

Is COVID a “Natural Disaster” Under the WARN Act?

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As manufacturing employers are well aware, the COVID pandemic has forced many employers to furlough or layoff employees. Some operations were closed altogether, while others furloughed employees for various periods of time. Often those layoffs or furloughs were longer than initially anticipated and in some circumstances triggered the WARN Act, requiring the employer to provide the employees suffering job loss with 60 days' notice of their termination. Calculating when and if the WARN Act is triggered can be complicated, especially when there are rolling layoffs. This is especially true in the context of the COVID pandemic when business conditions were changing rapidly. Often COVID related shut downs or layoffs were necessary on short notice and employers did not always have the ability to provide 60 days' notice to the laid off employees. The WARN Act provides for a few exceptions to the notice requirement that excuse non-compliance with the 60 day notice requirement, including a “natural disaster” exception. The First Circuit Court of Appeals recently decided whether COVID related layoffs qualify as a “natural disaster” under the WARN Act.

In the case,¹ the employer was forced to immediately lay off employees when its customers limited production or shut down due to decreased demand related to the COVID pandemic. When the laid off employees brought a lawsuit under the WARN Act, alleging that the employer did not provide them 60 days' notice of the layoff, the employer argued to the court that COVID was a “natural disaster” under the act, thereby excusing the employer from providing the required 60 days' notice. Under the WARN Act, even if a natural disaster is the cause of the employment loss, an employer must still give as much notice as practicable. The WARN Act regulations give examples of the types of natural disasters that would excuse full notice, stating “[f]loods, earthquakes, droughts, storms, tidal waves, or tsunamis and similar effects of nature” qualify as natural disasters.² The 5th Circuit Court of Appeals held that while COVID may be a natural disaster in the ordinary meaning of the terms “natural” and “disaster” it was not a natural disaster under the WARN Act reversing the decision of the lower court.

While only one Court of Appeals has made such a ruling so far, the take away for employers is that, if they have had layoffs or may have layoffs in the future related to COVID, the natural disaster exception will likely not be available. Instead, employers facing circumstances that may trigger the WARN Act, where 60 days' notice may not be possible, should consider whether their circumstances fit under one of the other exceptions to the WARN Act. Depending on the circumstances of each employer and their reasons and timing of COVID related layoffs, the unforeseeable business circumstances exception may be available. The exception does not excuse lack of notice entirely. Instead the employer is required to give as much notice as possible given the business

circumstances in question. The [DOL has also suggested](#) that the unforeseeable business circumstances exception may be available for some COVID related layoffs.

There is likely to be further litigation regarding COVID related layoffs or furloughs under the WARN Act. If employers are facing circumstances in which they think a WARN Act triggering layoff may be required, they should consult with legal counsel as early in the process to determine the best course of action.

FOOTNOTES

¹ *Easom v. U.S. Well Services Inc*, 5th U.S. Circuit Court of Appeals, No. 21-20202

² 29 CFR §2102(b)(2)(B); 20 CFR §639.9 639.9(c)(1)

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