

Illinois Federal Court: Don't Count Resigning Employees for WARN Purposes

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In late September, a federal court in Illinois ruled that an employer did not have to count toward WARN thresholds the number of employees who voluntarily resigned in exchange for severance packages in advance of a large involuntary layoff. Employees affected by the layoff had sued, claiming the employer failed to give proper WARN notice.

Given how many employers are dealing with the necessity for layoffs in a depressed economic climate that lingers, the Court's ruling merits attention.

WARN, the federal Worker Adjustment and Retraining Notification Act, is triggered if an employer with at least 100 employees either: (a) closes a plant, resulting in the involuntary employment loss of 50 or more employees during any 30-day period; or (b), over a 30- or 90-day period, involuntarily terminates or lays off at least 50 employees or more at a single site of employment, where the number laid off is at least one-third of the employees working at the site (the one-third requirement does not apply for layoffs affecting 500 or more employees at a single site).

Two former employees of DHL Express ("DHL") had filed a class action lawsuit in the federal district court for the Northern District of Illinois on behalf of themselves and all other DHL employees in the Chicagoland area. The lawsuit alleged that DHL and its parent company violated WARN by failing to give employees sufficient notice prior to a layoff.

DHL had notified the employees in November 2008 that they were to be laid off. A few days later, DHL's parent company announced that it was going to discontinue its air and ground services in the United States. In December, after negotiating with the union that represented its employees, DHL offered some of its employees a choice to voluntarily resign in exchange for severance pay.

The DHL employees alleged that DHL failed to provide 60 days' notice prior to starting the layoffs, which ultimately resulted in the separation of over one-third of DHL's employees within a 90-day period. However, in alleging that one-third of DHL's workforce had been laid off (to thus trigger WARN), the plaintiff employees argued that the court should count 315 employees who had voluntarily resigned in exchange for severance. According to the plaintiffs, those employees had voluntarily resigned only after DHL threatened that they would be involuntarily laid off with no severance pay or benefits if they did not resign voluntarily.

On September 21, 2009, the Court ruled that voluntary resignations or early retirements taken in exchange for severance do not count as "employment losses" under the WARN Act, as long as they were truly voluntary and not the result of a "hostile or intolerable work environment" created by the employer or because the employer used other forms of unlawful pressure or coercion to force the employees to resign. According to the Court, even though DHL's decision to discontinue part of its shipping business "no doubt caused great distress" to the employees, they did not resign because of a "hostile or intolerable work environment" or unlawful coercion or pressure. Consequently, the Court found that the number of employees who were involuntarily laid off was not sufficient to trigger WARN's notice requirements and dismissed the lawsuit against DHL.

What Does the Court's Ruling Mean for You?

Continued

This case is a good reminder that it is critical to proceed with caution when considering a reduction in force that could trigger the WARN Act. For WARN coverage, numbers count, and employers should be clear when planning a reduction which employees will be counted against WARN's triggers.

Miller Canfield's labor and employment lawyers can help ensure that your workforce reduction planning is legally compliant.