

Don't Forget to WARN

*Employer Notice Obligations for
Reductions in Force*

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Management Law



Who?

Employers who are contemplating...



- 1 Closing a plant
- 2 Moving locations
- 3 Reducing employee hours
- 4 Temporary layoffs
- 5 Terminating many employees

Covered Employers

- Sufficiently large business enterprises
- Private employers
- Possibly some public employers engaged in business activities separate from government functions (not under NY WARN)

Federal WARN

100+ employees
in U.S.

NY WARN

50+ employees
in NY



What?

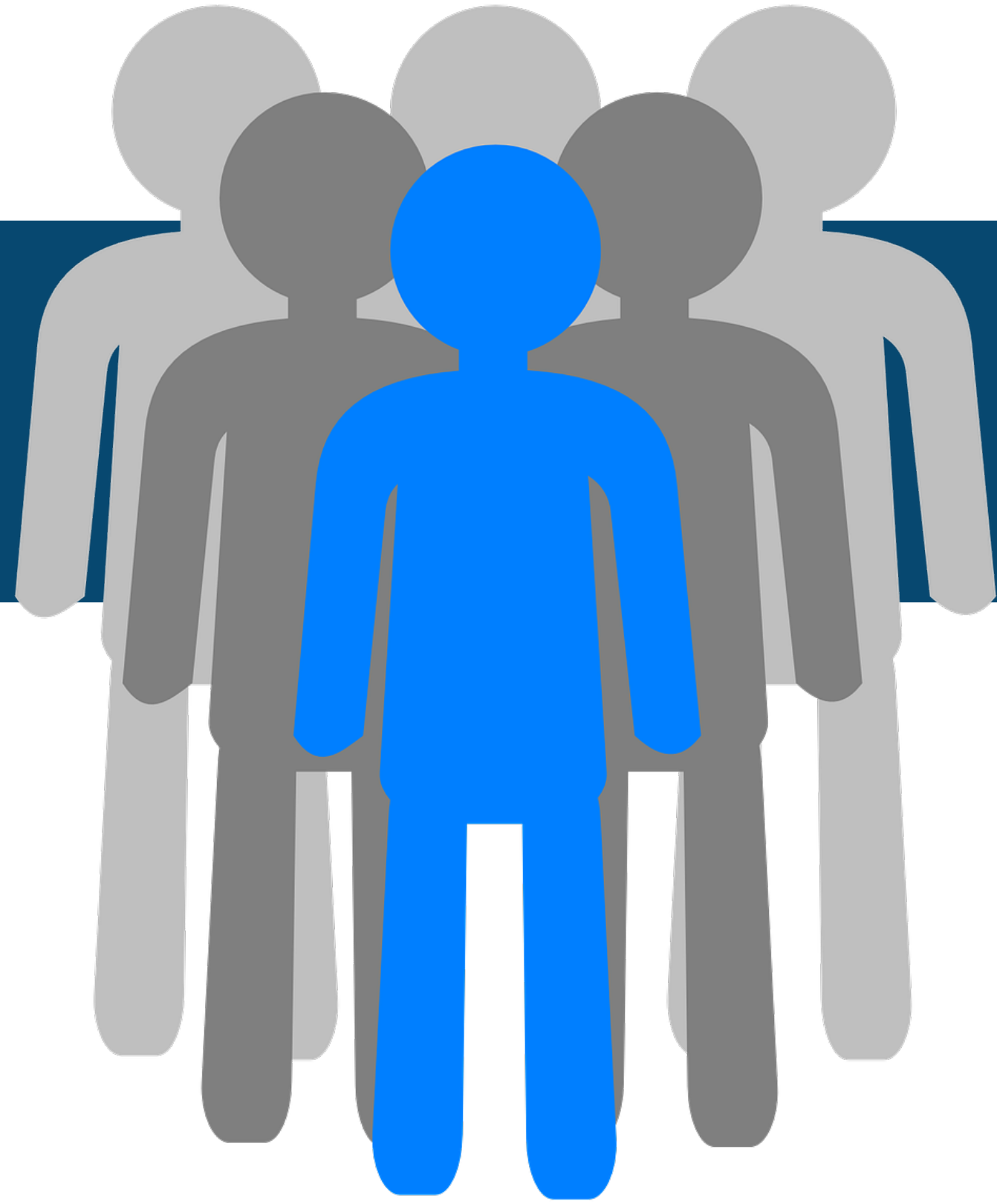
WARN Laws

- Worker Adjustment and Retraining Notification Acts
- Federal law and similar state laws, incl. New York
- Require companies to provide notice before taking certain actions to reduce the size of their workforce
- New York law imposes greater burdens than federal law



