

Navigating the WARN Act: Strategic Workforce Planning in Hotel Transactions

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Whether and when to notify employees about a hotel sale is often overlooked during hotel acquisitions and is often viewed as solely an HR matter. In practice, however, compliance with mandatory employee notification requirements can significantly impact transaction timing, operational continuity, and post-closing liability allocation between a hotel buyer and seller.

The WARN Act requires employers to provide at least 60 days' advance notice to employees, union representatives, and certain government entities in the event of certain plant closings or mass layoffs. The statute is designed to give employees time to prepare for job loss, seek alternative employment, or pursue retraining. Owners and operators, however, often believe that providing advance notice of an impending hotel sale to employees may undermine the continuity in staffing and management needed to transition the hotel through closing. Front-line employees and department heads are critical to maintaining guest experience during a transition. Providing advance notice of potential layoffs may lead employees to seek other opportunities, undermining stability during the transition period.

Not every hotel falls within the WARN Act's scope. The statute generally applies to employers with at least 100 full-time employees, or 100 or more employees (including part-time workers) who collectively work at least 4,000 hours per week, excluding overtime. In the hospitality sector, roughly 10% of U.S. hotels fall within its scope. If you are buying or selling a hotel that may meet these thresholds, you should engage experienced hospitality-focused counsel with labor and employment specialists to advise on WARN Act exposure and strategy.

The employer's obligation to provide notice is triggered by:

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- a plant closing affecting 50 or more full-time employees; or
- a mass layoff affecting at least 50 full-time employees where they represent at least 33% of the workforce at a single site, or 500 or more full-time employees regardless of percentage.

Keep in mind, employment losses occurring within a 90-day period may be aggregated to meet these thresholds, preventing employers from structuring staggered terminations to avoid compliance.

Allocating Liability in a Hotel Purchase and Sale Transaction

When a hotel is sold, WARN Act liability does not disappear but generally shifts to the buyer as of the closing date of the transaction. That timing distinction is critical when planning workforce changes shortly after the closing.

The transfer of employment from seller to buyer is not considered an employment loss under the WARN Act as long as those employees (or a sufficient amount) are rehired by the buyer under certain circumstances, after the transaction closes. Buyers can avoid WARN Act liability by rehiring, or causing a new hotel management company to rehire, a sufficient amount of employees under these rules. Note, however, that if these employees are offered re-employment with significant changes to their wages, benefits, job duties, or working conditions it may constitute “constructive discharge”.

If notification is required, the seller will want to defer any termination of employees until after the transaction closes in order to reduce or eliminate the seller’s exposure under the WARN Act and shift the notification burden to the buyer. This approach also helps preserve operational continuity and reduces the risk of employee attrition if the transaction does not close.

Buyers must consider any anticipated workforce reductions shortly after closing and plan accordingly. If a buyer plans a qualifying layoff at or within 60 days after closing, it will need to coordinate with the seller to fulfill its pre-closing notice obligations. Purchase and sale agreements for hotels often restrict a buyer’s ability to communicate with employees and any notification of employees prior to closing should come from the seller. Both sellers and buyers can avoid the associated risks of pre-closing notification by delaying any qualifying employee layoffs or closures until 60 days or later after the sale is completed.

Temporary Layoffs

Branded hotels are often required by the franchisor to complete significant renovations as directed under a property improvement plan (PIP) in connection with the hotel transfer and execution of a new hotel franchise agreement. Any resulting full or partial hotel closure may require the owner or manager to temporarily lay off employees while the renovations are underway. Under the WARN Act, temporary layoffs expected to exceed six months are treated the same as permanent layoffs and trigger notice requirements.

Third-Party Management

Often hotels are operated by third-party managers who serve as the employer in lieu of the hotel owner. As a result, hotel managers often seek contractual protection against owner-driven decisions, such as a sale or closure that could trigger WARN Act obligations.

If a hotel is subject to a hotel management agreement, upon the sale, the agreement can either be assigned to the buyer or terminated. If the hotel management agreement is terminated, the buyer may decide to transition the hotel to self-management or enter into a new hotel management agreement with the existing manager or a new third-party manager. In any case, the buyer may desire to retain selected employees for operational continuity. Note that if a third-party manager is employed, it will typically have operational control to decide most personnel decisions and in most cases an owner's input is limited to the hotel's general manager and some key personnel.

State-Specific Requirements

In addition to federal requirements, approximately 20 states—including California, New York, and New Jersey—have their own “mini-WARN” statutes, some of which impose stricter thresholds or longer notice periods. For example, in California, the layoff of 50 employees will trigger the statute, even if 33% of the workforce is not affected. These laws may apply independently of the federal statute and should be analyzed on a jurisdiction-by-jurisdiction basis.

Bottom Line

If you're buying or selling a hotel with 100 employees and plan to either close the location (including sometimes temporarily) or terminate the employees or offer employment under materially different terms, you may be subject to the WARN Act which requires 60 days' prior notice to employees, throwing a massive wrench in your plans to maintain operational continuity through the closing of the sale. Buyers and sellers who address these issues early are better positioned to avoid disruption and liability. Hotel investors should engage legal advisors experienced in the hospitality industry and labor and employment issues to guide them through the transaction process and advise on strategies to mitigate WARN Act exposure while managing operational continuity.