



Kathy Hochul, Governor
Robertta Reardon, Commissioner

December 18, 2023

Heather Pratt
Office of the State Comptroller
Division of State Government Accountability
110 State Street - 11th Floor
Albany, NY 12236-0001

Re: Audit Report – 2022-S-11, Issued 6/21/2023

Dear Ms. Pratt,

The New York State Department of Labor (NYSDOL) has reviewed the Office of the State Comptroller's (OSC) Audit Report Number 2022-S-11 titled Services to Workers Under the Worker Adjustment and Retraining Notification (WARN) Act, for the period January 1, 2019 through April 27, 2022. The report contained four recommendations, below are the NYSDOL's responses:

Recommendation #1:

Implement a process to:

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

NYSDOL 180-day Response:

Since its inception in April 2022, the WARN Portal has been a beneficial tool in the timely collection of documentation from businesses. The enhanced process takes businesses step-by-step through the information necessary to comply with New York State WARN Act Regulations. Each submission then goes through a secondary review process conducted by WARN Unit staff. The staff verifies all required information, claimed exemptions, payments in lieu of notice, and addresses potential violations. WARN Unit staff work with the business to bring the submission into compliance and make initial determinations, when necessary.

NYSDOL has implemented new guidance and conducted training for WARN Unit staff making it standard practice to request supporting documentation to substantiate exemption claims, payments in lieu of notice, and to resolve potential violations. To further support NYSDOL's mission to substantiate business claims, an internal review process has been put in place. This process allows the team to monitor for proper interpretation and application of New York State's policies, rules, and regulations.

The proposed regulations announced by Governor Hochul on May 13, 2023, have gone into effect. The regulations have strengthened measures as intended, addressing how remote workers should be counted and providing clarifying language to assist businesses with meeting their obligations.

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.

NYSDOL 180-day Response:

NYSDOL entered all notices identified by OSC into the One Stop Operating System (OSOS) and reviewed them for completeness. NYSDOL also conducted follow-up to discuss Rapid Response services, where appropriate. Additionally, NYSDOL implemented a quarterly review process for OSOS data entry to ensure data quality and mitigate future risks. The reviews have proven to be an effective method to verify the data entry of event information in OSOS.

Recommendation #3:

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

NYSDOL 180-day Response:

NYSDOL immediately engages businesses and impacted workers whenever a potential layoff is identified, even before determining whether the layoff is covered by the WARN Act. NYSDOL works proactively to identify layoffs of all sizes. In addition to WARN submissions, regional Rapid Response teams have been supplied with over 275 leads to date in calendar year 2023 through research and intelligence gathering, resulting in the identification of approximately 150 layoff events. NYSDOLs' proactive efforts increase the delivery of service information to both businesses and workers. NYSDOL knows layoffs of any size have an acute impact on those experiencing job loss, and that the sharing of service information is a key component in alleviating the impacts these separated workers' experience.

Prior to the completion of the audit, NYSDOL implemented a statewide uniform customer tracking method. Impacted Workers are data entered and monitored for outreach and response. Additionally, the uniform tracker allows for enhanced knowledge sharing by effectively communicating the needs of all regions, making the Rapid Response workforce more agile, and providing support to regions experiencing higher volumes on demand.

Finally, NYSDOL routinely monitors the uniform trackers for compliance with set expectations. This internal review process allows for early identification of potential issues and allows management to quickly address issues and assist with developing solutions.

Recommendation #4:

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

NYSDOL 180-day Response:

NYSDOL consistently analyzes current and anticipated WARN activity. NYSDOL has created the following new positions to address the anticipated WARN activity and has continued to work to fill backfill vacancies.

- Four (4) Labor Service Representatives
- One (1) Rapid Response Coordinator
- One (1) Workforce Program Specialist 1
- One (1) Workforce Program Specialist 3



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Seven of the ten regions have achieved full staffing levels following the pandemic. Hiring to fill critical needs continues to be a priority for NYSDOL, although we are still dealing with a shortage of candidate pools in some parts of the state.

If you have any comments, please contact Donald Temple, Director of Internal Audit at (518) 457-7332.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Melvin".

Scott B. Melvin
Executive Deputy Commissioner

- Cc: Roberta Reardon, Commissioner
Christopher White, Deputy Commissioner Workforce Development
Dana Politis, Associate Commissioner, Workforce Development
Vicki Mockler, Deputy Bureau Chief, Workforce Development
Beau Duffy, Deputy Commissioner, Strategic Communications
Donald Temple, Director, Internal Audit
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