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The WARN Act's Limitations and Artificial Intelligence-Related Job Disruption

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A NOTE ON THIS DOCUMENT

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Introduction

The Worker Adjustment and Retraining Notification (WARN) Act was designed to give workers and governments advance notice of impending mass-layoff events. Amid the job-apocalypse warnings of artificial intelligence (AI) boosters and doomers alike, policymakers and worker advocates have raised questions about whether and how the WARN Act can effectively respond to a changing economy.

The WARN Act was enacted to focus on large-scale layoffs of full-time, unionized employees at major manufacturing plants, against the backdrop of a particular set of workforce-retraining programs. AI-related layoffs could be more gradual and geographically diffuse, and they could affect workers in smaller workplaces and workers who are not unionized. Both the WARN Act itself and its implementing regulations could be updated to better serve its statutory purposes in the face of AI-related job loss, whatever version of AI's job market effects one thinks is most likely.[1]

This document describes the history, structure, and purpose of the WARN Act, outlines the ways the law may be limited in the current context, and provides policy recommendations.

I. History, Structure, and Implementation

Enacted in 1988, the WARN Act was designed to address mass-workforce disruption caused by plant closures and offshoring of manufacturing facilities due to globalization by requiring larger employers to provide advance notice of mass layoffs and plant closures. The law's primary purposes are to provide employees with sufficient time to find a new job or get retrained, and to alert state and local governments and workers' representatives to impending layoffs so they can provide resources—including transition and job search assistance—to displaced workers.[2]

The Act requires employers to notify workers, their representatives, and state and local governments in advance of a "plant closing" or "mass layoff" at an employer with 100 or more employees.[3] The Act defines "plant closing" to mean the shutting down of a single site of employment (or one or more facilities within a single site) if the shutdown results in 50 or

[1] *See* Teddy Tawil, The AI Labor Debate: Three Views on the Future of Work (Apr. 23, 2026), https://carnegieendowment.org/research/2026/04/the-ai-labor-debate-three-views-on-the-future-of-work.

[2] *See, e.g.*, 134 Cong. Rec. S8376 (June 22, 1988) (statement of Sen. Kennedy); Richard W. McHugh, Comment, Fair Warning or Foul? An Analysis of the Worker Adjustment and Retraining Notification (WARN) Act in Practice, 14 Berkeley J. Emp. & Lab. L. 1, 11–12 (1993).

[3] *See* 29 U.S.C. §§ 2101, 2102.

more employee layoffs during any 30-day period.[4] A "mass layoff" includes a reduction in force of at least 50 employees where the employment loss consists of at least 33 percent of employment at the site; or a reduction in force that causes an employment loss of 500 or more at a single site of employment, regardless of its proportion of total employment at the site.[5] Some states—like New Jersey[6]—have passed parallel laws that extend this threshold to layoffs spanning a group of locations in the state, and others—like Illinois[7]—require notification for smaller employers and for a lower threshold of laid-off workers.

Subject to certain exceptions,[8] 60 days prior to a termination event that triggers the WARN Act, an employer must give written notice of the planned terminations: "(1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and (2) to the State or entity designated by the State to carry out rapid response activities under [the Workforce Innovation and Opportunity Act], and the chief elected official of the unit of local government within which such closing or layoff is to occur."[9] Some states require more advance notification than 60 days in some circumstances. Maine, for example, requires 90 days' notice of a relocation or closing, but for a mass layoff requires only notice "as far in advance as practicable," and in no event later than seven days after the layoff.[10]

The Department of Labor (DOL) does not have enforcement authority related to the WARN Act, but the agency is authorized to promulgate rules to carry out the Act.[11] DOL issued regulations in 1989 and has not updated them since.[12] Those regulations define several key terms, including "single site of employment," which play a large role in determining when the WARN Act's requirements apply at all.[13] DOL indicated in 2024 that it was considering updating its definition of "single site of employment" to clarify how it relates to remote workers, but that regulatory effort was abandoned.[14]

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[4] *Id.* § 2101(a)(2).

