

WARN



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WARN Act May Apply to COVID-Related Job Losses

By [Jessica C. Jeffrey](#)

While many employers believed that the WARN Act's safe harbor provision for extreme and unexpected situations exempted job cuts made in the face of the COVID-19 pandemic, one U.S. Federal Court judge recently held otherwise.

Middle District of Florida Judge Roy B. Dalton recently denied a motion to dismiss that the COVID-19 pandemic is not an excuse to circumvent the notice requirements in the WARN Act. In *Benson, et al. v. Enterprise Holdings, Inc., et al.*, a proposed class action case, the plaintiffs alleged the defendants (car rental firms and the associated holding company) terminated them, along with hundreds of others, without providing advanced notice as required by the statute.

Under the Federal WARN Act, certain employers must provide 60-days advance notice to employees who suffer an employment loss as a result of a plant closing or mass layoff. While the WARN Act contains some exemptions for employers, the court disagreed that those exemptions applied to the defendants in these circumstances.

Specifically, the defendants argued that the COVID-19 pandemic was the result of a “natural disaster” thereby eliminating the notice requirement. Judge Dalton held that while the COVID-19 pandemic *could* qualify as a natural disaster, the exemption applies only when the layoff or plant closing is a “direct result” of a natural disaster. The court found that as alleged by the plaintiffs, the defendants’ layoffs were likely a result of a business downturn — not a natural disaster. Thus, the defendants’ terminations were not akin to a closure of facility due to direct physical destruction, such a flood, but rather were the result of a depressed economy. The court further explained that the Department of Labor’s lack of guidance on the topic provided support for his position.

The defendants also argued that the “unforeseeable business circumstances” exception applied. Under the “unforeseeable business circumstance” exception, employers must only provide as much notice “as is practicable” in light of “sudden, dramatic, and unexpected action or condition outside the employer’s control.” While the court did not foreclose this exception, the court concluded that even if the “unforeseeable business circumstances” exception applies, factual issues regarding when the defendants had to give notice is a “hotly contested factual issue.”

This decision is one of the first tests of how the WARN Act will apply to pandemic related job cuts and means that employers will likely face challenges for failing to comply with WARN even in the early days of the pandemic. It is important to note that the court’s preliminary decision only determined that the plaintiffs alleged facts sufficient to state a claim for violation of the WARN Act – not that the defendants violated WARN. Nevertheless, employers facing a situation that may result in a mass layoff should contact Nelson Mullins attorneys to ensure that WARN’s stringent requirements are complied with.

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