Legal Update Article

Detail Matters: Recent Court Decision Finds Insufficient Information Limits Employer Reliance on WARN Exceptions

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Takeaways

- In *Moore v. Yellow Corp. (In re Yellow Corp.),* the court found that even if circumstances fit within a WARN exception, employers may lose their ability to rely on an exception if they do not send WARN notices that include all required information with a sufficient level of detail.
- Courts may hesitate to dismiss WARN claims based on employees' execution of WARN waivers.
- Employers should not prepare WARN notices without consulting with counsel with WARN Act expertise.

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Article

A federal bankruptcy court held that an employer cannot rely on the "unforeseeable business circumstances" or "faltering company" exceptions to the federal Worker Adjustment Retraining Notification (WARN) Act's 60-day advance notice requirement because the WARN notices it provided employees lacked sufficient explanation of the employer's bases for relying on either exception. *See Moore v. Yellow Corp. (In re Yellow Corp.),* 2024 Bankr. LEXIS 3029 (Bankr. D. Del. Dec. 19, 2024). The WARN Act, as well as some state laws, require employers to provide employees with advance notice of a plant closing or a mass layoff.

Interestingly, the court found the factual circumstances surrounding the employer's WARN-triggering layoffs met the requirements for relying on both exceptions, but the failure to include sufficient information in the WARN notices precluded it from relying on the exceptions.

Finally, the court declined to grant summary judgment dismissing claims from any affected employees that signed general releases that included a waiver of WARN claims.

WARN Exceptions: Unforeseeable Business Circumstances, Faltering Company

Two exceptions to the WARN Act's 60-day notice requirements are the unforeseeable

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business circumstances (UBC) exception and the faltering company exception.

The UBC exception permits employers to provide less than 60 days' notice of WARN-triggering layoffs if:

1. The layoffs occurred as a result of a sudden unexpected event that was outside of the employer's control; and
2. The employer could not have reasonably foreseen that event occurring at the time WARN notices would have been due.

The faltering company exception (only applicable for WARN-triggering plant closures, not mass layoffs) permits employers to provide less than 60 days' notice of a WARN-triggering plant closure if:

1. The employer was actively seeking capital at the time the WARN notices would have been due;
2. There was a realistic opportunity to obtain that capital;
3. The capital would have been sufficient to avoid or postpone the plant closure; and
4. The employer reasonably believed that providing WARN notices would have precluded it from obtaining that capital.

Importantly, to rely on either exception, the employer must provide WARN notices as soon as practicable and those notices must include "a brief statement of the reason for reducing the notice period ...." 29 C.F.R. § 639.9.

Notices Sent

In 2022, Yellow Corp. began internal restructuring to address financial struggles. After discussions with the Teamsters union to effectuate an alteration of job duties for union dock workers failed, the Teamsters issued a public notice on July 17, 2023, that the union would begin striking 72 hours later. Although the strike was averted, when Yellow Corp.'s customers learned of the strike notice, they sent their business elsewhere. Demand for Yellow Corp.'s shipping services declined rapidly, exacerbating the company's financial crisis and precluding the availability of new financing, leading to Yellow Corp.'s collapse.

On July 28, 2023, Yellow Corp. laid off 3,500 non-union employees and sent them the following WARN notice:

> We regret to inform you that your employment with Yellow Corporation, or one of its subsidiaries, (collectively referred to as the "Company") will permanently terminate on July 28, 2023, or within 14 days after (the "Separation Date"). The Company is shutting down its regular operations on July 28, 2023, closing and/or laying off employees at all of its locations, including yours (the "Shut Down"). The Company submits this notice to you in part to satisfy any obligation that may exist under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. and applicable similar state laws (collectively, the "WARN Act"). The Company does not admit that such laws apply or that notice is required. If no obligations exist, this notice is being provided to you voluntarily. The Company was not able to provide earlier notice of the Shut Down as it qualifies under the "unforeseeable business circumstances," "faltering company," and "liquidating fiduciary" exceptions set forth in the WARN Acts.

On July 30, Yellow Corp. laid off its union employees and sent them WARN notices the following day that stated in relevant part:

> The Company was not able to provide earlier notice of the Shut Down as it qualifies under the 'unforeseeable business circumstances,' 'faltering company,' and 'liquidating fiduciary' exceptions set forth in the WARN Act. The Company expects all layoffs and location closures relating to the Shut Down to be permanent. The Company had hoped to complete one or more transactions and secure funds and business to prevent the closing of these locations but was unable to do so. These circumstances were not reasonably foreseeable at the time notice would have otherwise been required and notice is further excused because the business is being liquidated.

The court found that, although the factual circumstances would have permitted Yellow Corp. to rely on both the UBC and the faltering company exceptions, neither was available because the WARN notices Yellow Corp. issued did not provide employees with sufficient detail as to why the exceptions were applicable. Although the WARN notices that Yellow Corp. issued to the non-union employees clearly lacked factual information, the court found the information in the notices Yellow Corp. provided to the union employees was also insufficient. For that reason, the court denied Yellow Corp.'s motion for summary judgment on that issue.

(This decision does not address the fact that federal WARN notices must be sent to the representatives of unionized employees, rather than directly to the union employees.)

Signed WARN Waivers

Upon laying off the non-union employees, Yellow Corp. offered them a separation payment in exchange for signing a general release of claims, including WARN claims. To avoid issues relating to the company's pending bankruptcy petition, Yellow Corp. wound up issuing separation payments to all of the affected non-union employees regardless of whether the employees had signed the general release at that time.

In opposition to Yellow Corp.'s motion for summary judgment dismissing the claims of all non-union employees that signed general release agreements, the employees argued the general release agreements they signed lacked consideration because Yellow Corp. wound up issuing separation payments to all non-union employees, regardless of whether they had signed the general release agreement.

Although the court noted the employees' argument seemed "far-fetched," it still denied summary judgment on this issue, because it was precluded from making credibility determinations at the summary judgment stage and was required to draw all inferences in favor of the party opposing summary judgment.

Before implementing any sort of layoff, restructuring, or group termination, employers should consider consulting with legal counsel to ensure all legal requirements are met. Given the complexities involved, contact a Jackson Lewis attorney if you have questions about whether and when notice is required under the WARN Act or state law or when defending threatened or pending WARN Act actions.