California's WARN Act Applies to Temporary Layoffs

Insights
12.06.17

A California appellate court has ruled that California's WARN Act, which requires 60 days advance notice of "mass layoffs," applies to temporary layoffs and furloughs. The case (*Boilermakers Local 1998 v. Nassco Holdings, Inc.*) involved a shipbuilding company that laid off about 90 employees for three to five weeks during a workload lull. The employees were notified on the day the layoff began. Their union sued for violation of California's WARN Act. The trial court ruled in favor of the union and the appellate court affirmed.

The court noted that unlike the federal WARN Act, which defines a "mass layoff" as a layoff exceeding six months, California's WARN Act does not include a requirement that a layoff be more than six months. Any layoff involving 50 or more employees in a 30 day period requires 60 days advance notice under California law, maintained the court. The court also observed that unlike under federal law, California's WARN Act does not have an "unforeseen business circumstances" exception to the notice requirement. Temporary layoffs caused by unanticipated downturns in business are covered under California law if 50 or more employees are affected.

Under this ruling, therefore, California employers are exposed to WARN Act liability for layoffs involving 50 or more employees *regardless* of the duration. If 60 days advance notice is not provided, the employer can be sued for pay and benefits lost by each affected employee up to a maximum of 60 days. For example, if employees were given no advance notice of a layoff lasting 30 days, they each could recover pay and benefits for those 30 days.

Employers in California therefore must use care in planning layoffs. Where seasonal shutdowns occur, such as closing between Christmas and New Year's, or during the summer months, at least 60 days advance notice of such shutdowns must be given. Keep in mind that WARN notice must be given individually to each employee, their union (if any), and various state and local government agencies. Merely sending an e-mail to employees, or listing an annual closing in an employee handbook, is not likely to qualify as sufficient notice.

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