[5] *Id.* § 2101(a)(3).

[6] N.J. Stat. Ann. § 34:21-1.

[7] Ill. Admin. Code tit. 56, § 230.110.

[8] 29 U.S.C. § 2102(b).

[9] 29 U.S.C. § 2102(a).

[10] Me. Rev. Stat. Ann. tit. 26, § 625-B(6), (6-A).

[11] 29 U.S.C. § 2107(a).

[12] *See* Worker Adjustment and Retraining Notification, 54 Fed. Reg. 16042, 16064 (Apr. 20, 1989) (codified at 20 C.F.R. Part 639).

[13] 20 C.F.R. § 639.3(i).

[14] *See* Dep't of Labor, Spring 2024 Unified Regulatory Agenda RIN 1205-AC17 (last visited July 23, 2026), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=1205-AC17.

The notice to state dislocated worker units and local governments is designed to support the provision of rapid response activities.[15] DOL's regulations encourage maximum coordination with other programs focused on assistance for dislocated workers.[16] State Rapid Response teams provide employees and worker representatives with job search assistance and information about rights, protections, and support services to help them navigate job loss.[17] This process is initiated when the state or local Rapid Response team learns of impending layoffs, including from WARN notices. Rapid Response teams can provide on-site services at an employer and work in partnership with local American Job Centers and relevant DOL agencies.[18]

II. Limitations for AI-Driven Disruption

Several aspects of the WARN Act's design may limit its usefulness in preventing or illuminating AI-related job disruption.

A. Coverage

Limited scope. The WARN Act's coverage is limited by employer size and employment status. Originally intended to provide notice for large, discrete offshoring of vast manufacturing facilities employing workers with high union density and full-time work, the Act accordingly applies only to employers with 100 or more full-time employees (or where 100 or more employees collectively work at least 4,000 hours per week).[19] This emphasis on employers with 100 or more mostly full-time employees deprioritizes the vast majority of American employers,[20] roughly a third of private sector employees,[21] and part-time arrangements that have been on the rise since 2020.[22] Additionally, companies are

[15] *See* 29 U.S.C. § 2102(a)(2).

[16] *See* 20 C.F.R. § 639.1(f).

[17] Emp. and Training Admin., Rapid Response Services (last visited Aug. 14, 2026), https://www.dol.gov/agencies/eta/layoffs.

[18] Emp. and Training Admin., Rapid Response Services for Workers (last visited Aug. 14, 2026), https://www.dol.gov/agencies/eta/layoffs/workers.

[19] 29 U.S.C. § 2101(a)(1).

[20] Andrew Van Dam, *Is America Still a Nation of Small Businesses?*, Wash. Post (Jan. 31, 2025), https://www.washingtonpost.com/business/2025/01/31/is-america-still-nation-small-businesses/ (finding that 98 percent of private sector employers had fewer than 100 employees).

[21] Small Business & Entrepreneurship Council, Facts & Data on Small Businesses and Entrepreneurship (last visited July 23, 2026), https://sbecouncil.org/about-us/facts-and-data/ (finding that employers with fewer than 100 workers employed 32.4 percent of private sector payrolls).

[22] Jennifer Nash, *A Closer Look at Full-time and Part-time Employment: May 2026*, Advisor Perspectives (June 8, 2026), https://www.advisorperspectives.com/dshort/updates/2026/06/08/a-closer-look-at-full-time-and-part-time-

increasingly likely to classify their workers as independent contractors, and therefore the employers are not subject to WARN Act requirements.[23]

Obsolete definition of "single site of employment." Whether a layoff triggers the WARN Act's protections at all hinges on whether job losses take place at a "single site of employment."[24] The Act does not itself define "single site of employment," and DOL's implementing regulations offer a multi-part definition that might struggle to capture important job losses in the AI economy due to increases in remote work and mobile work subject to algorithmic management practices.[25]

First, some judicial opinions raise questions about whether the current regulations mean that a remote worker's residence is their single site of employment, because that is their "home base."[26] This interpretation would strip WARN protections from all remote workers (nearly 17 million spend all hours working off site[27]) because even the lowest statutory trigger requires at least 50 employment losses at a single site.

