

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

PROOF OF CLAIM

In re:

Case Number:

NOTE: See Reverse for List of Debtors/Case Numbers/ important details. Other than claims under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for administrative expenses arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).

Name of Creditor and Address: the person or other entity to whom the debtor owes money or property



24838954001247

RICKY HESS
PO BOX 1191
CHILHOWIE, VA 24319

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

THIS SPACE IS FOR COURT USE ONLY

RECEIVED

JUL 26 2010

BMC GROUP

☐ Check this box to indicate that this claim amends a previously filed claim.

Claim Number (if known):

Filed on: _____

Creditor Telephone Number () 276-521-0035

Name and address where payment should be sent (if different from above):

Payment Telephone Number () 276-521-0035

1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ 10,614.12

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. BASIS FOR CLAIM: 60 days wages

vacation pay sick days

(See instructions
#2 and #3a on
reverse side.)

3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

3a. Debtor may have scheduled account as: _____

4. SECURED CLAIM

(See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information

Nature of property or right of setoff:

☐ Real Estate ☐ Motor Vehicle ☐ Other _____

Value of Property: \$ _____ Annual Interest Rate: _____ % if any: \$ _____

Secured Claim Amount: \$ _____

Unsecured Claim Amount: \$ _____

DO NOT include the priority portion of your claim here.

Amount of arrearage and other charges as of time case file included in secured claim,

Basis for Perfection: _____

5. PRIORITY CLAIM

☒ Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a).

If any portion of your claim falls in one of the following categories, check the box and state the amount.

You MUST specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☒ Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

Unsecured Priority Claim Amount: \$ _____

Include **ONLY** the priority portion of your unsecured claim here.

☐ Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____).

* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

SECTION 503(b)(9) CLAIM

\$ _____

☐ Check this box if your claim is for the value of goods received by the debtor within 20 days before the date of commencement of the case (11 U.S.C. § 503(b)(9)). Include the amount of such claim in the space for "Amount entitled to priority" above.

6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. SUPPORTING DOCUMENTS: Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See instruction 7 and definition of "redacted" on reverse side.) If the documents are not available, please explain.

DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 4:00 pm, prevailing Eastern Time on August 6, 2010 for Non-Governmental Claimants OR on or before November 15, 2010 for Governmental Units.

BY MAIL TO:
BMC Group, Inc
Attn: Barcalounger Corporation Claims Processing
PO Box 3020
Chanhassen, MN 55317-3020

BY HAND OR OVERNIGHT DELIVERY TO:
BMC Group, Inc
Attn: Barcalounger Corporation Claims Processing
18750 Lake Drive East
Chanhassen, MN 55317

THIS SPACE FOR COURT USE ONLY

Barcalounger



00184

DATE

7-23-2010

SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Ricky Hess Employee

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

Court, Name of Debtor, and Case Number: Fill in the name of the federal judicial district where the bankruptcy case was filed (for example Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.	5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a). If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority. Claims entitled to administrative priority under 11 U.S.C. § 503(b)(9) should be asserted by filling in the appropriate information on this Proof of Claim form. All other administrative claims must be asserted by an appropriate "request" under 11 U.S.C. § 503(a) and should not be asserted on this Proof of Claim form.						
<table border="1"><thead><tr><th>Debtor Name</th><th>Case No</th></tr></thead><tbody><tr><td>American of Martinsville, Inc.</td><td>10-11638</td></tr><tr><td>Barcalounger Corporation</td><td>10-11637</td></tr></tbody></table>	Debtor Name	Case No	American of Martinsville, Inc.	10-11638	Barcalounger Corporation	10-11637	
Debtor Name	Case No						
American of Martinsville, Inc.	10-11638						
Barcalounger Corporation	10-11637						
Creditor's Name and Address: Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).	6. Credits: An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.						
1. Amount of Claim as of Date Case Filed: State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item 4. Check the box if interest or other charges are included in the claim.	7. Supporting Documents: Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.						
2. Basis for Claim: State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.	Date and Signature: The person filing this proof of claim <u>must</u> sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.						
3. Last Four Digits of Any Number by Which Creditor Identifies Debtor: State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.	Date-Stamped Copy Return claim form and attachments, if any. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.						
3a. Debtor May Have Scheduled Account As: Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.	Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true. Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."						
4. Secured Claim: Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.							

