

New Jersey WARN Act Applicable To Parent And Affiliated Companies

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In *DeRosa v. Accredited Home Lenders, Inc.*, Case No. A-3727-09T3 (NJ Superior Ct. App. Div., June 14, 2011), New Jersey's Appellate Division held that parents or affiliates (including a private equity investor) of a company that failed to give required notice of a closing or mass layoff under the New Jersey WARN Act may be liable for severance pay owed to the employees under the statute.

The WARN Act requires employers with 100 or more full-time employees to provide 60 days' advance notice of a transfer or termination of operations, or of a mass layoff, when certain conditions are met. In the event that the full 60 days notice is not given, the employer must pay the employee(s) severance in an amount equal to one week of pay for each full year of employment.

Defendant Accredited Home Lenders closed its New Jersey office without giving any notice to its employees. Thereafter, two employees filed a class action lawsuit under the WARN Act. Accredited filed for bankruptcy and was dismissed from the class action. The court held, however, that the class action plaintiffs could recover damages under the WARN Act against the private equity fund that acquired Accredited months earlier and/or the company that managed the assets of the fund, if plaintiffs were able to establish that the companies and Accredited were a "single employer."

The "single employer" test adopted in *DeRosa* requires courts to weigh the following five factors:

1. common ownership among the direct employer and parent or affiliate company;
2. common directors and/or officers among the direct employer and parent or affiliate company;
3. *de facto* exercise of control by the parent or affiliate company;
4. unity of personnel policies emanating from a common source;
5. dependency of operations between the direct employer and either the parent or affiliate company.

The court in *DeRosa* stated that no one factor is determinative nor do all factors need to be present for liability to attach. Factors one and two are "less significant", while factor three is perhaps the most significant of the factors.

Plaintiffs survived summary judgment and the case was remanded to allow for development of additional evidence on the various factors to determine whether the equity fund and/or its asset manager were considered a "single employer."