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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 10, 2025

Roberta Reardon
Commissioner
Department of Labor
W.A. Harriman Campus, Building 12
Albany, NY 12240

Re: Services to Workers Under the Worker
Adjustment and Retraining Notification
Act
Report 2024-F-22

Dear Ms. Reardon:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Labor (DOL) to implement the recommendations from our initial audit report, *Services to Workers Under the Worker Adjustment and Retraining Notification Act* (Report [2022-S-11](#)).

Background, Scope, and Objective

DOL's mission is to provide outstanding service to its customers—the workers and businesses in New York State. Through its Division of Employment and Workforce Solutions (DEWS), DOL administers the State's Worker Adjustment and Retraining Notification Act (WARN Act, or Act) and provides related services.

Enacted in 2008, the Act requires covered employers to give early warning to employees—defined as at least 90 days' advance notice—of a mass layoff, relocation, or employment loss, with some exceptions. They must also file a Notice with DOL, Local Workforce Development Boards, and certain local officials. This advance notice protects employees—as well as their families and communities—by giving them time to transition, seek new employment, and enter workforce training programs. DOL receipt of a Notice triggers staff to offer Rapid Response services, such as job search and résumé preparation assistance, career counseling, and occupational skills training, to assist workers in obtaining re-employment as soon as possible.

Employers may claim an exemption to the 90-day requirement under some circumstances, such as when a layoff or closure wasn't reasonably foreseeable at the time the Notice would have been required, or when the employer was actively seeking capital or business that would have prevented or postponed a relocation or termination and the employer—in good faith—believed that giving Notice would prevent the employer from obtaining the capital or business needed.

According to DOL policies and procedures, if the Notice is submitted within fewer than the required 90 days or appears not to meet one or more other WARN provisions, staff reach out to employers to substantiate any claim for an exemption, and review information

to determine if a violation may have occurred. If they find that a claim for exemption is not substantiated, the Notice is referred to Counsel's Office for guidance. Employers that fail to submit a Notice at least 90 days prior to the event and are not exempt may be liable for back pay and the value of any benefits that laid-off employees would have been entitled to. This liability can be reduced if the employer pays all applicable employees appropriate back pay and benefits within 3 weeks from the date the employer orders the mass layoff, relocation, or employment loss. An employer may also be subject to a civil penalty of up to \$500 for each day of the violation for up to 60 days. Late-filed Notices must be submitted to DOL as soon as practicable and must provide the basis for the reduced notification period.

DEWS maintains the Notices and the workforce data needed to initiate a response to mass closures or layoffs. Within DEWS, the Statewide Rapid Response Coordinator oversees a WARN Unit and 10 Regional Rapid Response Teams (Regional Teams) located throughout the State. The WARN Unit delegates Rapid Response activities to the appropriate Regional Teams. DOL also works with partners, such as Local Workforce Development Boards and Career Centers, to provide Rapid Response services to workers affected by Notices.

Since the initial audit, DOL has implemented the WARN Portal, which is the primary access point that employers use to provide both Notice of WARN events and the information that's required when they submit a Notice. After a Notice is received, Regional Teams conduct outreach to the employer to notify it of available services and to obtain employee contact information. The subsequent outreach to affected employees includes an orientation letting them know about available services, followed by routine contact and/or support in obtaining services. Regional Teams use DOL's One-Stop Operating System (OSOS) as a case management system to track employer information as well as the Rapid Response activities and services they offer and/or provide on behalf of affected employees.

The objectives of our initial audit, issued June 21, 2023, were to determine whether DOL was providing appropriate and timely services to workers affected by closings and layoffs that are covered under the Act, and whether it was effectively overseeing employer compliance with the Act. The audit covered WARN Notices received by DOL that were dated January 2019 through April 2022. We also considered DOL activities related to these Notices through January 2023. Based on our initial audit's results, we found several areas DOL could improve to better meet its obligations under the Act and ultimately the needs of dislocated workers. Specifically, there were weaknesses in DOL's oversight of employer compliance with the advance notice requirements of the Act. We also identified WARN Notices that were not entered into OSOS. Further, DOL staff were often late in attempting initial outreach to employers that submitted Notices and to affected employees, and in some cases, there was no record of any outreach. We concluded that, when combined, these weaknesses impede DOL's success in meeting the needs of dislocated workers and may undermine public perception of its commitment to its mission. DOL was cooperative throughout the audit and cited the unprecedented challenges of the pandemic as a major factor in these results.

The objective of our follow-up was to assess the extent of implementation, as of November 2024, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOL officials have made substantial progress in addressing the issues we identified in the initial audit report. Of the initial report's four audit recommendations, three have been implemented and one has been partially implemented.

Follow-Up Observations

Recommendation 1

Implement a process to:

- *Substantiate that employers that file late Notices meet exemption criteria; and*
- *Verify that employers pay affected employees when they cite past or planned payments in late-filed Notices.*

Status – Implemented

Agency Action – Partially in response to our initial audit report’s findings, in May 2023, DOL implemented the WARN Portal and review process to better ensure that employers that file late Notices have met the exemption criteria under the Act. The WARN Portal allows employers to upload required information, including information that substantiates claims for exemption. As part of the new process, DOL staff review submissions, using a checklist, to determine whether filed Notices contain all required information, including—when applicable—proof to substantiate exemption claims for employers that provide fewer than 90 days’ notice.

