

Eighth Circuit Adopts Narrow Definition of “Mass Layoff” Under the WARN Act

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An employer hired more than 100 workers to replace its employees who went on strike. Upon resolution of the strike, the employer fired 123 of the replacement workers and then reinstated 103 of the returning employees. The replacement workers sued, alleging that the employer had failed to provide an adequate termination notice under the Worker Adjustment and Retraining Notification Act (WARN Act). Under the WARN Act, an employer that conducts a “mass layoff” must provide notice to employees 60 days prior to the layoff. Under the Act, a “mass layoff” occurs when an employer terminates at least 33 percent of its active workforce or more than 500 workers. The replacement workers argued that the court had to consider the number of workers the employer fired, rather than the number of positions the employer eliminated to determine whether a “mass layoff” had occurred. The U.S. Court of Appeals for the Eighth Circuit disagreed and held that simply firing one worker and replacing him with another does not result in a reduction in force as required by the WARN Act. Rather, a reduction-in-force requires a net loss in productivity measured by the numerosity requirements set out in the Act. Accordingly, the employer did not conduct a “mass layoff” because it terminated 123 of the replacement workers, and filled their positions with 103 returning employees, meaning only 20 positions were eliminated. This case clarifies the requirements for a “mass layoff” under the WARN Act for both employers and employees in the Eighth Circuit. Employers must be aware that when positions are eliminated for more than 500 employees, or for at least 33 percent of their workforce, the WARN Act’s notice requirements must be followed.

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