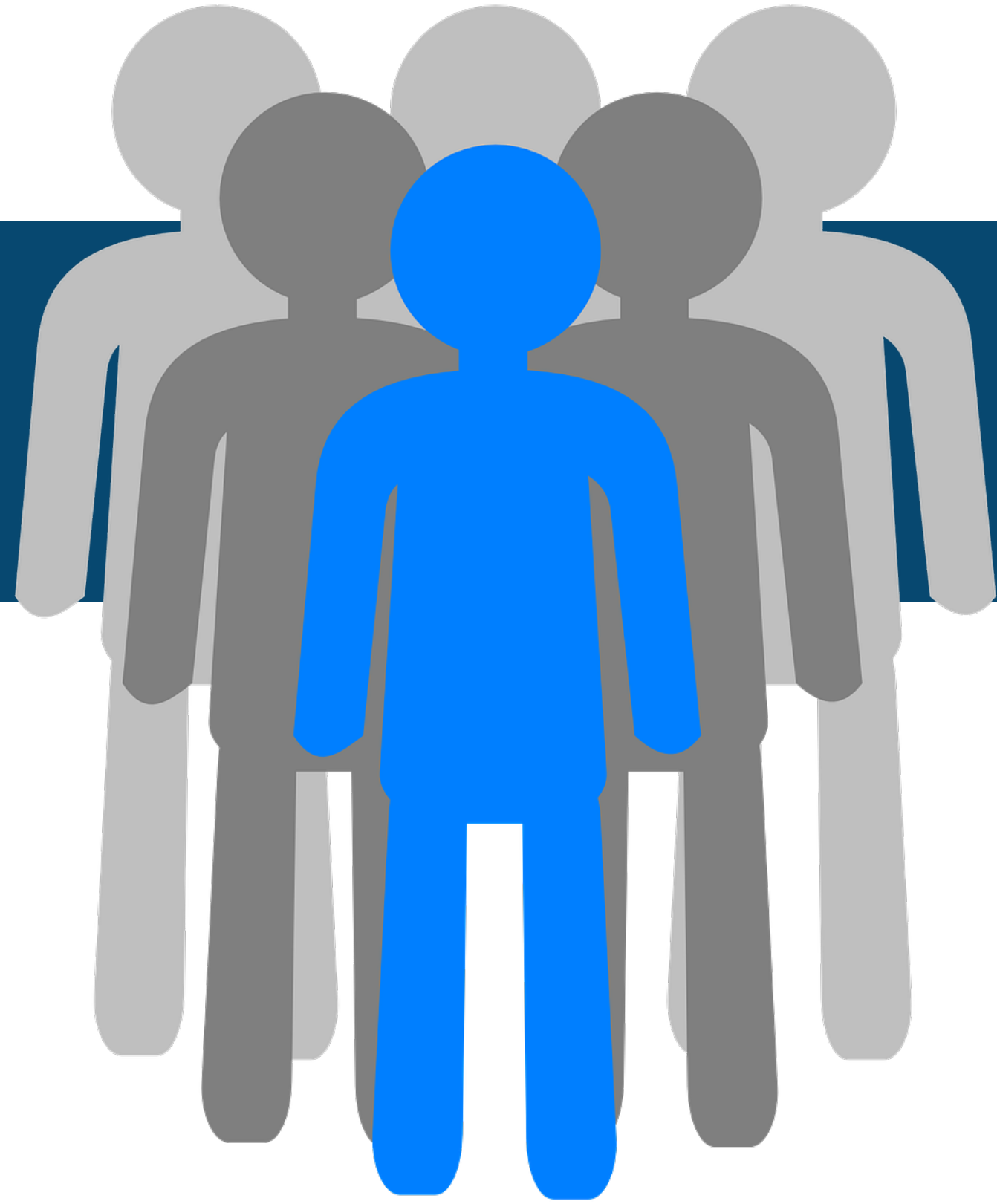
**Federal WARN Act requires 60 days notice, while
NY requires 90 days**





