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Second Circuit Vacates Ruling on WARN Act Notice Claims

Law and the Workplace on **May 26, 2023**

On May 15, 2023, the Second Circuit vacated the entry of summary judgment on Worker Adjustment and Retraining Notification Act and New York Labor Law § 860 et seq. (collectively, the "WARN Acts") claims, holding that a reasonable factfinder could conclude that a buffet restaurant operating inside of a casino was considered an operating unit for purposes of the WARN Acts, and was therefore subject to written notice requirements for mass layoffs. The case is *Roberts v. Genting New York, LLC*, No. 21-833.

Background

In January 2014, Defendant closed a buffet restaurant located inside the Resorts World Casino where Plaintiffs worked. Defendant gave Plaintiffs no notice of the closure, which took effect the same day and resulted in 177 employees being laid off. Plaintiffs then filed a putative class action against Defendant in the United States District Court for the Eastern District of New York, alleging that Defendant's failure to provide notice of the layoffs violated the WARN Acts.

Following discovery, the parties filed cross-motions for summary judgment. In March 2021, the District Court denied Plaintiffs' motion and granted Defendant's motion, holding that the buffet was not an "operating unit" or a "single site of employment" for purposes of the WARN Acts, and therefore written notice of the layoff to affected employees was not required.

Plaintiffs appealed the ruling, arguing that the lower court erred in granting summary judgment because a reasonable finder of fact could have determined that the buffet was its own operating unit or single site of employment, such that WARN notice *should* have been provided.

Second Circuit's Ruling

The Second Circuit affirmed the denial of Plaintiffs' motion for summary judgment and vacated the grant of Defendant's motion for summary judgment, holding that Defendant was not entitled to summary judgment because a reasonable factfinder could conclude that the buffet was an operating unit. The court explained that there was evidence to support both parties' arguments, therefore it should be up to a jury to decide the issue of whether the buffet is an operating unit.

The court explained that while the buffet did not share space with any other restaurant and had its own entrance and exit, it was also an open-air outlet that was not separated by walls or doors.

Further, the buffet had its own managers who supervised employees and oversaw their schedules, while the executive chef oversaw the menus at all of the food service outlets at the casino. Additionally, the servers, cashiers, and bus persons who worked at the buffet wore different color shirts than their counterparts at the casino's other food outlets, however, the buffet's cooks, stewards, and hosts wore the same uniform as people throughout the casino. Taken together, this evidence presented a genuine issue of material fact as to whether the buffet constituted an operating unit within the meaning of the law.

Among the takeaways from this case is that when planning a layoff that will result in a shut down of a discrete department, division or operation within a workplace, employers should consider the WARN implications of such an action, particularly if the number of employees impacted by the layoff will meet the statutory thresholds for federal or state WARN laws.

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