



# A New Wave Of COVID-19 Class Action Lawsuits Begins In California

Insights

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Several former employees of a national restaurant chain filed a class action lawsuit claiming their former restaurant employer violated California's WARN Act by furloughing workers in March without providing 60 days of notice or 60 days of wages and benefits. Although federal WARN Act cases related to COVID-19 employment actions are still somewhat rare, this case relies not on the federal statute but California's state version. What do employers need to know about the *De La Cruz v. Hometown Buffet* case in order to avoid a similar fate?

## Why Are COVID-19 WARN Act Lawsuits Appearing In California?

In addition to the federal Worker Adjustment and Retraining Notification (WARN) Act, a number of states have "mini" WARN Acts, including California. While there are slight differences between the mini-WARN Acts, they generally require employers to provide advance notice when a significant number of employees will be terminated or furloughed. If an employer violates the WARN Act, the penalties can be severe. Both the Federal WARN Act and California's WARN Act provide for the recovery of 60 days' pay and benefits per impacted employee, plus recovery of attorneys' fees and civil penalties up to \$500 per day.

California's WARN Act is far more expansive than the federal WARN Act. California's law applies to any employer that operates any industrial or commercial location that employs (or within the past 12 months has employed) at least 75 persons. Notice obligations under the Act are triggered when: (1) the business's operations are "effectively stopped," or (2) there is a layoff during any 30-day period of 50 or more employees at the location, or (3) if all or substantially all of the operations are being moved to a different location 100 or more miles away.

But the biggest distinction as applied to COVID-19-related events is that California's WARN Act applies to **temporary job loss regardless of duration**, whereas the Federal WARN Act only applies to layoffs lasting longer than six months. Specifically, the California Appellate court ruled in 2017 that California's WARN Act applies to temporary layoffs and furloughs. Under that ruling, California employers have potential liability under the WARN Act for furloughs and temporary layoffs involving 50 or more employees regardless of the duration the employees are out of work.

There are some exceptions to the requirement that employers provide notice under California's WARN Act, including a temporary project exception, physical calamity exception, and the "faltering business" exception. If one of those situations applies, the employer is not required to provide notice

under California's WARN Act. Notably, the federal WARN Act has similar exceptions, including a physical calamity exception, but the employer must still give as much notice as is "practicable" even when an exemption applies.

### **Is The Pandemic A Physical Calamity?**

At first blush, it would seem that the COVID-19 pandemic would qualify as a physical calamity excepting WARN notification, along the same lines as a flood, earthquake, or drought (similar to the drought that was ravaging U.S. farmlands when the federal WARN was enacted). However, there is no case law that expressly holds that a pandemic qualifies for the physical calamity exemption. As a result, it is still an open question.

For California employers who want to avoid having to prove the pandemic is a "physical calamity," Governor Newsom [issued an executive order that allows California employers who satisfy certain conditions to provide less than 60 days' notice under the WARN Act](#). While the order does not eliminate California's notice requirement, it does provide for a relaxed standard wherein employers give notice as soon as practicable – a standard similar to the federal WARN Act's requirement when the physical calamity exception applies.

### **This Lawsuit Likely Heralds The First Of Many**

Even if you are not located in California, the *Hometown Buffet* lawsuit could provide some insight into the lawsuits that may be coming in the states where you are operating. The plaintiffs' bar will take advantage of this opportunity and will file similar lawsuits. Employers subject to either the federal or a state WARN Act should evaluate whether your existing or planned layoffs and furloughs require notice. You should also consider whether giving notice (even if it may not be required) makes sense to try to eliminate potential litigation.

For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). Our [COVID-19 Employment Litigation and Class & Collective Actions section](#) also has a listing of our litigation-related alerts and team members handling these types of cases.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney. You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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