“Employment Loss”

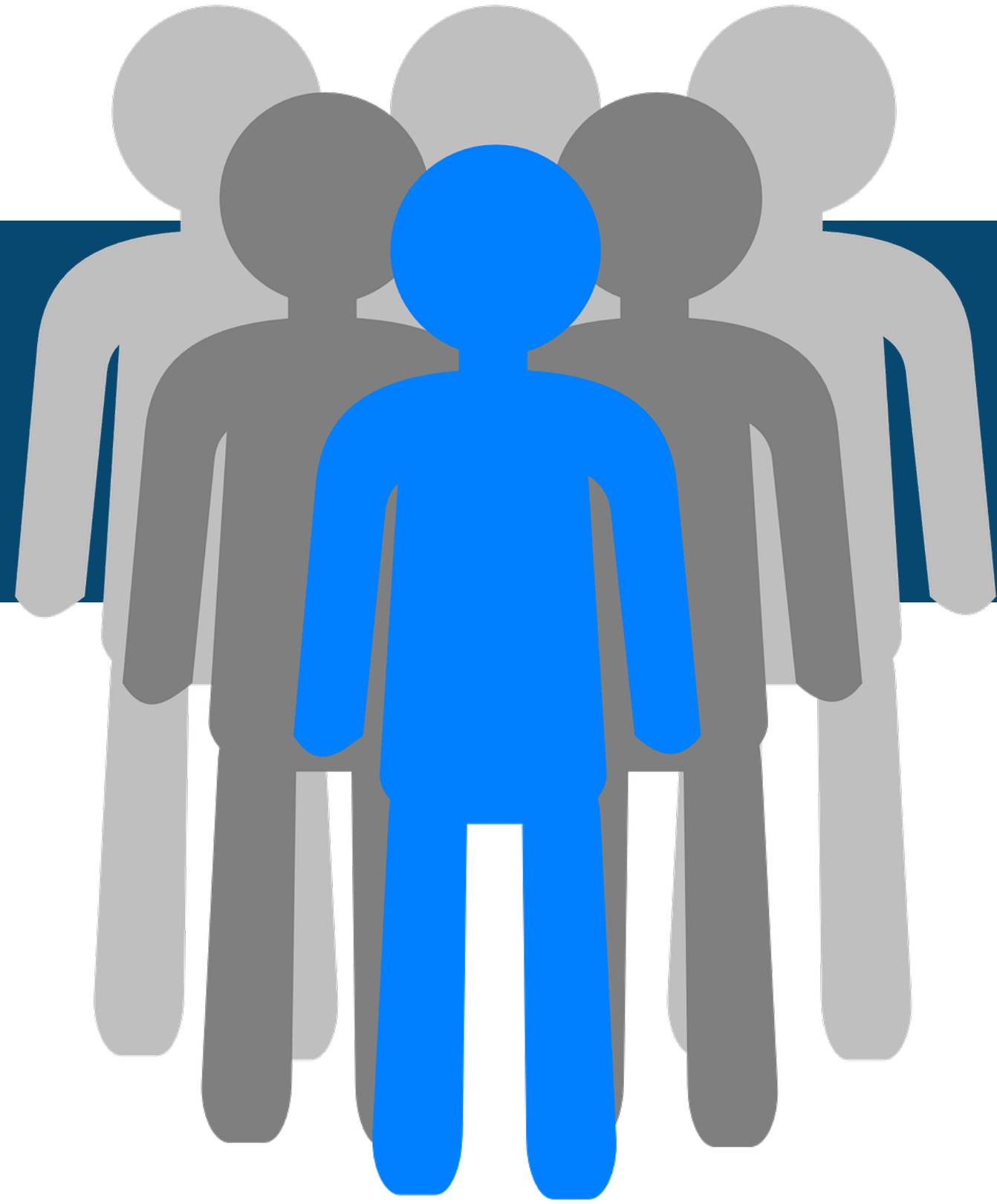
- a) Employment termination, other than discharge for cause, voluntary departure, or retirement;
- b) Layoff longer than 6 months; or
- c) Reduction in hours of work of more than 50% during each month of any 6 month period.