DEFINITIONS

DEBTOR A debtor is the person, corporation, or other entity that has filed a bankruptcy case.	The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).	document showing that the lien has been filed or recorded.
CREDITOR A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.		Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.
CLAIM A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.	UNSECURED NONPRIORITY CLAIM If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.	Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.
PROOF OF CLAIM A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page.	UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.	
SECURED CLAIM Under 11 U.S.C. §506(a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.	Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other	

ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING www.bmcgroup.com

Summary of Expenses / Payroll Owed to Rick Hess

Vacation Pay

- With 25 years of service with AoM my earned vacation was 4 weeks per year. This has always been noted in the handbook that the vacation is earned as of January 1st of each year. This would account for one month's salary. As noted in the WAREN Act, employers must pay earned vacation.

▪ \$2,064.00

Sick day Pay

- The AoM Employee handbook notes that earned sick day will be paid up to 40 days. In 25 years service I never used a sick day (always used vacation for sick days, which were few anyway). According to the handbook I would be entitled to 40 days sick pay.

▪ \$4,128.00

60 Days pay for WAREN Act

- I was not given notice 60 days prior to shutdown & termination; in fact notice was given after shutdown & termination. Also , the Warn act notes only 3 exception for not giving 60 days notice and this situation does not fit any of the three as:
 - There was no Natural Disaster
 - Business conditions were certainly foreseeable
 - There was no faltering company as Hancock Park owns the company and they are not faltering and certainly where well aware of the company finances for a long period of time. In fact customers were made aware of the financial situation and plan to restructure as well as refinance, so there was not reasonable believes that advance notice would hurt the ability to find the capital or business it needs to continue operating

▪ \$4,422.12

Total Owed

\$10,614.12

7-23-2010
Ricky Hess

Hourly Pay Rate Worksheet

Rate Pay = \$ 12.90 Per Hr.

60 days pay would be for a period to cover 60 days notice of employment termination.

During a 60 day period there would be 20 working days as calculated by the following:

60 days / 7 days in a week = 8.57

8.57 weeks in a 60 day period x (rate of pay per hour * 40 hours per week)

Hourly Rate	x	40 hours per week	x	8.57 weeks in a 60 day period	=	Pay due for 60 day notice period
\$ 12.90	x	40	x	8.57	=	\$ 4,422.12

Vacation pay for 4 weeks earned vacation pay.

Hourly Rate	x	40 hours per week	x	4 weeks of earned vacation	=	4 weeks vacation pay due
\$ 12.90	x	40	x	4	=	\$ 2,064.00

40 days of accumulated sick days (equals 8 weeks of pay)

Hourly Rate	x	40 hours per week	x	8 weeks of earned sick days	=	40 days accumulated sick pay due
\$ 12.90	x	40	x	8	=	\$ 4,128.00

Total Owed in Compensation \$ 10,614.12

Employee Name
Rickyl L. Hess

Employee Number
000131

Social Security No.
***-**-4250

Advice Date
09/25/2009

Advice Number
D008241

Earnings	Department	Hours	Reg Rate	Current	YTD	Deductions	Current	YTD			
Regular	610189	68.00	12.90809	877.75	28,345.60	FEDERAL INCOME	108.73	3,599.50			
Overtime-Weekly	610189	28.00	6.45393	180.71	5,018.00	FEDERAL MEDICARE	15.05	50.00			
Holiday					521.78	FEDERAL SOCIAL	64.36	2,142.14			
Vacation					1,445.78	VIRGINIA	50.20	1,622.70			
						Medical Hstst	18.00	70.00			
						Vision	1.64	6.00			
						Dental	0.81	3.00			
						STD	2.53	9.00			
						LTD	2.30	8.00			
						Vol Life EE	14.22	55.00			
						Vol Life Spouse	6.51	25.00			
						401K (%)	21.17	70.00			
Current Earnings	1058.46	Current Deductions	305.52	Net Pay	752.94	YTD Earnings	35331.16	YTD Deductions	10354.65	YTD Net Pay	24976.51

Period 09/13/2009 - 09/19/2009

American of Martinsville
126 East Church Street
P.O. Box 5071
Martinsville, VA 24115

Bank Name	Account Type	Account	Deposited
Branch Banking & Truilliant Federal CU	Sav	*461	10.00
Sunttrust Bank,	Chk	*000	100.00
		*920	642.94

Tax Status: Federal State VA

Marital	Married	Married
Exempt	0	0
Extra \$	10.00	0.00

American of Martinsville
126 East Church Street
P.O. Box 5071
Martinsville, VA 24115

