

DEPARTMENT OF INDUSTRIAL RELATIONS
Office of the Director
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San Francisco, CA 94102
(415) 703-4240



April 3, 2006

Via Facsimile to (925) 932-1961
And Via US Mail

Mr. Stephen Davenport
Davenport Gerstner & McClure
1990 North California Boulevard, Ste. 650
Walnut Creek CA 94596

Re: Request for Exemption Under
Labor Code §1402.5 (Cal-WARN Act)
Employer: Anderson Truss

Dear Mr. Davenport,

This constitutes the determination of the Director of Industrial Relations regarding the applicability of Labor Code §1402.5¹ to the closure of the Dixon plant of the Anderson Truss Company ("Company"). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Company meets the requirements of section 1402.5 and therefore is excused from providing its affected employees with the 60-day notice required by section 1401(a).

Summary of Facts

The Company manufactures roof and floor trusses, which are installed in new homes to support roofs and floors. Company maintains three plants, in Dixon, in Lathrop, and in Marysville, California. Only the Dixon plant is the subject of this Determination. Three of Company's largest clients are Beazer Homes, D.R. Horton and JMC Homes, each of whom is a national company in the business of building new homes.

Since November, 2005, the Company has operated the Dixon plant at reduced staffing levels due to a seasonal decrease in new home building and consequent decreased demand in the industry for trusses. At that time, the Company implemented a work-sharing plan with the Employment Development Department (EDD), which allows employees to work less than full time while receiving supplemental

¹ All statutory references herein are to the Labor Code, unless otherwise indicated.

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unemployment benefits from EDD. The Dixon plant employs approximately 90 people.

In December, 2005, Company received projections from Beazer Homes, D.R. Horton and JMC Homes, stating that they planned to build a total of 3,866 new homes in Northern California, for which Company would supply the trusses. Thus, at that time, Company expected plant operation to return to normal levels.

As of February 21, 2006, Beazer Homes, D.R. Horton and JMC Homes had all advised Company that they would be building, on average, 36% fewer homes than had been expected in December. Accordingly, they would be requiring 36% fewer trusses from Company than had been expected. This reduction is consistent with decreases experienced by other businesses in the building industry.

Due to the downturn in business, Company intends to close the Dixon plant as soon as possible. An administration office located at the site will remain open and continue to administer the two remaining plants, but the truss production operations which comprise the Dixon plant will completely close.

The Company believes that to announce the plant closure any sooner would have caused its large customers to place their truss orders with other competitors. In order to attract business of large home builders, the Company needs to be able to show them that it has the plant capacity and workforce necessary to fill orders in a timely fashion. Announcing a plant closure would have driven away business the Company needed and expected to get.

The Company would like to close down the Dixon plant immediately, or by early April. It is requesting an exemption from section 1401, which requires the Company to give its workers notice 60 days in advance of the closure, which would have been early February.

Analysis

Section 1400 et seq (known as the "Cal-WARN Act") provides, in pertinent part, that prior to closure of a "covered establishment," an employer must give its employees sixty days' notice of the pending closure. Section 1401(a) defines a "covered establishment" as "any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 75 or more persons." Section 1400 (a) An "employer" is any person who owns and operates a covered establishment. Section 1400 (b). The Dixon plant at issue here is a covered establishment because it employed

approximately 90 people during the past twelve months. Anderson Truss owns and operates the Dixon plant and therefore is an employer within the meaning of the Act. As such, it is required to give its employees 60 days notice of the plant closure, unless it is excused from the notice requirement.

Section 1402.5 (known as the "faltering company exception") provides as follows:

(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. ...

... d) This section does not apply to notice of a mass layoff as defined by subdivision (d) of Section 1400.

As a threshold matter, the closure of the Dixon plant is not a mass layoff but rather is a termination as defined by Section 1400 (f) : "the cessation or substantial cessation of industrial or commercial operations in a covered establishment." Therefore, Section 1402.5(d) is inapplicable.

If the plant is to be closed in early April, then the "time that the notice would have been required" was early February. As of that time, the Company was actively seeking business from its three main clients. It had received projections from its clients indicating that demand for trusses would increase in the coming months, and it had maintained its workforce with the expectation that this business was forthcoming. Thus, the first element of Section 1402.5 is met.

The second element is also met. Had the company received the number of orders for trusses that it had anticipated, there would be no need for it to close the plant.

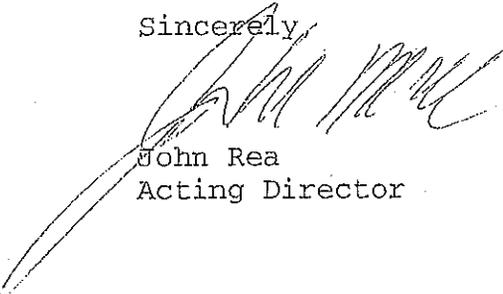
Finally, the third element is met because the employer reasonably believed that giving the notice would have caused its clients to take their business elsewhere. The Company

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understandably did not want to raise doubts that it would be unable to handle the business its clients had promised to bring.

For the foregoing reasons, under the facts presented here, the Company is excused from the 60-day notice requirement pursuant to section 1402.5(a).

Sincerely,



John Rea
Acting Director