“Affected Employees”

Employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff.

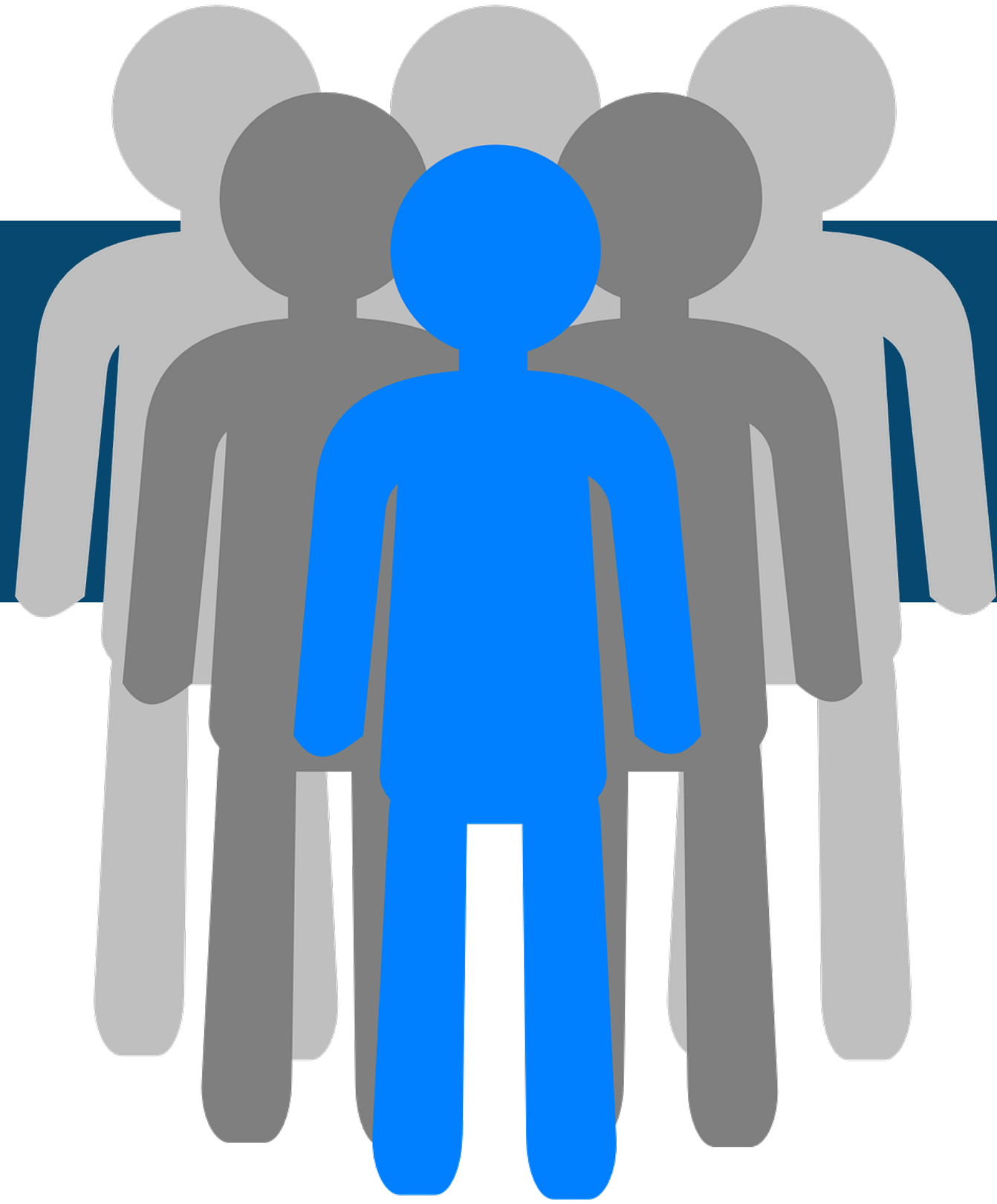
*Includes part-time employees.