56,382
412
Wells Fargo Bank

Pay the amount: Seven Hundred Fifty Two and 94/100 Dollars
To the account of:
Rickyl L. Hess
P.O. Box 1191
Chilhowie, VA 24319

Pay to the order of:
Rickyl L. Hess
P.O. Box 1191
Chilhowie, VA 24319

NO DIRECT DEPOSIT
NOT NEGOTIABLE



P.O. Box 5071
128 East Church Street
Martinsville, VA 24115-5071
PHONE (276) 632-2061

April 23, 2010

Employee Name
Employee Address

RE: WARN Notification - American of Martinsville

Dear Employee First Name:

American of Martinsville is announcing its intent to shutdown its Redd Level manufacturing facility located at:

11 Redd Level Plant Road
Martinsville, VA 24112

As a result of this action, your employment will end. Your termination may be covered by the Worker Adjustment and Retraining Notification Act (WARN). Therefore, we are providing you the following information:

1. **Separation:** American of Martinsville has begun terminating employees affected by the permanent shutdown of its Redd Level operations. Your termination is effective immediately.
2. **Bumping Rights:** No bumping rights exist.
3. **Statement Regarding Status of Planned Action:** The employment losses that will occur are expected to be permanent.
4. **Company Contact Information:** For information regarding your upcoming termination or the facility shutdown, please contact Bobby Mims, VP HR, (276) 634-2942.

Very truly yours,

American of Martinsville



**Salaried
and
Non-Exempt
Handbook
for Associates**

Error in Pay

Every effort is made to avoid errors in your paycheck. If you believe an error has been made, contact your supervisor immediately. Necessary steps will be taken to assure that any appropriate corrections are made promptly.

Overtime Pay

From time to time it may be necessary for you to perform overtime work in order to complete a job on time. All overtime must be approved in advance by your manager. When it is necessary to work overtime, you are expected to cooperate as a condition of your employment. There are two types of overtime work:

1. **Scheduled Overtime**: Scheduled overtime work is announced in advance and generally will involve an entire department or operation.
2. **Incidental Overtime**: Incidental overtime isn't scheduled, it becomes necessary in response to extenuating circumstances.

If you are a "non-exempt" associate and you perform overtime work, you will be paid one and one-half (1-1/2) times your regular hourly wage for any time over forty (40) hours per week that you work.

Full-time "non-exempt" associates who work on a company holiday will be given another day off for the holiday and be paid time and one half for work performed on the holiday. Again holiday pay hours as well as work performed on the holiday will be counted in calculating overtime pay for the week.

Note: See "Holiday Policies" in the "Benefits" section of this manual for further information.

Pay Cycle

Exempt & non-exempt associates are paid once each month (12 pay periods per year). Payday is normally the last working day of each calendar month for services performed during the month.

Pay Period & Hours

Our payroll workweek begins on Sunday at 12:01 a.m. and ends on Saturday at 12:00 midnight.

Termination & Severance Pay

American of Martinsville hopes and expects that you will give at least two weeks notice in the event you intend to leave our employ. Any vested but unused vacation time will be paid at the time of employment termination, as specified under "Vacations" in the "Benefits" section of this Manual.

American of Martinsville does not normally pay severance pay.

Breaks/Rest Periods

These will be determined by the department in which you work.

Lunch Periods

If you work longer than four (4) hours a day, you will be given an unpaid lunch period. The time when lunch periods are scheduled varies among departments, depending on the needs of each department. Your manager will give you your lunch period schedule.

Non-exempt associates are expected to take a one (1) hour unpaid lunch period daily; please understand that you may not "work through lunch" in order to arrive late or to leave early or to work extra time without prior approval by your department manager or supervisor.

Associates will be reconsidered for employment after a six month waiting period.

Should the time ever come when you are thinking of leaving American of Martinsville, please talk it over with your supervisor. This is a very important decision, and you may have failed to consider some important factors.

If you decide to resign, please give at least two weeks notice. This will help us to find a replacement. You will receive your final paycheck (including any payment you are owed for accrued vacation) on the next regular pay day.

BENEFITS

Eligibility for Benefits

If you are a full-time associate, you will enjoy all of the benefits described in this manual as soon as you meet the eligibility requirements of each particular benefit.

Part-time associates are not eligible for benefits.

Holidays

All full-time associates are eligible for holiday pay after the 90-day introductory period is completed. In order to be paid holiday pay, you must work the regularly scheduled work day shift prior to and immediately after the holiday.

If you are out on a leave of absence, you will not receive holiday pay.

