

Federal Court in Florida Issues Decision in COVID-19 Related WARN Case

Worker Adjustment and Retraining Notification (WARN) litigation is gearing up in the wake of millions of COVID-19 related layoffs that took place in 2020.

The Federal WARN Act applies to employers with 100 or more employees, and typically requires written notice 60 days in advance of a plant closing or mass layoff. The Act permits employers to reduce this notice period upon showing that a statutory exception applies. Specifically, the Act contains exceptions relating to faltering companies, unforeseeable business circumstances, and natural disasters. If an employee sues his employer for failure to provide statutorily required notice, the burden is on the employer to demonstrate that one of these exceptions applies.

On Jan. 4, 2021, a federal district court in Florida issued what appears to be the first judicial decision discussing WARN liability in relation to layoffs that were allegedly necessitated by the COVID-19 pandemic. In this case, *Benson et. al. v. Enterprise, et. al.*, two employees who lost their jobs in a mass layoff sued their employer, alleging that it violated the WARN Act by failing to provide 60 days' notice prior to terminating their employment. One employee received 6 days' notice, and the other receive no notice at all. The employer moved to dismiss the complaint, arguing that it could not be held liable under the WARN Act by virtue of the "natural disaster" and "unforeseeable business circumstances" exceptions.

The court denied the employer's motion. In its decision, the court first addressed the "natural disaster" exception. This exception excuses notice altogether where a closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm. The court acknowledged that the COVID-19 pandemic may be a "natural disaster" within the meaning of the WARN Act. However, the court held that the layoffs did not result **directly** from the pandemic. Thus, the exception did not apply. The court illustrated its reasoning by analogizing the COVID-19 pandemic to a flood. The "natural disaster" exception would apply if a flood destroyed a factory and the employees who work in that factory were subsequently laid off without notice. By contrast, the exception would not apply if the factory workers were laid off because a nearby flood depressed the local economy. In the first scenario, the flood directly caused the layoffs. In the second, the flood only indirectly caused the layoffs.

The court then addressed the "unforeseeable business circumstances" exception. This exception applies to closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required. Employers asserting this exception must give "as much notice as is practicable." This is unlike the "natural disaster" exception, which excuses notice altogether. The court indicated that the "unforeseeable business circumstances" exception may apply in this case, but it declined to dismiss the lawsuit because determining "exactly when" the employer was required to give notice "will doubtless be a hotly contested factual issue." The lawsuit thus will proceed to the discovery phase.

What Does This Mean for Employers?

Employers may face costly litigation if they have implemented WARN-triggering layoffs or closings without adequate notice. Even if a statutory exception is available to the employer, it may have to navigate multiple stages of litigation before a resolution is reached.

For assistance with assessing your company's potential liability under the WARN Act, please contact any [attorney](#) in Bond's [Labor and Employment practice](#), or the attorney in the firm with whom you are regularly in contact.



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