“Part-Time”

An employee who:

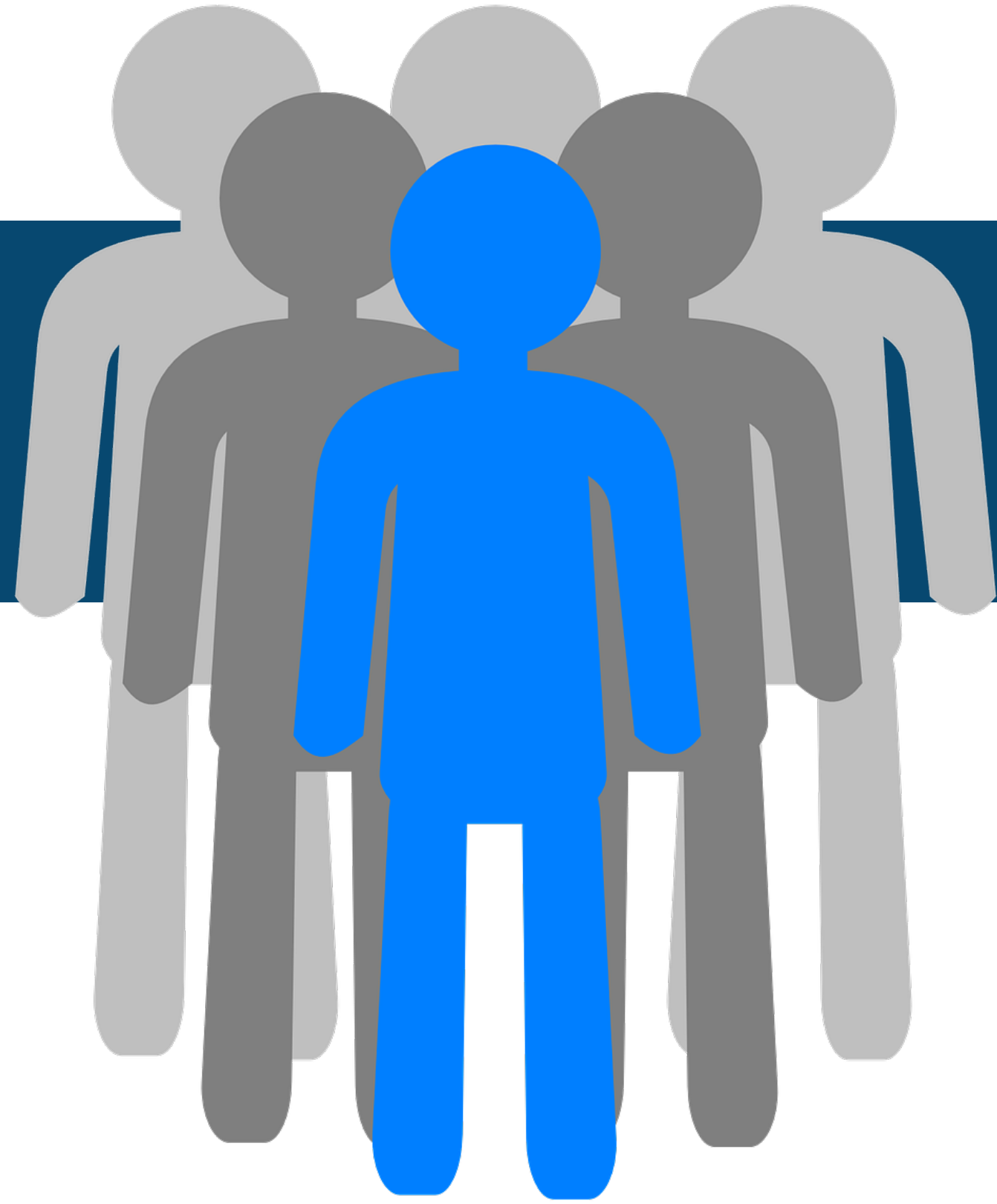
- a) is employed for an average of less than 20 hours per week; or
- b) who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.



“Plant Closing”

An employment site is being shut down and will result in an employment loss for **25(New York)/50(Federal)** or more employees* during a *30-day period*.

