CLIENT ALERTS & INSIGHTS

The WARN Act and COVID-19 Litigation: Early Signs

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On January 4, 2020, the U.S. District Court for the Middle District of Florida ruled that neither the "natural disaster" exception nor the "unforeseeable business circumstance" exception warranted dismissal of a WARN Act class action. The court's ruling shows that WARN Act litigation relating to the COVID-19 pandemic may not be easily dispended of at the motion to dismiss stage.

Under the Federal Workers Adjustment and Retraining Notification Act ("WARN Act"), it is illegal for companies with at least 100 employees to institute a "plant closing" or "mass layoff" affecting 50 or more people at a single site of employment. However, under two exceptions - the natural disaster exception and the unforeseeable business circumstances exception - the notice requirements are relaxed.

The "natural disaster" exception applies if the plant closing or mass layoff is "a direct result of a natural disaster." Applicable regulations define "natural disaster" to include "floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature." As a result of a natural disaster, an employer is not required to give any advance notice of the employment loss, and notice may be given after the event. The "unforeseeable business circumstances" exception applies where the plant closing or mass layoff is "caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required." Under such exception, an employer is still required to give as much advance notice "as is practicable."

The issue before the court involved the car rental company Enterprise Leasing Company that furloughed hundreds of employees in March 2020 due to the COVID-19 pandemic. The employer did not provide 60 days' notice of the furlough to its employees. The employees, in turn, filed a class action lawsuit under the WARN Act.

In an effort to prevail in the lawsuit prior to discovery, Enterprise filed a motion to dismiss, alleging that the plaintiffs failed to meet the minimum pleading requirements or otherwise state a plausible claim. Enterprise's motion, among other arguments, asserted that both the natural disaster and unforeseeable business circumstances defenses applied and warranted the dismissal of the case.

The court ruled that the natural disaster exception did not apply because COVID-19 was not a direct cause of the layoffs. The court explained that the furloughs were an indirect result of COVID-19-it was the global economic slowdown and suspension of most travel that necessitated the furloughs, and not the virus itself. The court also found persuasive the fact that the Department of Labor's guidance on the WARN Act and COVID-19 made no mention of the natural disaster exception.

On the other hand, the court acknowledged that the unforeseeable business circumstances exception might apply. However, the court concluded that dismissal was not appropriate because this exception "doesn't waive the notice requirement but softens it: employers are only required to

‘give as much notice as is practicable.’” As such, the court found that determining “exactly when Defendants had to give notice will doubtless be a hotly contested factual issue,” meaning that plaintiffs were entitled to pursue their case.

The *Enterprise* decision is a warning to employers that COVID-related layoff notice requirements will be subject to close judicial scrutiny and that employers will not be able to win a quick dismissal of resulting WARN Act claims. Although the “unforeseeable business circumstances” exception to WARN’s 60-day notice requirement may apply, courts may be reluctant to grant early dismissal of WARN cases where there is a dispute as to how much notice was “practicable” for the employer to provide.

Although the *Enterprise* court’s ruling is not binding on other courts, employers should be aware of the precedent and be prepared to litigate the issue of practicality of notice during the COVID-19 pandemic. Given the apparent factual dispute this issue raises, courts may be hesitant to grant summary judgment of these issues too. Leaving these matters to a jury provide legal risk which employers need to consider as they navigate these type of claims.

Contact a member of Benesch's Labor & Employment Practice Group for more information.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19’s status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