DOL staff conduct an administrative review if an employer fails to file a Notice or if an employer files a Notice but is suspected to be in violation of the Act following the initial review; this results in an initial determination of whether the employer complied with the Act. If staff determine that an employer didn’t comply, they generate a civil penalty proposal and refer the matter to the DOL’s Counsel’s Office.

We reviewed supporting documentation for seven employers that filed late Notices and found DOL staff took appropriate action for all seven Notices. Of the seven employers, three filed Notices in anticipation of layoffs that would trigger WARN obligations, but the subsequent layoffs affected fewer people than expected, resulting in no obligation to file. Two employers provided appropriate support to qualify for exemptions due to lost contracts, which DOL granted in June 2024. Of the remaining two late-filing employers, DOL’s Counsel’s Office was still considering one employer’s exemption request—also due to a lost contract—at the time of our engagement, and one employer didn’t qualify for an exemption. DOL didn’t assess a penalty in this case because the employer made payment to the affected workers in lieu of Notice prior to the closure. We reviewed pay stub records for 10 of the 97 affected employees’ payments and found that they were appropriately paid 90 days of wages and benefits. DOL officials stated that staff are trained to request payroll documentation when an employer elects to pay employees in lieu of Notice.

Recommendation 2

Follow up on Notices that were not entered in OSOS, including those identified by our audit, and offer and provide Rapid Response services as appropriate.

Status – Implemented

Agency Action – We verified that each of the 91 Notices identified by our audit was entered in OSOS. Most of the Notices were entered by January 2023 and all identified Notices had been entered by July 2023. Since our audit, DOL implemented a quarterly review

process where the Regional Rapid Response Coordinator from each of DOL's 10 regions reviews a report generated from the WARN Portal for completeness and accuracy. The review includes determining whether each event was entered in OSOS and whether staff comments pertaining to outreach attempts, information collected, services offered, and the employer's decision on whether to receive Rapid Response services were accurately recorded. Quality review staff perform a second review, and the Statewide Rapid Response Coordinator remedies any identified errors.

Although staff entered the backlog of Notices in OSOS, they generally didn't provide Rapid Response services to the affected employees. Rather, DOL officials stated that staff followed up to discuss Rapid Response services where appropriate, indicating that it would have been inappropriate to perform additional outreach due to the length of time that had passed since the events identified in the Notices.

Recommendation 3

Take steps to improve timely outreach to both employers and employees affected by employment changes covered by the WARN Act.

Status – Implemented

Agency Action – DOL's WARN Portal and its May 2023 WARN Submission Review and Outreach Guideline (Guideline) have improved its ability to facilitate outreach to employers and employees affected by WARN events. (Note that despite the Guideline footer that reads "DRAFT," DOL officials—in response to our inquiry—stated that the Guideline has been put into effect.) According to the Guideline, follow-up should occur within 2 days of initial outreach, with at least three outreach attempts, if necessary, to employers and employees meeting the WARN criteria.

DOL also implemented a uniform case management tracking method that's used at all 10 of its regions to monitor employee outreach attempts. Within the WARN Portal, DOL staff maintain employer and employee outreach information organized by active customers who accepted Rapid Response services and inactive customers who have either declined services, were non-responsive to outreach attempts, or returned to work. DOL quality review staff provide reports with findings to each Regional Rapid Response Coordinator, who then resolves the findings. The new process may improve timely outreach to both the employers and employees affected by employment changes covered by the Act.

We reviewed DOL outreach information in OSOS for a sample of 45 affected employees from five of DOL's 10 regions from the period April 2023 through August 2024 to evaluate the effectiveness of the process. We also selected two employers that filed Notices during the period December 2022 through March 2024 from each of the 10 regions, for a total of 20 employers, and found that DOL staff provided timely outreach to all 20 employers.

Recommendation 4

Assess current and anticipated WARN activity to determine and pursue appropriate WARN staffing levels.

Status – Partially Implemented

Agency Action – DOL officials stated that their analysis of current and anticipated WARN activity to determine appropriate WARN staffing levels is ongoing due to the natural fluctuation in volume of this activity. They noted, for example, that WARN submissions more than doubled in the program year beginning July 1, 2022 and continued to rise in 2023. They explained that they determined effective regional staffing models through regularly scheduled weekly meetings, and that these determinations were based on combined historical knowledge and WARN data.

To pursue appropriate WARN staffing levels, DOL has posted DEWS titles, such as Labor Services Representative, to the State Governor’s Office of Employee Relations website using NY Hiring for Emergency Limited Placement Statewide (NY HELPS) and has also pursued hiring through the State Civil Service promotional process. DOL officials indicated that they are actively hiring to backfill vacant positions, but vacancies remain.

DOL officials couldn’t provide a record of management meeting discussions that resulted in their determinations of appropriate staffing levels. Without such a record, we considered this recommendation to be partially implemented.

Major contributors to this report were Philip Boyd and Kathleen Garceau.

DOL officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report’s issuance. We thank the DOL management and staff for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Samantha Doran, Department of Labor