***excludes part-time employees**

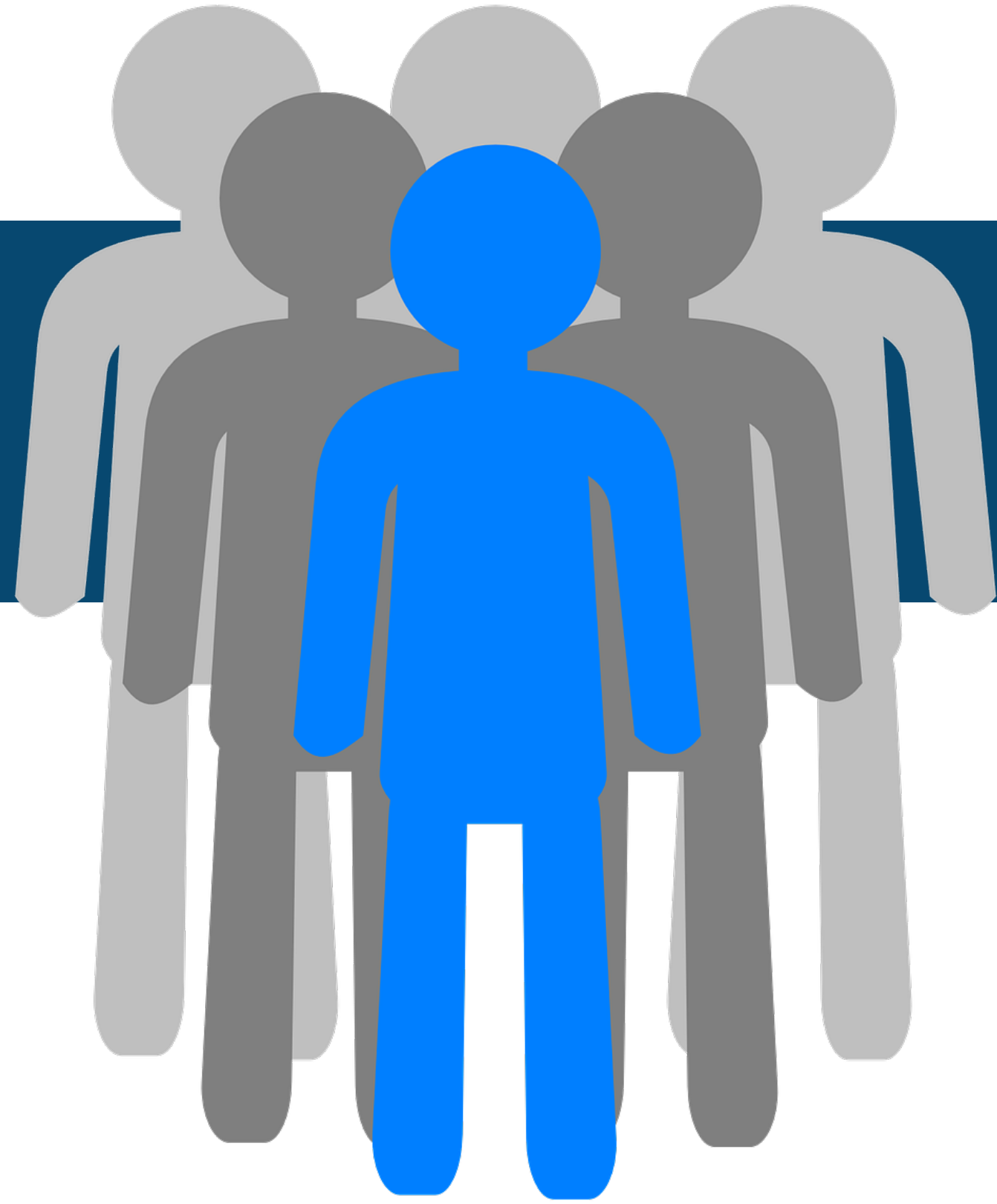


“Mass Layoff”

Reduction in workforce that results in an employment loss during any *30-day period* for:

- 250/500 or more employees*; or
- 25-249/50-499 employees* if at least 33% of active workforce.

***excludes part-time employees**



“Relocation”

All or substantially all of employer operations will move to a different location 50 miles or more away from original site and 25 or more employees* lose their jobs.

