
Why WARN?

Plant Closing Legislation

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In July 1988 Congress passed the Worker Adjustment and Retraining Notification Act (WARN), which requires firms with 100 or more employees to provide workers, the state government dislocated worker unit, and local government officials with written notice 60 days before a planned shutdown or large-scale layoff. Although Congress had considered legislation calling for advance notice every year since 1979, 1988 was the first year that such legislation passed both houses of Congress. President Reagan, although philosophically opposed to the legislation, bowed to election year political pressure and did not veto the law. WARN went into effect on February 4, 1989.

In addition to advance notification of plant closings, WARN requires covered employers to give 60 days' notice of a layoff that is planned to last at least six months that involves either 500 or more workers or at least one-third of the employer's workforce. Coverage is not universal, however. In addition to not covering small firms, the law exempts firms from the advance notice requirement for a number of reasons: for example, if the firm is actively seeking ways to avoid the shutdown (such as trying to find a buyer for the business), if business circumstances that could not be "reasonably foreseen" force the disloca-

tion (however, notice is required at that point), if a natural disaster directly causes the shutdown or mass layoff, if the firm relocates within a "reasonable" commuting distance of its previous site and offers employees jobs at the new location, if the workers to be displaced were hired with the understanding that their employment was limited to the duration of a particular project, or if a planned layoff of less than 60 days is extended due to "unforeseeable" circumstances. In each of these cases, the burden of proof is on the employer to show that he warrants an exemption.

Penalties for failure to provide the required advance notice include back pay and benefits for each displaced worker for each day of violation and a fine of \$500 per day for failing to notify local government. The law is designed to be enforced through law suits filed in a federal district court by employees, a union, or a local government. Unlike other forms of labor market regulation such as the Fair Labor Standards Act (governing minimum wages, overtime premium, and child labor) and the Occupational Safety and Health Act, the U.S. Department of Labor has no enforcement authority under WARN.

WARN was passed only after a decade of strenuous debate, and two years after its enactment it is useful to consider a number of issues it raised. What benefits did proponents feel would arise from advance notice legislation and what costs did opponents perceive? What type of public policies toward advance notice do other nations have? Did displaced workers in the United States receive advance notice before WARN became law? What do we know empirically about the ac-

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tual effects of advance notice on workers and firms? What has experience under the first year of WARN taught us? Finally, what research should be conducted to determine whether WARN is a good idea and what alternative public policies might help facilitate the provision of advance notice to displaced workers?

Hypothesized Benefits and Costs of Advance Notice Legislation

Proponents of advance notice requirements argue that they ease displaced workers' shock and facilitate their search for alternative employment or additional training. Notifying government agencies allows them lead time to mobilize their resources to assist displaced workers. Indeed, a companion piece of legislation to WARN, the Economic Dislocation and Worker Adjustment Assistance Act specifically requires the Department of Labor to fund programs for states to aid dislocated workers and to create dislocated worker units that counsel workers about alternative employment and new training.

Advance notice also allows employers, workers, unions, and local government to collaborate to determine whether there are ways to prevent the plant closing or layoffs. Such measures include wage concessions by the workers, tax concessions by the local government, restructuring of the work environment to improve productivity, or seeking new ownership, including employee ownership.

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To the extent that advance notice facilitates workers' transition to new jobs or helps to avert workers' displacement, proponents argue that it benefits local communities as well as individual workers. Plant shutdowns and massive layoffs place extra demands on communities for social services, as the stress induced by unemployment causes an increased incidence of physical and

mental ailments while local sales and property tax revenues are reduced.

Opponents of advance notice legislation argue that it will restrict the free mobility of capital, increase worker turnover, and decrease productivity. They also argue that advance notice will decrease the likelihood that buyers of the plant's product will place new orders, that banks will supply new credit, that suppliers will continue to provide services, and that the firm can sell the plant to potential buyers. (The latter explains one of the exemptions under WARN.) In addition, they believe that advance notice may depress corporate stock prices and that by effectively increasing the cost of reducing employment, it can encourage firms *not* to expand employment or to substitute overtime hours for additional employment.

Critics of WARN and similar legislation object to the fact that the advance notice is mandatory. Proponents respond that in the absence of mandatory advance notice very few displaced workers will actually receive such notice; evidence we cite below suggests that the proponents are probably correct on this point.

