

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



July 19, 2011

Crystal M. O'Brien
MMC, Inc.
8150 Beverly Boulevard
Los Angeles, CA 90048

Re: Request For Exception Under Labor Code § 1402.5 (Cal-WARN Act)
Employer: Good Samaritan Hospital

Dear Ms. O'Brien:

This is in response to your June 29, 2011, request of Director of the Department of Industrial Relations ("DIR") for a determination that Good Samaritan Hospital of Bakersfield, California ("Good Samaritan") is not required to give the requisite employee notice under the Cal-WARN Act for an anticipated mass layoff of its employees. Good Samaritan seeks an exception on the basis that it fulfills the requirements under Labor Code § 1402.5¹ for an employer actively seeking capital or business at the time notice is required.

The Acting Director referred the submissions of Good Samaritan to the California Labor Commissioner for investigation. Based upon a review of the facts of this case and the applicable law, the Acting Director adopts the recommendation of the Labor Commissioner that Good Samaritan does not meet the requirements of Section 1402.5 and therefore is not excused from providing its affected employees with the 60-day notice required by Section 1401(a). The basis for this determination is that the exception you seek does not apply to notice of a mass layoff. See Lab. Code. § 1402.5(d).

I. FACTUAL BACKGROUND

A. The Request for Determination

On or about July 6, 2011, DIR received a letter dated June 29, 2011, from Labor & Employment Law Counsel, Crystal M. O'Brien, on behalf of Good Samaritan. Ms. O'Brien's letter to DIR enclosed a June 22, 2011, letter to the Employment Development Department. The June 22, 2011, letter, submitted on behalf of Good Samaritan, seeks exception to the Cal-WARN Act requirements under Labor Code § 1402.5 for an anticipated mass layoff.

B. Evidence Submitted in Support of Request for Determination

In support of its request, Good Samaritan submitted a declaration from Vicki Nguyen, Chief Financial Officer for Good Samaritan. Attached to Nguyen's declaration, Good Samaritan also submitted a June 7, 2011, correspondence from the County of Kern to Noel Cabezzas, Chief

¹ All statutory section references are to the California Labor Code.

Operating Officer for Good Samaritan and a May 4, 2011, email correspondence from Good Samaritan management regarding an effort to obtain a line of credit.

According to the documents and information submitted, Good Samaritan is a private medical facility with a corporate office and main campus located at 901 Olive Street and a Southwest campus located at 5201 White Lane, both in Bakersfield, CA. Collectively, the two campuses employ 400 workers as medical physicians, nurses, medical assistants, technologists, and administrative personnel.

In May, 2011, Good Samaritan was informed by Kern County that it would no longer be designated as a facility to serve involuntarily admitted adult patients and contract funds related to a designation permitting treatment of this population would not be renewed in June 2011. The Declaration of Vicki Nguyen indicates that the loss of this contract severely impacted monthly revenues by cutting cash flow from \$2,300,000 to \$1,400,000 with monthly payroll costs of approximately \$1,380,000 and \$840,000, respectively.

While seeking to reverse the County's decision regarding the hospital's designation, Good Samaritan also began taking steps to develop lines of credit with several lending institutions. Despite these measures, Ms. Nguyen stated that she held the opinion that a mass layoff would be necessary, the hospital would not be able to afford a 60-day notice, and that such notice would have an adverse impact on investment opportunities and applications for lines of credit. She also stated her belief that remaining employees will likely leave their employment if the 60 day notice were required. Ms. Nguyen concluded that the hospital would return the greater majority of employees back to work within the next year and likely not have to contemplate further layoffs.

II. EXCEPTION FOR EMPLOYER ACTIVELY SEEKING CAPITAL OR BUSINESS UNDER SECTION 1402.5

Section 1401(a) requires "[a]n employer may not order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order . . ." Section 1402.5 provides a limited exception to the notice requirement:

- (a) An employer is not required to comply with the notice requirement contained in subdivision (a) of Section 1401 if the department determines that all of the following conditions exist:
 - (1) As of the time that notice would have been required, the employer was actively seeking capital or business.
 - (2) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination.

- (3) The employer reasonably and in good faith believed that giving the notice required by subdivision (a) of Section 1401 would have precluded the employer from obtaining the needed capital or business.
- (b) The Department may not determine that the employer was actively seeking capital or business under subdivision (a) unless the employer provides the Department with both of the following:
 - (1) A written record consisting of all documents relevant to the determination of whether the employer was actively seeking capital or business, as specified by the Department.
 - (2) An affidavit verifying the contents of the documents contained in the record.
- (c) The affidavit provided to the Department pursuant to paragraph (2) of subdivision (b) shall contain a declaration signed under penalty of perjury stating that the affidavit and the contents of the documents contained in the record submitted pursuant to paragraph (1) of subdivision (b) are true and correct.
- (d) This section does not apply to notice of a mass layoff as defined by subdivision (d) of Section 1400. (emphasis added)

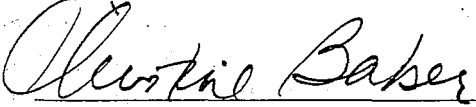
A mass layoff is defined as a layoff during any 30-day period of 50 or more employees at a covered establishment. A mass layoff is further defined as a separation from a position for lack of funds or lack of work. See Lab. Code § 1400(c) & (d).

Unlike a termination or relocation, the actively seeking capital or business exception does not apply to a mass layoff. See Lab. Code § 1402.5(d). The information and documents submitted by Good Samaritan do not support the conclusion that the exception for notice applies to its anticipated mass layoff of employees. Accordingly, Good Samaritan's request for exception is denied.

III. CONCLUSION

Based on the foregoing reasons and under the facts presented here, Good Samaritan has failed to meet the requirements under Section 1402.5. It is therefore not entitled to an exception from the employee notice requirements contained in Section 1401.

Dated: July 19, 2011


Christine L. Baker, Acting Director
Department of Industrial Relations