

Congressional Investigation Targets WARN Act Guidance Issued To Defense Contractors

October 16, 2012 | [Traditional Labor, Currents - Employment Law](#)



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A congressional investigation has been initiated in response to the Obama administration's guidance advising defense contractors not to issue budget-driven layoff notices in accordance with federal WARN Act provisions. The investigation, lead by Rep. Darrell Issa (R-Calif.), who serves as the Chair of the U.S. House of Representatives' Oversight Committee, seeks correspondence between the White House and various defense firms to determine whether any guidance issued runs afoul of WARN Act requirements and encourages contractors to disregard employment laws.

Specifically, with the upcoming November elections, the WARN Act (which requires 60 days notice to be provided to employees for mass layoffs or plant closings) potentially could force such contractors to send layoff notices only days before the election as a result of inflexible budget cuts/sequestration requirements written into the 2011 Budget Control Act set to begin on Jan. 2, 2013. Despite U.S. Department of Labor guidance indicating that the speculative threats of sequestration and unknowns as to actual cuts to be made or congressional action to be taken, defense contractors had earlier expressed concerns regarding the impact of the WARN Act on their operations. The White House Office of Management and Budget, however, alleviated some of these concerns in indicating that WARN Act liability could be a negotiated cost for contracts cancelled as a result to the sequestration, provided that contractors abided by the law and didn't not provide early warning based on speculations.

The congressional investigation, arising on the heels of public criticism of the Obama administration for its guidance, targets communications between contractors and the White House Office of Management and Budget and the Department of Labor, as well as asks that the contractors provide any legal advice they had received in relation to the WARN Act and sequestration, either from in-house or outside counsel.

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