

CLIENT ALERT

DOL Issues WARN Act Guidance to Federal Contractors in Light of Sequestration

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On July 30, in the latest twist in the ongoing drama surrounding the sequestration process, the Department of Labor issued guidance regarding federal contractors' responsibilities under the Worker Adjustment and Retraining Notification (WARN) Act. The DOL's guidance declares that "in the context of prospective across-the-board budget cuts ...WARN Act notice[s] to employees of Federal contractors, including in the defense industry, is not required 60 days in advance of January 2, 2013, and would be inappropriate, given the lack of certainty about how the budget cuts will be implemented and the possibility that the sequester will be avoided before January." Adding to the growing confusion over mandatory sequestration cuts slated to begin January 2, the DOL's guidance (which does not carry the force and effect of law) states that although sequestration "may" occur, it is "not necessarily foreseeable," in part because agencies "have some discretion in how to implement the required reductions if sequestration were to occur." On that basis, the DOL opines that contractors would be excused from the WARN Act's 60-day notification requirement in the event of sequestration.

The DOL's Guidance does not necessarily mean that the notification issue is dead for employers potentially affected by sequestration. There is the possibility that the DOL's announcement will not carry the day if an employer is challenged under the WARN Act. While the guidance above is consistent with the preamble to the WARN Act regulations -- which state that blanket notice to workers is not appropriate -- the DOL has also previously stated in a Fact Sheet that "since it has no administrative or enforcement responsibility under" the WARN Act, it "cannot provide specific advice or guidance with respect to individual situations." As this issue continues to develop, and as January 2, 2013 draws closer, employers who may be subject to sequestration should continue to assess their potential notice obligations based on the circumstances relating to their federal contracts and subcontracts.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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