Second, to the extent that mobile workers (e.g., rideshare drivers) are classified as employees and are increasingly subject to algorithmic management practices—some of which might operate without direction from, for example, a company's headquarters[28]—it is unclear whether DOL's current regulations cover such employees under the WARN Act

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employment-may-2026. However, note that "[w]hile part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, such workers are due notice" under the Act. 20 C.F.R. § 639.6(b).

[23] U.S. Bureau of Labor Statistics, Contingent and Alternative Employment Arrangements - July 2023 (Nov. 8, 2024), https://www.bls.gov/news.release/pdf/conemp.pdf; *see generally* David Weil, The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It (2014); David Weil, Understanding the Present and Future of Work in the Fissured Workplace Context, 5 RSF: The Russell Sage Found. J. Soc. Scis. 147, 147–65 (2019), https://www.rsfjournal.org/content/5/5/147/.

[24] 29 U.S.C. § 2101(a)(2), (3).

[25] 20 C.F.R. § 639.3(i).

[26] *See Ciarlante v. Brown & Williamson Tobacco Corp.*, 143 F.3d 139, 146 (3d Cir. 1998) (describing an employee's "home base" as the "physical base of the employee" rather than "the physical base of the employer's operation"); *In re Storehouse, Inc.*, No. 06-11144-SSM, 2010 WL 4453849, at *4 (Bankr. E.D. Va. Nov. 3, 2010) (suggesting that if the employee had chosen to work remotely from his home in Richmond, Virginia, and reported to the Atlanta, Georgia, office, he would still have a single site of employment—his residence in Richmond); *see also Kephart v. Data Sys. Int'l, Inc.*, 243 F. Supp. 2d 1205, 1222 (D. Kan. 2003) (denying summary judgment because of fact disputes about whether home office-based employees should be grouped together for single-site-of-employment purposes or if their individual home offices are the appropriate single site of employment); *Gray v. Oracle Corp.*, No. 2:05-CV-534 TS, 2006 WL 2987939, at *1 (D. Utah Oct. 17, 2006).

[27] Tanya Goldman & Katherine Gallagher Robbins, Who Works from Home? Remote Work, Gender Equity, and the Access Gap, National Partnership for Women & Families (Apr. 2026), https://nationalpartnership.org/report/who-works-from-home-remote-work-gender-equity-access-gap/.

[28] *See, e.g.*, Alex Rosenblat & Luke Stark, *Algorithmic Labor and Information Asymmetries: A Case Study of Uber's Drivers*, 10 Int'l J. Comm. 3758, 3768–76 (2016) (highlighting Uber's claims that the algorithm, rather than the company, sets prices based on local conditions, and describing how the company's automated systems and passenger rating systems perform managerial control over drivers in the absence of human supervisors).

because they may not have a single site of employment that is their "home base," a site from which work is assigned, or a site to which they report.[29]

Exception for "unforeseeable business circumstances." Employers are excepted from the 60-day advance notification requirement when mass layoffs are attributed to "business circumstances that were not reasonably foreseeable as of the time that notice would have been required."[30] This test is focused on an employer's judgment, which leaves room for ambiguity and interpretation, particularly if, for example, an employer aims to obscure the role that AI plays in a layoff.[31]

B. Notice triggers

Omission of gradual job losses. The Act's notice provisions only apply where a job loss affects, within a 30-day period, one-third of employees at a single site of employment, if that amounts to at least 50 employees, or 500 employees at any single site of employment.[32] These statutory triggers for WARN notice might not capture more gradual job loss attributable to AI adoption that either affects fewer workers or affects an employer's workforce over a longer period of time through staggered or intermittent terminations.[33]

Omission of non-replacement. There are already some indications that AI's job market effects include employers being slower to replace departed employees in addition to affirmative job cuts.[34] WARN's trigger reaches affirmative separations only. An employer that simply stops backfilling departures could produce the same aggregate displacement without ever generating a WARN notice.