***excludes part-time employees**

(NY WARN only)

But, be WARNed . . .

30 days sometimes means 90 days.

Where?

Other State “WARN” Laws

- California
- Connecticut
- Delaware
- Georgia
- Hawaii
- Illinois
- Iowa
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- New Hampshire
- New Jersey
- Ohio
- Oregon
- Tennessee
- Vermont
- Wisconsin

Single Site of Employment

- Either a single location or a group of contiguous locations
- Separate locations further apart if in reasonable geographic proximity, used for the same purpose, and share same staff or equipment
- Same building could be multiple “single sites” of employment if independent employers operate at same location
- Single site of employment for employees who work remotely is the site to which they are assigned, from which their work is assigned, or to which they report

Why?

Intent of the Acts

- Give employees more time to prepare for layoff and increase chances of finding a new job
- Regional Rapid Response teams help aid affected employees with job placement assistance, such as referrals, job fairs, resume preparation, job market information, and career advice and training options

What if a company doesn't comply??



Consequences of Violations

- Damages to each employee who should have received notice
- Up to 60 days' pay and benefits, plus attorneys' fees
- Civil penalty of \$500 per day of violation
- Employers might be able to chose a pay in lieu of notice approach

How?

Employers Must Give Notice to...

- “Affected Employees,” including part-time
- Unions (if applicable)
- Government officials

NY Notice Contents - Employees

- Expected date of first employment loss
- Expected date of the employee's employment loss
- Whether permanent/temporary
- Whether "bumping rights" exist
- Name and number of a company official to contact for further information
- Information about unemployment insurance, job training, etc.

But . . .

Narrowly Applied Exceptions

Faltering Company exception: only applies to plant closing and is limited to situations where a company has sought new capital or business to attempt to stay open **and** giving notice would ruin the opportunity to obtain the new capital/business.

Unforeseeable Business Circumstances exception: applies to closings and layoffs caused by business circumstances that were **not reasonably foreseeable** when notice would otherwise have been required; **BUT** employers must still give as much notice as possible.

Other Potential Exceptions

- Employer offers to transfer employees to a different work location within reasonable commuting distance
- Seasonal/temporary employment
- Closing or layoff was the direct result of a natural disaster, such as a flood, earthquake, drought, or storm
- Strikes and lockouts related to collective bargaining
- A new company will continue employment in connection with the sale of a business

Sale of Business

- Seller responsible for notice up to and including effective date/time of sale
- Purchaser responsible for notice after effective date/time of sale
- Parties to business mergers/acquisitions should contemplate WARN obligations and allocate responsibility accordingly

To summarize...

NEW YORK **WARN** ACT

(Worker Adjustment & Retraining Notification)

COVERED EMPLOYERS

50+

Number of Employees
in New York State

"Business
Enterprise"