Recognized Holidays

Notices giving definite dates will be posted on the bulletin boards as far in advance as possible. If you are required to work on a holiday, you will be paid time and one-half (1-1/2) for the hours worked that day.

Vacations

Vacation is a time for you to rest, relax, and pursue special interests. Regular full-time associates are eligible for paid vacation.

Amount of Vacation

The vacation year starts January 1 and ends on December 31 of each year. All earned vacation is credited on January 1 of each year and must be taken by December 31 of the same year. Associates will be eligible for a paid vacation, dependent upon the length of service, as follows:

<u>Length of Service January 1</u>	<u>Earned Vacation Days</u>
Less than one year	Hired no later than June 30th, will be eligible for five (5) days
1 - 4 Years	10 Days
5 - 11 Years	15 Days
* 12 or more Years	20 Days

If hired no later than June 30th, associates will be eligible for (5) five days of vacation. Although vacation accrual begins on the date of hire, associates are not eligible to take vacation until after six months and it is not considered an earned benefit until completion of six months continuous service. During their first six months, new associates will be required to work during vacation shutdown periods. New hires with less than six months continuous service on January 1, will be allowed to transfer earned but unused

vacation to the next year, but both transferred vacation and credited vacation must be taken during the next fiscal year.

Vacation is earned at (1) one day per month to a maximum of 10 days. 15 days is earned at 1.5 days per month. 20 days is earned at 2 days per month. Vacation time may not be carried over and accumulated in subsequent calendar years. Unused vacation will be pro-rated at time of separation.

Scheduling Vacation

Every effort will be made to grant you your vacation at the time you desire. However, vacations cannot interfere with your department's operation and therefore must be approved by your manager. Vacation time may be taken in hourly, half-day, or full day increments. If conflicts arise in requests for vacation time, the supervisor will resolve them. Vacation time must be scheduled at least 24 hours in advance with your supervisor's approval.

Accumulation Rights

Vacation earned at (1) one day per month, a maximum of 10 days. 15 days is earned at 1.5 days per month. 20 days is earned at 2 days per month. Vacation time may not be carried over and accumulated in subsequent calendar years.

Sick Leave

Non-exempt associates are eligible for paid sick leave. To qualify for paid sick leave, you must be a full-time associate in a non-exempt position, and have completed your initial 90-day period. Time taken off during the initial 90-day period will be without pay. If you must be absent from work because of a personal illness, you will be eligible to receive your regular straight time pay for up to ten (10) days per calendar year. Please advise your manager as soon as possible when you need to be absent from work due to illness.


You will be eligible for paid sick days after you have completed your introductory period as follows: one (1) day when you have completed your introductory period plus one (1) day for each month from the end of your initial 90-day period. Time taken off during the initial 90-day period. Time taken off during the period through the end of the calendar year (not to exceed five (5) days during your first year of employment). Thereafter, you will be eligible for the normal ten (10) paid sick days per calendar year. Please check the Attendance section of this Manual.

Sick leave may be used for the purpose of visiting doctors, dentists or other practitioners in their offices, or for illnesses in your immediate family.

American of Martinsville may request "proof-of-illness" and may also use a company-appointed physician to examine the associate.

If you are required to take a disability leave of absence, any accrued sick leave will be used at the time the leave commences.

In the event of an illness or injury covered by workers' compensation, this sick leave policy will not apply but will defer to state statutes.

 Sick leave may be carried over to a maximum of forty (40) days. If you have accumulated at least twenty-five (25) days of sick leave at the beginning of the calendar year you may use a maximum of two (2) sick days during that calendar year as personal days. These personal days will not be counted as occurrences when taken and are not subject to payment if the associate terminates employment prior to using them. Regular full-time eligible for vacation pay and vacation time off.

Other Paid Leaves

If any of these paid leaves apply to you, please see the Human Resources Department.
Revised 12/05

U.S. Department of Labor Employment and Training Administration Fact Sheet

The Worker Adjustment and Retraining Notification Act

A Guide to Advance Notice of Closings and Layoffs

The Worker Adjustment and Retraining Notification Act (WARN) was enacted on August 4, 1988 and became effective on February 4, 1989.

General Provisions

WARN offers protection to workers, their families and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the State dislocated worker unit; and to the appropriate unit of local government.

Employer Coverage

In general, employers are covered by WARN if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months and not counting employees who work an average of less than 20 hours a week. Private, for-profit employers and private, nonprofit employers are covered, as are public and quasi-public entities which operate in a commercial context and are separately organized from the regular government. Regular Federal, State, and local government entities which provide public services are not covered.