In evaluating the case for advance notice legislation, it is important to stress that for two reasons an employer does not bear the full social cost of the plant shutdown or mass layoff. First, because the unemployment insurance system is financed in the United States by an imperfectly experience-rated payroll tax, an employer's unemployment insurance payments will increase by less than the unemployment insurance benefits his displaced workers receive. Second, an employer typically does not take into account the costs that a mass layoff or plant shutdown imposes on the community. Consequently, proponents of advance notice requirements argue that the legislation helps internalize these external costs, and that by implicitly increasing the cost of plant closings or mass layoffs, employers will be discouraged from taking such actions. Meanwhile, critics stress that anything that implicitly or explicitly increases labor costs will encourage the flight of jobs overseas.

Advance Notice Legislation before WARN in the United States and Abroad

Most European nations have legislation requiring employers to notify employees about to be laid off or fired. The length of notice required typically depends on whether the individual is a white-col-

lar or blue-collar employee and on his prior length of service with the firm. The advance notice required in these countries ranges from 1 week to 24 months. When large-scale layoffs or plant shutdowns are contemplated, European law also typically requires firms to notify unions and government and to work with employees and government representatives to attempt to avert the displacement. Often European law requires severance pay for displaced workers, and some countries, for example, Sweden, have detailed programs of labor market services including retraining, job placement, public works jobs, and wage subsidies to facilitate labor market adjustments. In many European countries small establishments with fewer than 100 employees are exempt from advance notice requirements, perhaps to avoid imposing additional costs on small businesses (which typically have high failure rates) or to account for the fact that a failure of a small business does not have a substantial negative effect on a community.

Both federal and provincial laws in Canada similarly require advance notice, which typically depends on an individual's length of service with the employer. Furthermore, the length of advance notice required typically exceeds the 60-day requirement of WARN.

Serious debate about an advance notice requirement began in the United States during the deep recession of the mid-1970s. The large number of plant closings and permanent layoffs in major manufacturing industries that followed increased interest in advance notice legislation. As has often been the case with other forms of government regulation of conditions of employment in the United States, action by states preceded federal action.

As of early 1988, there were only a few state laws relating to advance notice in the United States. Maine, Wisconsin, and Hawaii required advance notice of plant shutdowns (with size class exemptions). Maine also required one week's severance pay per year of service for workers with more than three years of service. The penalties for noncompliance were low in Maine (\$500 per establishment) and Wisconsin (\$50 per employee), but high in Hawaii (three months' wages and benefits per laid-off worker). Connecticut did not require advance notice, but did require non-bankrupt firms to maintain health insurance and other benefits for up to 120 days for workers unemployed because of plant shutdowns. Massachusetts, Maryland, and Michigan had voluntary pro-

grams in which firms were urged to provide advance notice or to continue benefits. Finally, South Carolina "required" employers to give workers two weeks' notice before shutting down, but *only* in situations where employees were required to give advance notice before quitting.

Before WARN became law, displaced workers in the United States could have received advance notice of a pending layoff or plant shutdown if they lived in a state in which such notice was required, if a collective bargaining agreement required notice, or if an employer voluntarily chose to provide advance notice.

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Three employee-based surveys have recently collected information about the fraction of displaced workers who received advance notice. These were the *Survey of Displaced Workers* supplements to the January 1984, January 1986, and January 1988 *Current Population Surveys (CPS)*, the monthly national probability sample of the population from which our unemployment and labor force statistics are derived. These supplements covered workers who were displaced during the 1979–1983, 1981–1985, and 1983–1987 periods, respectively.

Table 1 presents data on the proportion of displaced workers in these surveys who received advance notice or who expected layoffs. For the purposes of this table, we define displaced workers as individuals who worked for the same firm for at least three years before permanently losing or involuntarily leaving a full-time job. These data, presented in the first three rows of the table, suggest that over half of those workers displaced during the 1979–1987 period received advance notice or expected their layoffs. Thus, at first glance, it appears that a substantial fraction of displaced workers in the United States received advance notice before WARN became law.

We should note, however, that the question,

Table 1: Proportion of Displaced Workers Who Received Advance Notice or Expected a Layoff in the January 1984, January 1986, and January 1988 CPS Displaced Worker Supplements

January 1984 Survey (workers displaced in 1979–1983)	.56
January 1986 Survey (workers displaced in 1981–1985)	.55
January 1988 Survey (workers displaced in 1983–1987):	.58
Received written advance notice	.20
Received written notice of less than 1 month	.06
Received written notice of 1 to 2 months	.05
Received written notice of 2 or more months	.07
Received written notice but failed to report length	.02
Expected a layoff	.38

Source: Authors' calculations from U.S. Bureau of Labor Statistics Bulletin 2240, *Displaced Workers 1979–83* (Washington, D.C.: July 1985), U.S. Bureau of Labor Statistics Bulletin 2289, *Displaced Workers, 1981–1985* (Washington, D.C.: September 1987), and tables from a forthcoming bulletin governing the 1983–87 period.

