



Employee WARN ACT Notice

TO: Employees

FROM: Rick Staunton & Jim "U" Ulcickas

DATE: March 26, 2020

SUBJECT: WARN Act Notice (California and Federal); COVID-19 National Emergency

As you know, the health and safety of our employees and our customers is always our highest priority. The COVID-19 virus is a quickly evolving and rapidly changing situation. We want to thank you for your continued service professionalism and calm during this challenging period as we experience drastic and unexpected declines in revenue and other unforeseen adverse impacts on our business in response to this international pandemic.

In response to the announcements by local public health officials adopting legal orders, the Center for Disease Control (CDC) and the World Health Organization regarding the Coronavirus pandemic, and the declaration of a national and state-wide emergency by President Trump and Governor Newsom, we are taking what we believe are appropriate and significant measures to protect our employees and help contain and control the spread of this contagious virus.

Regrettably, due to these health-related concerns as well as the unforeseen impacts that the COVID-19 virus has had on our business, this requires that we place you and many other valuable employees on a temporary layoff effective immediately, **March 23, 2020**. We endeavored to provide you with as much notice as possible, but the events leading to this decision happened so quickly that we were not able to provide you with the customary sixty (60) days' notice. This is not a reflection on your service or professionalism, and is certainly not a termination of your employment. Rather, this is a change in your status from active to temporary layoff because of these unfortunate circumstances beyond anyone's control. This decision to temporarily lay off most of our employees is further based upon guidance from local, state and federal government officials, as well as from the CDC.

Even though this is not a termination of employment, we have made the decision to pay you all of your unpaid wages plus requested vacation pay, if any, which will be paid to you no later than March 27, 2020 so that you will have all of your financial resources available to you.

If you have any accrued PTO available and would like to use it to cover your time off, your options are to;

- (1) Receive up to 80 hours of accrued PTO that will be paid in the next regular pay cycle;
- (2) Cash out your entire PTO balance to be paid in the next regular pay cycle;
- (3) Apply your accrued PTO to your unemployment benefits; or
- (4) Do not use any of your accrued PTO at this time.

Please understand that if you use your accrued PTO at this time, it will not be available later on when you return to work. If requesting PTO, please email hr@bluewatergrill.com to be paid to you no later than April 03, 2020.

We apologize that we were unable to provide you with more advance notice of this action but the actions leading to this decision happened so quickly and prevented us from providing more notice. Unfortunately, the ever-constant change in events surrounding the spread of COVID-19 and its effects on business have made it an unpredictable situation.

Additionally, the recent governmental pronouncements have also imposed severe restrictions that directly affect our business. Accordingly, after carefully reviewing this information and our staffing needs, as well as our desire to protect the health of all parties, we have no choice but to engage in this temporary action. We are providing this notice to you at the earliest possible time.

It is our sincere hope that this temporary layoff will only be for a few weeks. However, the COVID-19 situation and its effects on business are rapidly changing and we cannot predict how this will affect our ability to resume normal business operations.

There will be no "bumping rights" or the right of an employee to displace another employee in order to retain his or her position, in connection with the temporary layoffs.

Although we do not believe we are required to do so, this notice is being provided in accordance with the federal Worker Adjustment Retraining Notification Act, 29 U.S.C. §2101 *et seq.* ("WARN Act"), the California WARN Act, ("Cal WARN Act") Labor Code §1400 *et seq.*, and Governor Newsom's Executive Order N-31-20 dated March 20, 2020, ("Executive Order") to inform you of a "plant closing" "mass layoff" and/or "termination" at the Company and to comply with any obligations it may have under the WARN Act and Cal WARN Act.

Additionally, it is our understanding and position that we are not required to provide employees with the full 60 days' notice because of an exception referred to as "unforeseeable business circumstances" exception, as set forth in Section 3(b)(2)(a) of the WARN Act (29 CFR 639.9 (b)) and the Executive Order. It is our belief that this section is applicable in light of the fact that there exists increasing challenges presented by the extremely serious and potentially life-threatening impact of the COVID-19 coronavirus, the extreme decline in business, announcements by local public health officials, the CDC and the World Health Organization regarding the Coronavirus pandemic, and a declaration of national and state-wide emergency by the President and Governor.

The "unforeseeable business circumstances" exception under section 3(b)(2)(A) of WARN applies to plant closings and mass layoffs caused by "business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required." The rapid onset of COVID-19 and its impact on our business qualify as "unforeseeable business circumstances" and prevented the Company from providing 60 days' notice.

Under the federal law, an important indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control. A principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, and ***an unanticipated and dramatic major economic downturn*** might each be considered a business circumstance that is not reasonably foreseeable. A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance.

At this time, you will be able to remain on the Company's group health insurance benefits on the same terms and conditions as if you were actively working. Eligible employees who are currently covered for contributions will be responsible for the employee share of benefit costs when you return to work. Bluewater Grill will make employee Health Insurance payments for you if you are participating after PTO is paid. Should you elect not to participate, you will be eligible to continue coverage through COBRA by paying the full costs of the premiums, plus an administrative fee. Although the length of your layoff will be temporary, you may seek dislocated worker assistance by contacting:

https://www.edd.ca.gov/Jobs_and_Training/Local_Area_Listing.htm

If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.

Bluewater, Toyon Grill and El Galleon are awaiting guidance from the federal government on further employee programs and will continue to evaluate the COVID-19 developments over the next few weeks. We will keep employees updated as new information becomes available on our website, Facebook page and hot schedules when we receive clear directions.

Should you have any questions or concerns regarding the foregoing or other matters related to your employment, please contact Deanna Sarro 310-634-6048 or hr@bluewatergrill.com.

We thank you for your patience and understanding during this challenging time. Please stay healthy.

With gratitude,

Rick Staunton
James "U" Ulcickas
Founders