
Employment-Related Obligations of Automotive Suppliers Affected by a Strike at an OEM

By James R. Stadler / Oct 07, 2015

The Big 3 negotiations have heated up. UAW members rejected the tentative agreement with Fiat Chrysler Automobiles (FCA); and, the UAW has threatened a strike at FCA. If a strike ensues against FCA (or against GM or Ford for that matter), automotive suppliers will be affected as well. The following is a checklist of employment-related items to consider and plan for if a strike ensues.

Unemployment Benefits

A strike at FCA will likely trigger layoffs at your plants. The eligibility of your employees for unemployment benefits is determined by state law. In Michigan, the employees of a non-FCA supplier who are laid off directly as a result of a strike at FCA are eligible for unemployment benefits. If you have plants outside of Michigan which are similarly affected by a strike at FCA, you should review each such state's unemployment law to determine whether your employees in those other states are eligible for unemployment benefits. The answer will differ among the various states.

WARN

Automotive suppliers who trigger WARN due to layoffs caused by a strike at FCA are not relieved of the obligation to give WARN notices if in fact WARN is triggered. A "mass layoff" under WARN means a reduction in force at a single site of employment resulting in an "employment loss" during any 90-day period of (a) at least 500 employees, or (b) at least 50 employees and such affected employees constitute at least 33 percent of the employees at that single site of employment. An "employment loss" occurs only if the layoff is expected to exceed six months or if there is a reduction in hours of work for affected employees of more than 50% during each month of any six-month period. While one may not expect that a strike at FCA would cause an "employment loss," it is possible that strikes at GM and/or Ford could follow on the heels of a resolution at FCA and thereby further extend an "employment loss" for affected employees.

WARN is designed to encourage employers to err on the side of giving WARN notices. A question arises as to whether layoffs caused by a strike at FCA is foreseeable. The WARN regulations state that the unforeseen business circumstance and reduced notice period "may apply" in the context of a strike. At least one federal court of appeals outside Michigan, the Eight Circuit Court of Appeals, agrees. Other courts are free to differ, however, on the theory that a strike of one of the Big 3 is foreseeable as a possibility despite the fact that such strikes have been uncommon in the 30 years.

Some states (e.g. Wisconsin) have their own WARN statutes with which employers in those states must also comply.

Compliance with Collective Bargaining Agreement

Lastly, when faced with significant layoffs of a unionized workforce, it is important to understand and properly apply the layoff provisions of any applicable collective bargaining agreement. Failure to follow contractual layoff provisions and procedures could result in grievances and potential back pay for employees improperly laid off in violation of an applicable collective bargaining agreement.

If you would like to further discuss and plan for potential layoffs associated with a strike at FCA, GM or Ford, please contact James Stadler at (616) 608-1164 | jstadler@clarkhill.com or another member of Clark Hill's Labor & Employment Practice Group.