Might include separate,
but related entities



Doesn't include government
entities, but can include
private non-profits

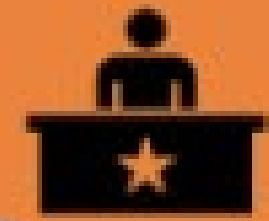
NOTICE REQUIREMENT



Affected Employees
and their Unions

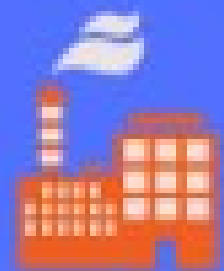


Written notice 90 days
before first
employment loss

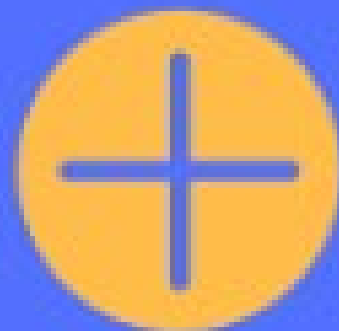


Government Officials

PLANT CLOSING



Shutdown of
employment site,
facility, or operating unit



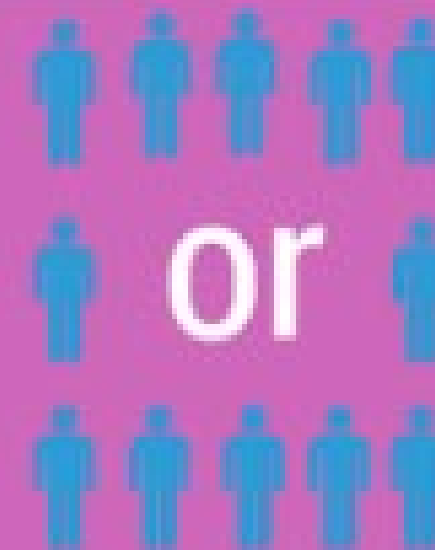
25+

Employees with
employment loss

MASS LAYOFF

25+

Employees with
employment loss if at
least 33% of active
workforce at site



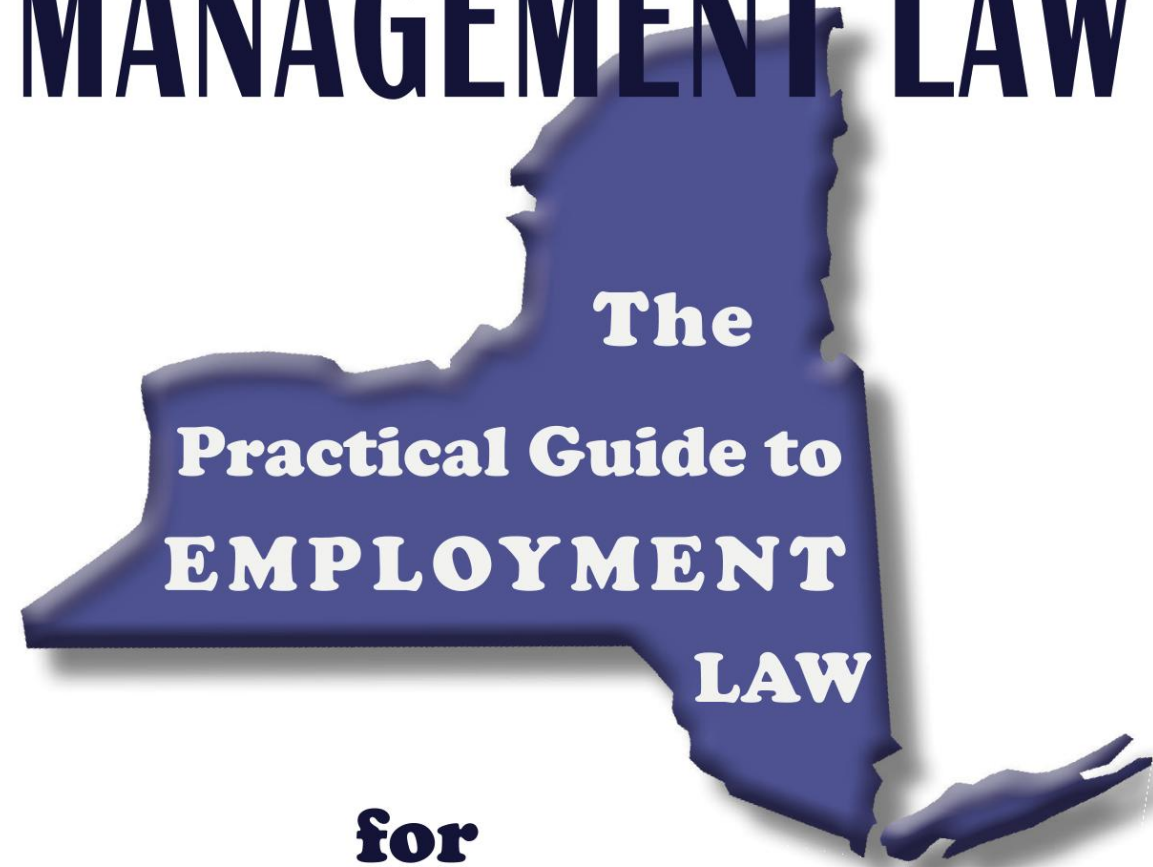
250+

Employees with
employment loss at site
even if less than 33% of
workforce

The background features several groups of business silhouettes in various poses, some standing in circles. In the center, there are blue arrows pointing in different directions, suggesting a strategic or planning process. The overall theme is professional and forward-looking.

Plan Ahead!

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Thanks for your time!

Questions?

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