



First Impression Decision: Under WARN Act Quitting Due to Business's Imminent Closing is Not "Voluntary Departure"

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The Court in *Collins v. Gee West Seattle LLC* (No. 09-36110, opinion by Judge N.R. Smith) determined the meaning of the term "voluntary departure" under the Worker Adjustment and Retaining Notification ("WARN") Act, 29 U.S.C. section 2101 et seq. On an issue of first impression for the 9th Circuit, the Court held that if an employee leaves a job because the business is closing that employee has not voluntarily departed, but instead has suffered an "employment loss" within the meaning of the WARN Act.

In *Collins*, the employer, Gee West Seattle LLC ("Gee West"), operated several automobile franchises. Due to financial losses, Gee West attempted to sell the business beginning in July of 2007. On September 26, 2007, Gee West informed its employees that it was pursuing a sale of the business and that if the sale could not be finalized by October 7, 2007 the company would be shutting down. Employees were further notified that notice could not be provided earlier because "Gee West was actively seeking business to keep the business running...and it was concerned that potential purchasers would not make a purchase, had its workforce been seeking alternate employment."

Prior to its potential -closing announcement, Gee West had approximately 150 employees. Following the announcement, several employees stopped reporting to work. By October 5, 2007, only 30 employees reported to work at Gee West's facilities. Each employee who terminated his or her respective employment after September 26, 2007 stated that he or she had done so because the "business closed." Gee West officially closed on October 5, 2007, because too few employees remained to continue operations.

The Court concluded that departures like those of the Gee West employees were not "voluntary departures" as defined under the WARN Act and the employees had in fact suffered an "employment loss". The Court stated that the unexpected and urgent need to find new employment was precisely the type of pressure that Congress was attempting to eliminate by creating the WARN Act. The employees who departed Gee West due to the closing suffered an "employment loss" and therefore, Gee West was required to provide notice in compliance with the WARN Act.

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