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[29] *See* 20 C.F.R. § 639.3(i)(6). Of course, this also assumes that rideshare workers should be classified as employees (and thus covered by the WARN Act), rather than independent contractors, which is an evolving area of debate.

[30] 29 U.S.C. § 2102(b)(2); 20 C.F.R. § 639.9(b).

[31] 20 C.F.R. § 639.9(b)(2).

[32] 29 U.S.C. § 2101(a)(2), (3).

[33] *See, e.g.*, Tawil, *supra* note 1. 29 U.S.C. § 2102(d) provides a partial solution to this problem by aggregating employment losses over any 90-day period to stop incremental evasion. However, an employer can escape aggregation by showing the losses stem from "separate and distinct" causes, and the 90-day window may be too short for technology rollouts and workforce impacts that span quarters or years.

[34] Megan Cerullo, *AI job cuts are rising, but experts say layoffs are only part of the story*, CBS News (May 22, 2026), https://www.cbsnews.com/news/ai-layoffs-hiring-entry-level-workers/.

C. Notice limitations

Challenges with attribution. The WARN Act and its implementing regulations do not require an employer to include a reason for a noticed job loss event.[35] This limits the ability of governments or the public to understand the scope of AI-related job losses.

Even if required by law, AI-attribution disclosures depend on an employer's characterization of a layoff's cause, which can be complicated by multi-causal layoffs, ambiguity over what counts as "AI-related," and incentives to underreport given the reputational and legal exposure that comes with the label. New York's experience bears this out: after New York added an AI-attribution question to its WARN filings in 2025, no employers reported AI as a factor in the first year, despite other data pointing to the contrary.[36]

Timing. Sixty days' advance notice is unlikely to provide workers or their representatives with a reasonable amount of time to prepare for job loss, including identifying and seeking other employment opportunities, especially if those opportunities might be outside of a particularly AI-impacted sector. And if one goal of WARN notice is to allow workers and their representatives to organize in advance of job losses, an AI-related job loss notice requirement that comes only after a layoff decision has already been made—rather than, for example, when the technology is purchased or adopted—arguably comes too late.

Reduced organized labor involvement. When alerted through WARN Act notifications, workers' representatives can act quickly to negotiate with an employer and provide support for their members. By requiring notice to worker representatives only if the affected workers are themselves unionized—rather than to labor organizations or civil society more generally—the WARN Act's representative-notice provision has become less effective as private sector union density has decreased in recent decades.[37] Workers who do not have a representative are left without the types of support and protections that labor organizations can offer to navigate job loss. And non-union workplaces may be more susceptible to AI-driven job loss in the first place because workers have less leverage in shaping workplace technology decisions.

Minimal worker-support requirements. The statute does not require specific information to be included in the notice that could be helpful for a worker navigating unemployment or

[35] 20 C.F.R. § 639.7 (describing what notice must contain).

[36] Robert T. Quackenboss & Michelle Meyer, *New York WARN Act: No AI-Related Layoffs Reported in First Year of Adding AI-Related Disclosure to the System*, Hunton (May 18, 2026), https://www.hunton.com/hunton-employment-labor-perspectives/new-york-warn-act-no-ai-related-layoffs-reported-in-first-year-of-adding-ai-related-disclosure-to-the-system.

[37] *See generally* Cong. Rsch. Serv., R47596, A Brief Examination of Union Membership Data (June 6, 2023), https://www.congress.gov/crs-product/R47596.

accessing services. Additionally, employers offering notice are under no obligation to provide support for or negotiate over their workers' transitions back into the job market.

D. Enforcement

Lack of federal enforcement and notification. The WARN Act only requires notice to state and local governments, not the federal government, and is enforceable only through civil litigation brought by aggrieved workers, their representatives, or local governments against the employer.[38] These features stymie public enforcement and limit the federal government's understanding of AI's effects on the labor market.

