

Eighth Circuit: Current Economic Downturn was an “Unforeseeable Business Circumstance” Under the WARN Act

2 min read

Jul 6, 2012

The Worker Adjustment and Retraining Notification (WARN) Act requires qualifying employers to provide written notice at least 60 calendar days in advance of plant closings and mass layoffs. An exception to the Act exists, however, for “unforeseeable business circumstances.” Under that exception, no advance notice is required when the layoff event is the result of business circumstances caused by a sudden, dramatic, and unexpected condition. In its July 2, 2012, decision in *United Steel Workers Local 2660 v. U.S. Steel Corp.*, the Eighth Circuit approved a shortened WARN Act notice for the employer, holding that the current economic downturn fell within that “unforeseeable business circumstances” exception.

In the case, the employer had provided only four day’s notice before laying off 313 employees at a plant in early December 2008. The union sued, arguing that the employer knew that layoffs were anticipated far earlier and so had violated the WARN Act. The union pointed to an October 2008 press release from the employer that had acknowledged — two months before the layoff — that demand for its products had decreased due to the economic downturn. The court gave more weight, however, to evidence from the employer illustrating that the sharp decrease in demand for its products was not fully apparent until late November 2008, just days before the employer gave notice of the layoff.

In determining whether the business circumstances that caused the layoffs were reasonably foreseeable, the Eighth Circuit focused on the employer’s business judgment, asking whether the employer “exercise[d] such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market.” The court determined that, in this case, the 2008 economic crisis and the dramatic decline in demand constituted an “unforeseeable business circumstance” under the WARN Act. As a result, the employer had not violated the Act by giving only four day’s warning to employees before the mass layoff.

Importantly for employers, the Eighth Circuit’s decision demonstrates that the ongoing economic recession and any resulting decreases in demand for a service or product may satisfy the “unforeseeable business

circumstances” exception to the WARN Act. In all cases, the question will be the employer exercised “commercially reasonable business judgment as would a similarly situated employer” in its market.

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