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The Impact of the UAW Strike on your Workforce – What Automotive Suppliers Need to Know

Client Alert

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Employers whose businesses have been negatively impacted by the strike may need to examine changes to their workforce. Before making any changes or reductions, companies should make certain that they are complying with all applicable federal and state local laws.

Possible Alternatives to a Reduction-In-Force

Before implementing lay-offs or closures, some businesses can trim the bottom line by implementing other measures, including:

1. Temporary or permanent wage reductions;
2. Voluntary time-off (most employers are surprised by how many employees will voluntarily take time off without pay especially since hunting season opens in Michigan soon);
3. Early retirement/voluntary separation program (VSP);
4. Reduce overtime or hours of work for non-exempt hourly employees (employers need to be mindful that the Fair Labor Standards Act requires that exempt employee receive the same amount each week they perform services and as such, a weekly reduction of hours is not a meaningful alternative for exempt employees).

It is recommended that suppliers consult their employment attorney early on in planning any of these potential steps to make certain that their proposed strategy is legally compliant.

WARN Act Requirements for a Reduction-In-Force

To the extent that closures and/or mass layoffs are necessary, employers need to assess whether they are or may be required to submit a Worker Adjustment and Retraining Notification (WARN) to the State of Michigan and other entities.

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Employer Coverage

Generally speaking, with regard to layoffs, a WARN notice is required when a business with 100 or more full-time workers (not counting workers who have less than 6 months on the job and workers who work fewer than 20 hours per week) is laying off at least 50 people at a single site of employment (see glossary and FAQs), or employs 100 or more workers who work at least a combined 4,000 hours per week, and is a private for-profit business, private non-profit organization, or quasi-public entity separately organized from regular government. Regular Federal, State, and local government entities which provide public services are not covered.

The WARN Act does contain exceptions to the otherwise required 60-day notice, which exceptions can include unforeseeable changes in business circumstances. If an auto supplier is considering a mass layoff or plant closing due to the downstream effects of the UAW strike, it should consult with employment counsel promptly to determine the best course to comply with the various specific WARN Act requirements .

How to Provide Notice

The WARN Act requires employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to three different recipients:

1. affected workers or their representatives (e.g., a labor union);
2. to the State dislocated worker unit; and
3. to the appropriate unit of local government.

Again, employers should consult with legal counsel on the details of WARN Notice.

Avoiding Discrimination Claims in a Reduction-In-Force

If not all workers of the same classification will be affected, the employer must properly review the persons selected for reduction to avoid or defend any claims of discrimination. To do this, employers will need to identify the objective criteria to use to identify employees to be impacted by the RIF (e.g. essential skills, past performance, unique skill set, attendance, ability to be a team player, seniority, projects or client assignments, or combination of factors). After these criteria are identified, the employer should then prepare the written, business-related, non-discriminatory criteria for the managers to apply when deciding who to retain and who to lay off.

There may be other issues to consider for any particular employer and circumstance.

The Butzel labor and employment team can assist with this process.

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