“Did you receive advance notice or expect a layoff?” does not distinguish between a worker’s receiving a formal written notice and his simply seeing the “handwriting on the wall.” Similarly, the question elicits no information about the length of advance notice. This is a crucial shortcoming because the effectiveness of advance notice policies in preventing displacements and easing workers’ transitions presumably depends partially on how far in advance the notice is given.

Fortunately, the January 1988 survey, which covered workers displaced during the 1983–1987 period, also specifically asked displaced workers whether they had received formal written advance notice. If individuals answered affirmatively, they were also asked whether the notice was less than one month, one month to less than two months, or two months or more. The answers to these questions are tabulated in the bottom rows of Table 3.

Quite strikingly, only 20 percent of these displaced workers reported receiving written advance notice, and most of these reported receiving relatively short advance written notice. Indeed, only 7 percent of the displaced workers reported receiving written notice two or more months before they lost their jobs. Thus, it seems clear that before the passage of WARN, only a small fraction of displaced workers actually received the 60 days’ written advance notice that WARN now requires. Studies recently conducted by the Bureau of Labor Statistics and the General Accounting Office of employers who had laid off a

substantial number of workers confirm this conclusion.

Does Providing Displaced Workers with Advance Notice Matter?

Studies of the effects of legally mandated, collectively bargained, or voluntarily provided advance notice before the passage of WARN have been of two types. The first looks at the effects of advance notice on employment-related variables at the national or community level. One study that used

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aggregate data from 23 countries over the 1956–1984 period found weak evidence that advance notice requirements tend to increase the fraction of the population employed but decrease their average weekly hours. The author attributed these findings to the fact that many nations with advance notice laws exempt firms from notifying part-time employees, with the result that employers substitute part-time for full-time employees.

WARN was designed to reduce the possibility of such substitution. Although part-time employees who work fewer than 20 hours a week are not counted under WARN in determining whether a firm has at least 100 employees, covered firms are required to notify part-time employees.

Another study examined the effects of plant closings in Maine before enactment of that state’s law. The researchers found that when a firm voluntarily provided at least one month’s advance notice, the closing’s impact on the local area’s unemployment rate in the month of closing was significantly reduced. While this result may be due to more rapid reemployment of displaced workers in the presence of advance notice, the researchers also found that advance notice was associated with a significant reduction in the size of the local labor force in the month of the closing. This latter result probably reflects either individual decisions to withdraw from the labor force or to move to other areas to seek employment.

The researchers were unable to ascertain which had occurred.

The second, and by far the more numerous, type of studies examines the effects of advance notice on individual displaced workers and their employers. For example, one early study of 32 plant closings in the United States in the late 1950s and early 1960s found that voluntarily provided advance notice rarely led to increased quit rates or decreased productivity of workers.

More recently, many authors, including ourselves, have used the January 1984 and January 1986 survey data to analyze the effects of advance notice. On balance, these studies suggest that providing advance notice significantly increased the likelihood that a displaced worker would not experience any unemployment. That is, advance notice provided time for some workers to find a new job before their date of displacement. These studies also suggest that once an individual experienced any unemployment, the presence of advance notice had no effect on his ultimate duration of unemployment. Advance notice seemed to help, then, only if individuals found employment before displacement. In addition, these studies suggest that receipt of advance notice appeared, for the most part, to have no effect on subsequent earnings once a displaced worker was reemployed. Finally, among the people in the surveys who received advance notice, there was no evidence that a firm's most productive workers were more likely to quit before the displacement date and thus disrupt the firm's operations in its final weeks.

All of these conclusions, however, were based on analyses of the 1984 and 1986 data in which respondents were asked only whether they "received advance notice or expected layoff." Data from the January 1988 survey suggest that most people who responded affirmatively probably did *not* receive formal written notice and that most of those who did received relatively short advance notice. A recent analysis of the 1988 data suggested that formal written notice increases the likelihood that an individual will avoid unemployment, but that the magnitude of the effect of advance notice is smaller than when the broader definition of notice found in the 1984 and 1986 studies was used. Clearly, it is not written advance notice per se that determines a worker's success at finding reemployment, but rather whether, on the basis of his general perception of the likely future of his employer, he has made an effort to search for new employment. Written advance no-

tice will matter only if it provides new information to the worker about his future employment prospects.

