

DOL'S NEW WARN ACT GUIDANCE CAUSES CONFUSION



A guidance letter issued by the U.S. Department of Labor (DOL) on July 30 says that federal contractors hit by possible sequestration budget cuts do not need to send WARN notices to those being laid off. The guidance states that federal contractors under such circumstances may use the “unforeseeable business circumstances” provision of WARN which permits announcing layoffs on notices with periods shorter than the statutory 60 days. The DOL guidance letter mentions that the situation “would apply to plant closings or mass layoffs occurring before or in the wake of the potential sequestration on January 2.” Republicans have stated that this is a characteristic arm-twisting tactic of the current government and intended to influence the Congress. They hold that signaling contractors that they do not need to send pre-election layoff warnings to their employees is cheap politics. The Republicans feel that a guidance at this moment from the Department of Labor holding that contractors do not need to alert hundreds of thousands of workers who are at the risk of losing jobs if Congress fails to avert the \$110 billion in automatic spending cuts scheduled next year is just not done. About half of the cut would be in defense spending and the rest would come from other federal projects. Republicans had been counting on the layoff warnings scheduled to be received by hundreds of thousands of employees just before the November election as a potential and hot rallying issue, but the DOL guidance seems aimed to avert that. Rep. Buck McKeon, the House Armed Services Committee chairman has asked the Labor Department to hand over documents to support its decision. Republicans are also pushing for legislation that would require contractors to issue statutory notices with the minimum 60 days prior notice under the WARN Act. McKeon told reporters, “To think that one of the agencies of the Obama administration would give guidance not to follow the law of the land – a judge would laugh at that.” However, Rep. Adam Smith, a Democrat, said, “This is an important and correct interpretation of the law ... There is no reason to needlessly alarm hundreds of thousands of workers.” However, Cord Sterling, vice president for legislative affairs of the Aerospace Industries Association, said the problem with the DOL guidance was that though it said federal contractors could use the exemption if affected by automatic cuts, it “does not provide companies with an exemption to the WARN Act notification requirements.” Sterling said, “The new Labor Department memo is talking about when and if those workers would have to be notified that they will be laid off ... However, it does nothing to avoid job losses.”