4th Circ. Ruling Reveals 2 Layoff Pitfalls To Avoid

By Kevin White and Steven DiBeneditto
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The U.S. Court of Appeals for the Fourth Circuit's April 3 opinion in Messer v. Bristol Compressors International LLC highlights a few lessons learned for employers planning layoffs.

In that case, the court considered three questions.

First, did Bristol Compressors validly eliminate its severance plan before terminating the plaintiffs' employment?

Second, did certain plaintiffs who signed severance agreements — called stay bonus letter agreements, or SBLAs — waive their claims against Bristol Compressors?

And third, did the four plaintiffs receive adequate notice under the Worker Adjustment and Retraining Notification Act before their employment terminated?

Elimination of Severance Plans

The Fourth Circuit first held that Bristol Compressors did not validly revoke its severance plan, contained in its employee handbook, before terminating the plaintiffs' employment.

In reaching this conclusion, the court noted that the severance plan was an unvested employee welfare benefit plan under the Employee Retirement Income Security Act, meaning the company was free to amend or eliminate the plan so long as it complied with requisite procedures in the plan for such actions.

With this in mind, the court concluded that Bristol Compressors did not comply with the procedures in the employee handbook, which set forth a two-step process for altering or eliminating handbook provisions, including the employee severance plan.

First, the board of directors needed to vote to eliminate the plan, and second, human resources had to implement the board's action in writing.

Because the board voted to eliminate the plan, but human resources did not effectuate that action in writing, the severance plan was not eliminated under the terms of the employee handbook. Consequently, the Fourth Circuit reversed and remanded the issue back to the U.S. District Court for the Western District of Virginia.

Employers should keep in mind that when offering severance in a layoff, it is critical to survey existing severance benefits to which employees may be entitled and address those benefits appropriately in planning the layoff. The Bristol Compressors case demonstrates the pitfalls of not taking all necessary

steps to address preexisting severance plans.

Waiver of Claims Under SBLAs

On the second question, the Fourth Circuit ruled that the SBLA provision under which certain plaintiff employees waived their right to participate in litigation was not unconscionable.

Although the court looked to Virginia contract law when making this decision, the same principles likely apply in other jurisdictions. The court reasoned that even though the payments employees were to receive under the SBLA were less than they would be entitled to under the WARN Act, that disparity itself did not establish the gross disparity required to find an agreement unconscionable under Virginia law.

And although the SBLA contained statements that could be read as evidence of bad faith or appear to be a contract of adhesion, i.e., disproportionate bargaining power, the problematic terms were obviated at least in part by other language giving employees seven days to sign the agreement and consult with a lawyer. Thus, the Fourth Circuit upheld the SBLA and found it was not unconscionable.

The Fourth Circuit's analysis is a timely reminder that severance agreements are contracts governed by state contract law. Often, employers focus on compliance with federal and state labor and employment laws, but they also have to consider state contract law principles. Understanding which state's laws will govern the severance agreement and identifying conflict-of-laws issues are key.

Inadequate WARN Notice

Finally, the court found that Bristol Compressors failed to provide adequate WARN Act notice to the four plaintiffs.

Under the WARN Act, an employer must give employees 60 days' notice of a plant closing or mass layoff. The WARN Act also requires, however, that employers give employees additional notice when the scheduled plant closing or layoff is postponed beyond the original date. If the postponement is for 60 days or more, the additional notice is treated as a new notice subject to regulations governing the initial notice.

Conversely, if the postponement is for less than 60 days, employers are required to give notice as soon as possible, referring to the initial notice, the date to which the action is postponed and the reasons for the postponement.

Bristol Compressors first notified employees on July 31, 2018, that the plant was expected to close by Aug. 31 of that year, and that layoffs could commence immediately. The next day, Bristol Compressors told workers the plant was set to close by Sept. 30, but the four workers were not terminated until Oct. 19, and the plant did not officially shutter until November.

Given these facts, the Fourth Circuit concluded that Bristol Compressors should have provided employees additional notice under the WARN Act.

It also rejected the district court's finding that even though the workers were given inadequate notice under the WARN Act, they were not prejudiced in any way by the failure because they remained employed for more than 60 days after the initial July 31 notice.

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The Fourth Circuit explained that failing to give notice at all under the WARN Act is not akin to providing incomplete notice, the latter of which may be excused in some circumstances.

Moreover, the court held that the WARN Act does not require plaintiffs to show that they were prejudiced by lack of notice. The court thus reversed the district's court's grant of summary judgment to Bristol Compressors and remanded to the court for further proceedings.

There are two main takeaways from the Fourth Circuit's WARN Act analysis.

The first is that giving 60 days' notice does not relieve employers of their obligations to employees under the WARN Act. Rather, employers have a continuing obligation to keep employees informed of developments with a plant closing or mass layoff, including a postponement that may trigger additional obligations under the WARN Act.

Second, employees do not have to show prejudice to succeed on their WARN Act claims. Failing to provide the required notice may be sufficient on its own to establish liability under WARN.

Keep in mind that the Fourth Circuit distinguished contradictory precedent from the U.S. Court of Appeals for the Fifth Circuit in reaching its decision. Thus, the outcome of the case may have been different in the Fifth Circuit, and employers have to keep in mind that application of the WARN Act may differ from circuit to circuit.

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