Early Experiences under WARN

WARN has now been in effect for slightly over a year, and while it is too early to evaluate the law formally, conversations with U.S. Department of Labor personnel and staff at the state dislocated worker units provide broad insights about how it is faring. Compliance with WARN appears to be high. WARN does not affect manufacturing firms primarily. In addition, WARN does not affect a substantial proportion of permanently laid-off workers.

Compliance. Unlike many other types of protective labor legislation, enforcement of WARN takes place through suits filed by employees, unions, or local governments in federal district courts, not through an office in the Department of Labor. Consequently, there is no central office receiving complaints about noncompliance, and hard evidence is difficult to obtain. State dislocated worker units, as well as the Department of Labor, receive numerous inquiries from unions and employees who feel they should have received advance notice, but often it appears that the employers probably were not required to file notice because (typically) their small size or the size of the layoff exempted them from the law.

Early experience with WARN shows that compliance appears to be high, that WARN does not primarily affect manufacturing firms, and that WARN does not affect a substantial proportion of permanently laid-off workers.

Even in cases where employers are not legally required to provide advance notice, they often do so. Of the 167 advance notifications received by Pennsylvania's DWU during the period from WARN's enactment through January 9, 1990, only 117 were from employers who were legally required to provide notice: about 30 percent of the notifications received were not required under the law. (This pattern was not observed in some of the other states we contacted.)

Why would employers who do not have to comply with WARN do so? One possibility is that the debate surrounding the legislation caused many employers to reevaluate their vision of a "good employer." A second possibility is that the law is so complex and ambiguous that employers are simply trying to protect themselves. The penalties for noncompliance are so high (up to 60 days' back wages and benefits) that many employers may be deciding that it is cheaper to comply than to risk being found guilty of a violation.

The percentage of workers receiving advance notice under WARN is low because there are a number of exemptions under WARN and because WARN covers only plant shutdowns and mass layoffs.

As a result, although a number of individuals and unions have indicated to state and federal personnel that they intend to file suits for noncompliance, the number of suits actually filed has been small. As of early January 1990, state DWU personnel in several Northeastern and Mid-Atlantic states knew of no law suits being filed in their states, and the solicitor's office of the Department of Labor knew of only eight to ten cases in progress throughout the country. Although it is possible that the cost of pursuing lawsuits has discouraged some aggrieved parties from filing claims, on balance it appears that compliance with WARN is high. This should be contrasted with the relatively high noncompliance rates that researchers have found for the minimum wage and overtime pay premium provisions of the Fair Labor Standards Act, where the penalties for noncompliance and the likelihood of being caught are both quite low.

Affected Groups. Contrary to popular opinion, WARN is not affecting solely or even primarily manufacturing employers. Available statistics from the second half of 1989 indicate that only 27 percent of the notifications in Pennsylvania were from manufacturing firms. During the same period less than 40 percent of the notified displaced workers in New York State came from manufacturing; the majority had been employed in wholesale trade, retail trade, finance, insurance, and

real estate, and other service-sector jobs. Although the public debate over advance notice requirements focused on our supposedly declining manufacturing base, WARN affects a much larger range of industries.

Still WARN does not apply to a substantial proportion of permanently laid-off workers in the United States. During WARN's first 11 months, from February 1, 1989 to December 31, 1989, there were 127 advance notifications involving 22,822 workers in New York State. Meanwhile, there were 657,247 new claims filed for unemployment insurance benefits, and 490,889 first payments were made to unemployment insurance recipients. (The difference between new claims filed and first payments reflects individuals who found new jobs within a week as well as those who were determined to be ineligible for benefits because they were dismissed for cause or quit their jobs rather than were laid off.)

Even if we ignore the fact that some workers covered by WARN notifications may have found jobs within a week of their displacement (prior studies suggest about 10 percent of them probably did), workers involved in WARN notifications represented only 4.6 percent of all new unemployment insurance recipients in New York. Even if half of these recipients were only temporarily laid off and were waiting to be recalled by their employers, less than 10 percent of permanently displaced workers in New York received advance notice under WARN.

This percentage is so low for two reasons. First, as noted above, there are a number of exemptions under WARN, including firms employing fewer than 100 workers. Second, unlike the laws prevailing in Canada and many European countries, WARN covers only plant shutdowns and mass layoffs so that advance notice for layoffs of individuals or small numbers of employees is not required in the United States.