- o American of Martinsville / Barcalounger had over 100 employees.

Employee Coverage

Employees entitled to notice under WARN include hourly and salaried workers, as well as managerial and supervisory employees. Business partners are not entitled to notice.

- o Management was told April 16th that effective immediately they were no longer employed. We were notified that they was no money, thus there would be no vacation pay, no severance pay and no other pay. Expense reimbursements and company credit cards were left open, that they would be reviewed, to date (May

23rd nothing has been reimbursed or paid). A press release was given on April 23rd that the company was closed and notice of Warn Act was sent out, however, nothing referencing any 60 day pay.

What Triggers Notice

Plant Closing: A covered employer must give notice if an employment site (or one or more facilities or operating units within an employment site) will be shut down, and the shutdown will result in an employment loss (as defined later) for 50 or more employees during any 30-day period. This does not count employees who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours a week for that employer. These latter groups, however, are entitled to notice (discussed later).

o Notice of shutdown was sent out on the May 23rd.

Mass Layoff: A covered employer must give notice if there is to be a mass layoff which does not result from a plant closing, but which will result in an employment loss at the employment site during any 30-day period for 500 or more employees, or for 50-499 employees if they make up at least 33% of the employer's active workforce. Again, this does not count employees who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours a week for that employer. These latter groups, however, are entitled to notice (discussed later).

An employer also must give notice if the number of employment losses which occur during a 30-day period fails to meet the threshold requirements of a plant closing or mass layoff, but the number of employment losses for 2 or more groups of workers, each of which is less than the minimum number needed to trigger notice, reaches the threshold level, during any 90-day period, of either a plant closing or mass layoff. Job losses within any 90-day period will count together toward **WARN** threshold levels, unless the employer demonstrates that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

Sale of Businesses

In a situation involving the sale of part or all of a business, the following requirements apply. (1) In each situation, there is always an employer responsible for giving notice. (2) If the sale by a covered employer results in a covered plant closing or mass layoff, the required parties (discussed later) must receive at least 60 days notice. (3) The seller is responsible for providing notice of any covered plant closing or mass layoff which occurs up to and including the date/time of the sale. (4) The buyer is responsible for providing notice of any covered plant closing or mass layoff which occurs after the date/time of the sale. (5) No notice is required if the sale does not result in a covered plant closing or mass layoff. (6) Employees of the seller (other than employees who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours a week) on the date/time of the sale become, for purposes

of **WARN**, employees of the buyer immediately following the sale. This provision preserves the notice rights of the employees of a business that has been sold.

Employment Loss

The term "employment loss" means:

(1) An employment termination, other than a discharge for cause, voluntary departure, or retirement;

- o All employees were terminated except a skeleton crew of approximately 6 to close down.

(2) a layoff exceeding 6 months; or

(3) a reduction in an employee's hours of work of more than 50% in each month of any 6-month period.

Exceptions: An employee who refuses a transfer to a different employment site within reasonable commuting distance does not experience an employment loss. An employee who accepts a transfer outside this distance within 30 days after it is offered or within 30 days after the plant closing or mass layoff, whichever is later, does not experience an employment loss. In both cases, the transfer offer must be made before the closing or layoff, there must be no more than a 6 month break in employment, and the new job must not be deemed a constructive discharge. These transfer exceptions from the "employment loss" definition apply only if the closing or layoff results from the relocation or consolidation of part or all of the employer's business.

Exemptions

An employer does not need to give notice if a plant closing is the closing of a temporary facility, or if the closing or mass layoff is the result of the completion of a particular project or undertaking. This exemption applies only if the workers were hired with the understanding that their employment was limited to the duration of the facility, project or undertaking. An employer cannot label an ongoing project "temporary" in order to evade its obligations under **WARN**.

- o Does not apply. Factory was not temporary, nor completion of a particular project or undertaking.

An employer does not need to provide notice to strikers or to workers who are part of the bargaining unit(s) which are involved in the labor negotiations that led to a lockout when the strike or lockout is equivalent to a plant closing or mass layoff. Non-striking employees who experience an employment loss as a direct or indirect result of a strike and workers who are not part of the bargaining unit(s) which are involved in the labor

negotiations that led to a lockout are still entitled to notice.

An employer does not need to give notice when permanently replacing a person who is an "economic striker" as defined under the National Labor Relations Act.

