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The first published case interpreting "mass layoff" under California WARN held that where employees are transferred as the result of a sale and keep the same positions and compensation, California WARN notice is unnecessary.

California Edition
A Littler Mendelson California-specific Newsletter

A Transfer of Employment Does Not Necessarily Constitute A "Mass Layoff" Under California WARN.

By Ron Holland and Ellen Bronchetti

In the first published case interpreting the meaning of "mass layoff" under the California Worker Adjustment and Retraining Notification Act ("California WARN", Cal. Lab. Code §1400 *et. seq.*), a California Court of Appeal provided some much needed guidance and good news to employers regarding their obligations under the statute. In *Stanley MacIsaac v. Waste Management Collection and Recycling, Inc.*, A108599 (Cal. Ct. of Appeal, 1st Dist., Dec. 12, 2005), the court held that an employer need not provide the required sixty-day statutory notice to employees when employees are transferred to another operation as a result of a sale.

Background Information

The California WARN Act went into effect on January 1, 2003. By its terms, the Act forbids an employer from ordering a "mass layoff" unless the employer gives sixty days' notice to the employees affected by the order and to various government entities. (Cal. Labor Code §1400.) According to the language of the statute, a "mass layoff" is any "layoff during any 30-day period of 50 or more employees at a covered work establishment."[1] An employer who fails to give the required notice is liable to each employee for back pay and the value of the costs of any benefits the employee lost. (Cal. Labor Code § 1402.) An employer may also be subject to a civil penalty of $500 for each day of the employer's violation and attorneys' fees for any plaintiff successfully bringing a claim for violation of California WARN. (Cal. Labor Code §§ 1403 and 1404.)

The intent behind the California WARN Act is similar to its federal predecessor, the Federal WARN Act, set forth in 29 U.S.C. 2101 *et. seq.* However, there are significant differences between the language of the two acts. First, Federal WARN defines a "mass layoff" as an "employment loss at [a] single site of employment." (29 U.S.C. §2101(a)(3)(B).) The California WARN Act, on the other hand, requires that employees be "separate[ed] from a position" before a "mass layoff" will be deemed to have occurred. (Cal. Labor Code § 1400(c), (d),

1 Under California WARN, a "covered establishment" is any industrial or commercial facility that employs, or has employed within the preceding twelve months, seventy five or more persons. (Cal. Lab. Code §1400(a).)

§1401(a).) Another critical difference is that the Federal WARN Act exempts a "sale of part or all of an employer's business" from the definition of an "employment loss" that triggers notice under the statute. The California WARN Act has no "sales exception."

The Case

In *Stanley MacIsaac v. Waste Management Collection and Recycling, Inc.*, the plaintiff was a former employee of Empire Waste Management ("Empire Waste"), a garbage hauling operation located in Santa Rosa, California. Empire Waste had a contract with the City of Santa Rosa to provide garbage disposal services through December 2006. In contract negotiations for a successor agreement, another competitor, North Bay Disposal Corporation ("North Bay"), was awarded the post-2006 contract. As a result, North Bay offered to purchase the remaining years of Empire Waste's current contract with the City. As part of that agreement, North Bay agreed to hire forty-two drivers to drive the same routes at the same rates of pay and the same benefits that they received at Empire Waste. On Friday, January 31, 2003, Empire Waste took these forty-two employees off its payroll; on Monday, February 1, 2003, North Bay added these forty-two employees to its payroll (the "transferred employees"). Later in February 2003, as a result of a corporate-wide reduction in force, Empire Waste laid-off an additional twenty employees.

Plaintiff was employed at Empire Waste and was assigned to the routes covered by the City of Santa Rosa contract. When North Bay purchased the contract from Empire, he was one of the employees offered a position at North Bay beginning on February 1, 2003. He received the offer on January 8, 2003 and rejected it. Instead, he brought suit alleging that Empire Waste violated Section 1401(a) of the California WARN Act when it failed to give employees sixty days' notice before it transferred forty-two employees and later laid-off twenty employees.

The trial court granted Empire Waste's motion for summary judgment holding that Empire Waste had no legal obligation under California WARN to provide sixty days' notice to employees because there was no "mass layoff" as defined by the statute. On appeal, the California Court of Appeal affirmed that decision. In doing so, the Court concluded that the forty-two transferred employees were not "separated from their positions" for lack of funds or lack of work within the meaning of California WARN. Rather, employees maintained their positions with North Bay without losing one day of continued employment. Critical to the Court's determination that there was no "separation" of employment was the fact that employees' work duties and benefits stayed the same with the new employer. Transferred employees used the same equipment, performed the same routes, and received the same benefits, pay and level of seniority. Therefore, Empire Waste did not engage in a "mass layoff" under California WARN when it transferred the forty-two employees and laid-off another twenty within a thirty day period. Accordingly, Empire Waste had no legal obligation to provide employees with the requisite sixty days' notice required by California WARN.

The Court left open the question of whether a "significant" change in pay or benefits would alter this conclusion. Indeed, the court stated that it might have reached a different result if North Bay had offered to rehire workers at a substantially lower wage than the previous wage or on conditions so inferior to the prior conditions that the offer was tantamount to a constructive discharge.

Conclusion

The *Stanley MacIsaac* decision is certainly welcome news to employers in that it affirms that a sales exception is not necessary and was not intended by the California legislature when it drafted the statute. Instead, where employees are transferred as the result of a sale and keep essentially the same position and level of benefits and compensation, California WARN does not apply, and statutory notice is unnecessary. However, it appears that an employer's notice obligations under the Act may apply where, in the sale of a business, employees are transferred to new jobs and receive inferior wages or a different benefit structure. Thus, employers must continue to be mindful of their notice obligations under the Act, as the penalties for failure to comply with notice obligations under the Act are significant.

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