercially reasonable method. The employer must identify specific actions taken to obtain capital or business.

The employer must, at the time notice is actually given, provide an explanation for reducing the notice period in addition to the other notice requirements. There must have been a realistic opportunity to obtain the financing or business sought. The financing or business sought must have been sufficient, if obtained, to have enabled the employer to avoid or postpone the shutdown. The employer must be able to objectively demonstrate that the amount of capital or the volume of new business sought would have enabled the company to keep the facility, operating unit, or site open for a reasonable period of time. In addition, the notice would have precluded the employer from obtaining the needed capital or business, or a potential customer or source of financing would have been unwilling to provide the new business or capital if notice had been given. The employer can satisfy this requirement if the employer can show that the financing or business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs.

**“Unforeseeable Business Circumstance”** -- A business closing, and mass layoff, is given an exception to the state WARN Act for an “Unforeseeable Business Circumstance.” This would be if business circumstances occurred that were not reasonably foreseeable at the time of the required 30-day notice. The employer must, at the time notice is actually given, provide a statement of explanation for reducing the notice period in addition to the other notice requirements. An important indicator for this exemption would be if the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control. The employer must exercise commercially reasonable business judgment as would a similarly situated employer in predicting the demands of the employer's particular market. The employer is not required to accurately predict general economic conditions that also may affect demand for products or services for this exemption.

**“Natural Disaster”** -- An exception to the 30-day notice applies to business closings and to mass layoffs for natural disasters. A natural disaster would have to have occurred at the time notice

would have been required. The employer must, at the time notice is actually given, provide a statement of explanation for reducing the notice period in addition to the other notice requirements. Floods, earthquakes, droughts, storms, tornadoes, and similar effects of nature would be considered natural disasters. An employer must be able to demonstrate that the business closing or mass layoff is a direct result of the natural disaster. If a business closing or mass layoff occurs as an indirect result of a natural disaster, this exception does not apply but the unforeseeable business circumstance exception may be applicable.

### **Section 5, Enforcement and Penalties**

The department is to adopt rules for investigations to determine whether an employer has violated the state WARN Act. A determination by the department about whether a violation has occurred is a final agency action. An employer who violates the act is subject to a civil penalty of not more than \$100 for each day of the violation. Any penalties collected by the department are deposited in the state's general fund. These penalties are the exclusive remedies for violations. A court will not be able to enjoin a business closing or mass layoff.