Implications for Future Research and Public Policy

Past empirical studies do suggest that advance notice may facilitate labor market adjustments by allowing displaced workers to find new employment before they are fired or laid off. Advance notice thus appears to reduce the probability that displaced workers will suffer any period of unemployment, and thus it may moderate temporary increases in area unemployment rates. Moreover, virtually all past studies have counted as "ad-



vance” notice even notice of very short duration. Thus, their results may understate the effects of mandated notice of longer duration that is accompanied by the other supportive services that WARN requires. Furthermore, the data used in most of the studies were based on responses by individuals and did not consider whether advance notice can lead to actions (e.g., reorganization, wage concessions, or employee ownership) that help avert displacements.

Although opponents of advance notice cite the potential costs of such policies, empirical studies have found no evidence either that advance notice causes firms’ most productive workers to leave or that the productivity of the remaining workers suffers. Moreover, except for one study that used aggregate multinational data, no systematic empirical evidence has been provided on the other potential adverse effects of advance notice that opponents have enumerated.

Although at first glance this suggests support for WARN, several cautions are in order. First, the effects of voluntary provision of advance notice when workers expect impending displacement may be very different from the effects of mandated advance notice when workers are not expecting the displacement. All of the research conducted for the United States so far has used data that predated WARN. Future research will need to analyze data from later periods when WARN was in effect. Since WARN requires advance notice only for large-scale displacements in large firms, researchers will need to distinguish the effects of WARN from the effects of being part of a large-scale displacement from a large firm. In addition, to estimate adequately the effects of advance notice per se will require researchers to model what displaced workers’ expectations of displacement would have been in the absence of

advance notice. Put another way, researchers will need to estimate whether formal advance notice actually communicates new information to workers.

Second, the observation that voluntary advance notice appears to reduce the probability that a displaced worker will suffer any unemployment does not necessarily imply that mandated advance notice will increase employment and decrease unemployment rates overall. It is possible that situations may develop in which displaced workers compete for a fixed number of vacant positions. Those workers who receive advance notice will enjoy an advantage, but concomitantly, the probability that workers who failed to receive notice will find jobs will be diminished. Thus, the gains to workers who received notice would come solely at the expense of those who did not. There would be no social gains from advance notice as it would not influence aggregate employment levels or unemployment rates.

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Studies that use data generated by individual workers’ responses, such as the *Survey of Displaced Workers*, cannot test for the possibility of such effects. The only study of U.S. data that addressed this issue found evidence that voluntarily provided advance notice led to smaller temporary increases in area unemployment rates. But the one study of cross-country data found no positive effects of mandated advance notice on aggregate employment levels and unemployment rates. Clearly more studies focusing on the effects of advance notice on area economic outcomes are needed.

Suppose for a moment, however, that all voluntarily provided advance notice actually does is “reshuffle” jobs among displaced workers from those people who fail to receive notice to those who do receive it. In fact, such evidence might strengthen the case for mandated notice if the people who receive voluntary notice need such

assistance the least. For example, if before WARN was passed it was high-wage, unionized workers who were more likely to receive notice than comparably skilled, lower-wage nonunion workers (which some data suggest was the case), then implementation of WARN would allow the latter a "better shot" at competing for the available jobs when they are displaced. WARN could be desirable policy, then, because of its potential redistributive effects, even if it is expected to have no net effect on aggregate employment or unemployment.

To the extent that advance notice is a desirable policy, we should consider policies that encourage employers to voluntarily provide advance notice to exempted employees.

Third, it is important when designing a policy to be clear about the problem being addressed. If the major concern is the costs imposed on a local community by a plant closing or large-scale layoff, then public policy should specifically address this concern. While such a concern may argue for an advance notice requirement, exemptions from notice requirements should be based on the size of the displacement relative to the local labor market, not on the absolute sizes of the displacement and the employer, as is currently done under WARN. In contrast, if the source of the concern is the private costs workers suffer from displacement, then requirements for advance notice of individual displacements or severance pay provisions similar to those that exist in many European countries might be worth considering.

It is also worth reemphasizing that the data suggest that only a small proportion of permanently displaced workers in the United States actually receive advance notice under WARN because the law exempts small employers and small-scale or individual layoffs by large employers. To the extent that advance notice is a desirable policy, we should consider policies that encourage employers *voluntarily* to provide advance notice to exempted employees. For example, the federal government could fund a share of the unemployment benefits received by notified workers or reduce the corporate profit tax rates of firms that voluntarily provide advance notice to displaced workers.

Finally, well-designed research is needed to more adequately address issues relating to the overall labor market effects of WARN, including whether advance notice of impending displacement can help prevent displacement from occurring, as proponents of the legislation often assert. Because so much past research has focused on the potential benefits of advance notice legislation, subsequent studies of WARN should also focus on the potential costs of the law and other issues of concern to opponents.

Selected Readings

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