

## DOL Issues WARN Guidance In Light Of Upcoming Sequestration Measures

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A [newly-issued guidance memorandum](#) from the DOL says that defense contractors do not need to send out WARN notices to their employees in advance of the mandatory sequestration cuts currently slated for January 2, 2013. As part of the Budget Control Act of 2011, there will be large cuts in the defense budget, which may result in huge layoffs to defense contractor workforces on January 2 unless some further deal can be reached in Congress regarding the deficit.

Pursuant to WARN, the defense contractors are required to notify their workers and state and local governmental agencies of mass layoffs 60 days in advance of the layoffs taking place - which would mean in this case that the notices would have to be mailed to potentially hundreds of thousands of workers just a few days before the upcoming November Presidential election.

The DOL now says that defense contractor employers don't need to send out WARN notices because of the possibility that a deal could be reached on the mandatory sequestration cuts between now and January 2, 2013. According to the DOL, not sending out a notice would be consistent with other situations where there was uncertainty about the cancellation of a defense contract.

One problem for employers, however, is that WARN mandates strict compliance and also provides per diem civil penalties that could stack up quickly in the event of a class action involving a large number of employees. Another problem is procedural: the DOL does not enforce the Act and its guidance could provide flimsy protection to an employer facing a WARN action. As such, it is an open question whether the DOL's guidance would be enough to block an employee from suing under WARN if the employer fails to provide the required notice in advance of the sequestration cuts slated to take place on January 2, 2013.

Employers facing possible layoffs as a result of the sequestration process should make sure to check with counsel so they can weigh the risks associated with sending (or not sending) a WARN notice based on the DOL's guidance.

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