Who Must Receive Notice

The employer must give written notice to the chief elected officer of the exclusive representative(s) or bargaining agency(s) of affected employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss. This includes employees who may lose their employment due to "bumping," or displacement by other workers, to the extent that the employer can identify those employees when notice is given. If an employer cannot identify employees who may lose their jobs through bumping procedures, the employer must provide notice to the incumbents in the jobs which are being eliminated. Employees who have worked less than 6 months in the last 12 months and employees who work an average of less than 20 hours a week are due notice, even though they are not counted when determining the trigger levels.

The employer must also provide notice to the State dislocated worker unit and to the chief elected official of the unit of local government in which the employment site is located.

- No notice was given until after workers were terminated.

Notification Period

With three exceptions, notice must be timed to reach the required parties at least 60 days before a closing or layoff. When the individual employment separations for a closing or layoff occur on more than one day, the notices are due to the representative(s), State dislocated worker unit and local government at least 60 days before each separation. If the workers are not represented, each worker's notice is due at least 60 days before that worker's separation.

The exceptions to 60-day notice are:

(1) **Faltering company.** This exception, to be narrowly construed, covers situations where a company has sought new capital or business in order to stay open and where giving notice would ruin the opportunity to get the new capital or business, and applies only to plant closings;

- This is only an outlet for companies to avoid paying the 60 day notice – is there ever really a company that goes out of business that is not faltering and tries in some way to get capital? This exception could be used by every company.
- In this particular case, giving notice would not have ruined the opportunity new capital as the capital backing was being sought from the owning company

(Hancock Park).

- o Hancock Park should not be allowed to hid behind layers of "Corporations" to avoid paying 60 day pay as required by the WARN Act.
- o Hancock Park (Owner) boast of having investments of \$256 million on it's Web Site (<http://www.hpcap.com/AboutUs.aspx>). Hardly a company that is "Faltering".

(2) unforeseeable business circumstances. This exception applies to closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required; and

(3) Natural disaster. This applies where a closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm.

If an employer provides less than 60 days advance notice of a closing or layoff and relies on one of these three exceptions, the employer bears the burden of proof that the conditions for the exception have been met. The employer also must give as much notice as is practicable. When the notices are given, they must include a brief statement of the reason for reducing the notice period in addition to the items required in notices.

- o No reason given as to reason for reducing the notice period.

Form and Content of Notice

No particular form of notice is required. However, all notices must be in writing. Any reasonable method of delivery designed to ensure receipt 60 days before a closing or layoff is acceptable.

Notice must be specific. Notice may be given conditionally upon the occurrence or non-occurrence of an event only when the event is definite and its occurrence or nonoccurrence will result in a covered employment action less than 60 days after the event.

The content of the notices to the required parties is listed in section 639.7 of the **WARN** final regulations. Additional notice is required when the date(s) or 14-day period(s) for a planned plant closing or mass layoff are extended beyond the date(s) or 14-day period(s) announced in the original notice.

Record

No particular form of record is required. The information employers will use to determine whether, to whom, and when they must give notice is information that employers usually keep in ordinary business practices and in complying with other

laws and regulations.

Penalties

An employer who violates the **WARN** provisions by ordering a plant closing or mass layoff without providing appropriate notice is liable to each aggrieved employee for an amount including back pay and benefits for the period of violation, up to 60 days. The employer's liability may be reduced by such items as wages paid by the employer to the employee during the period of the violation and voluntary and unconditional payments made by the employer to the employee.

An employer who fails to provide notice as required to a unit of local government is subject to a civil penalty not to exceed \$500 for each day of violation. This penalty may be avoided if the employer satisfies the liability to each aggrieved employee within 3 weeks after the closing or layoff is ordered by the employer.

Enforcement

Enforcement of **WARN** requirements is through the United States district courts. Workers, representatives of employees and units of local government may bring individual or class action suits. In any suit, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

Information

Specific requirements of the Worker Adjustment and Retraining Notification Act may be found in the Act itself, Public Law 100-379 (29 U.S.C. 2101, et seq.) The Department of Labor published final regulations on April 20, 1989 in the Federal Register (Vol. 54, No. 75). The regulations appear at 20 CFR Part 639.

General questions on the regulations may be addressed to:

U.S. Department of Labor
Employment and Training Administration
Office of Work-Based Learning
Room N-5426
200 Constitution Avenue, N.W.
Washington, D.C. 20210
(202) 219-5577

The Department of Labor, since it has no administrative or enforcement responsibility under **WARN**, cannot provide specific advice or guidance with respect to individual situations.