Remedies for violations. The remedy in a civil action alleging a WARN Act violation is limited to up to 60 days' backpay for wages and benefits during the unnoticed job loss.[39] Employers can also offset any backpay obligation by paying voluntary and unconditional severance payments to the employee.[40] Further, employers can eliminate their liability by conditioning severance packages on the waiver of claims under the WARN Act.[41] The ability to condition severance in this manner impairs the degree to which the WARN Act serves to inform various governments of job losses.

III. Policy Recommendations

To ensure adequate notification and worker support during potential AI workforce transitions, policymakers might consider legislative or regulatory changes to:

Increase coverage to require notice for more layoffs:

- Expand coverage to employers with fewer than 100 employees and include part-time, independent contractor, and subcontracted workers in coverage-threshold calculations.
- Remove the "single site of employment" requirement or clarify the definition to ensure coverage for employers with multiple facilities and remote workers.[42]

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[38] 29 U.S.C. §§ 2102(a)(2), 2104.

[39] 29 U.S.C. § 2104(a)(1).

[40] 29 U.S.C. § 2104(a)(2); U.S. Dep't of Labor, WARN Advisor (last visited Aug. 14, 2026), https://webapps.dol.gov/elaws/eta/warn/faqs.asp#:~:text=the%20severance%20package%20may%20offset%20WARN%2C%20this%20effectively%20providing%20pay%20in%20lieu%20of%20notice.

[41] U.S. Dep't of Labor, WARN Worker's Guide to Advance Notice of Closings and Layoffs 18 (2003), https://www.dol.gov/sites/dolgov/files/ETA/Layoff/pdfs/WorkerWARN2003.pdf.

[42] *See, e.g.*, Reed Shaw, Taking Further Agency Action on AI: Department of Labor, Center for American Progress & Governing for Impact (June 17, 2024), https://www.americanprogress.org/article/taking-further-agency-action-on-ai/department-of-labor-chapter/#:~:text=Retraining%20Notification%20Act-,Congress,-enacted%20the%20Worker.

- Remove or modify the exception for "unforeseeable business circumstances" to ensure that it does not act as a loophole to coverage.[43]

Broaden and lengthen notice triggers:

- Lengthen the advance-notification timeline and the amount of backpay due upon violation (and, therefore, the amount of severance due to offset obligations).
- Lower the layoff threshold for triggering notification obligations.
- Clarify the definition of "separate and distinct actions and causes" to ensure that repeated job losses traceable to the deployment of new technologies are presumptively aggregated for the purposes of determining whether the notification trigger is met.[44]
- Revise or clarify the Act's exclusion of "voluntary departure[s]" from the definition of "employment loss" to ensure that notification is still required for buyouts and voluntary separations that occur after the deployment of new technologies.[45]

Enhance and standardize notices for usability and analysis:

- Require notification to include information about the jobs and job functions being eliminated and the cause of layoffs, including whether the tasks performed by eliminated positions are being discontinued or reassigned to an automated system, a vendor, or another worker.
- Standardize notice format and expand notification obligations to include the federal DOL.
- Provide DOL with dedicated funding and staffing to carry out evaluation activities based on these notifications.
- Make the government-notification obligations non-waivable.

Better integrate relevant supports and services for workers:

- Require notifications to include information about workforce-transition benefits and support.
- Integrate the notification regime with relevant resources like unemployment insurance and employment services to increase uptake and require employers to support on-site rapid response services when requested by state or local Rapid Response teams.

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[43] *See* 20 C.F.R. § 639.9(b)(1).

[44] *See* 20 C.F.R. § 639.5(a)(1)(ii).

[45] *See* 29 U.S.C. § 2101(a)(6)(A).

Strengthen enforcement to promote compliance:

- Authorize the federal DOL to investigate complaints and directly assess civil penalties and pursue other remedies.
- Establish an expanded penalty schedule to ensure enforcement does not depend solely on backpay litigation, which may not sufficiently deter violations too small to justify the burden and expense of bringing a lawsuit.
- Provide DOL with dedicated funding and staffing to carry out enforcement, including investigation, complaint intake, and penalty assessment.
- Increase penalties and incentives for private enforcement.

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