

ALERTS AND UPDATES

Appeals Court Rules N.J. WARN Act May Apply to Parent Companies

June 27, 2011

The New Jersey Appellate Division on June 14, 2011, held that the Millville Dallas Airmotive Plant Job Loss Notification Act (the "New Jersey WARN Act")¹ applies not only to the direct employer, but also may apply to parent and affiliated companies if certain factors are present.

The New Jersey WARN Act requires employers with more than 100 full-time employees to provide its employees with notice, or in the alternative, severance pay, in the event of a mass layoff or facility shutdown. An "employer" is defined as "an individual or private business entity which employs the workforce at an establishment." The statute is silent as to whether an "employer" includes parent or affiliated entities.

In *DeRosa v. Accredited Home Lenders, Inc., et al.*,² the plaintiffs filed a putative class action, alleging violations of the New Jersey WARN Act. The New Jersey Appellate Division held that, in determining single-employer status under the New Jersey WARN Act, courts should apply the "five-factor" test applicable to its federal counterpart, the Worker Adjustment and Retraining Notification Act of 1988 (the "federal WARN Act").³

Those five factors are: "(i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from a common source, and (v) the dependency of operations."⁴ This five-factor test is a fact-specific balancing test. The goal of the test is to determine whether the parent or affiliated company had become so entangled with the other company's affairs as to engender federal WARN Act liability.

What This Means to Employers

Employers considering a reduction in force or a facility shutdown should consider consulting with employment counsel to potentially minimize the risks of liability to the employer as well as to the parent and affiliate companies.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. Millville Dallas Airmotive Plant Job Loss Notification Act ("New Jersey WARN Act"), N.J. Stat. Ann. § 34:21-1 to -7.
2. *DeRosa v. Accredited Home Lenders, Inc.*, 2011 N.J. Super. LEXIS 109 (App. Div. June 14, 2011).
3. Worker Adjustment and Retraining Notification Act of 1988 (the "federal WARN Act"), [20 C.F.R. Part 639](#).
4. 20 C.F.R. Part 639.3(a)(2).

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