January 29, 2024

2023 New Jersey Employment Law Recap and Looking Ahead in 2024

Over the past year, there have been several notable updates in New Jersey employment laws of which employers should be aware. Below, we summarize some of the significant changes that occurred during 2023 and those on the horizon in 2024.

Changes That Occurred in 2023

The New Jersey Attorney General Is Aggressively Pursuing Employee Misclassifications

In 2020 and 2021, New Jersey Gov. Phil Murphy signed legislation that enhanced New Jersey's power to curtail misclassification of workers. The legislation includes the power to bring actions in Superior Court, increase penalties for misclassification and issue stop-work orders. On December 11, 2023, the New Jersey Attorney General's Office announced that it filed the first lawsuit in connection with its enhanced enforcement of worker misclassifications. The Attorney General's Office filed the lawsuit against two shipping and logistics companies to recover millions of dollars in back wages, penalties and fines due to the alleged misclassification of more than 300 drivers as independent contractors. Whether an individual is an employee or an independent contractor has great significance for employee pay and benefits such as earned sick leave, wage and hour issues, and workers' compensation. Employers can expect increased focus on worker classification going forward, and they should carefully review all independent contractor arrangements to ensure compliance with the law.

Service Workers Are Given More Layoff Protections in New Jersey

Gov. Murphy signed into law the Service Worker Retention Law, which protects certain service workers in covered locations from the sudden and unexpected loss of employment due to changes in ownership. The law, which took effect October 22, 2023, requires that upon a change in the contract service provider, the successor employer is required to continue to employ the service employees at that location for 60 days following the change in ownership. "Service employee" is defined as "an individual employed or assigned to a covered location on a full or part-time basis for at least 60 days and who is not a managerial or professional employee or regularly scheduled to work less than 16 hours per week" in certain jobs provided under the law. The specific types of jobs that come under the service employee definition are working in the care or maintenance of a building or property; food preparation services at schools; passenger-related security services, cargo-related and ramp services, in-terminal and passenger handling at airports; and cleaning services. Covered locations range from schools and hospitals to nursing care facilities, senior care centers and airports. The successor employer is not required to retain covered service workers for 60 days if all of the following criteria are met: the employer (1) finds that fewer employees are required to perform the work than the predecessor employer employed, (2) retains employees by seniority in each job classification, (3) maintains a preferential hiring list of employees not retained and (4) hires additional service workers from that list in order of seniority. The law requires current owners of eligible locations to give service workers notice of an impending change in ownership at least 15 days before such change takes effect, to post a notice of the impending change in ownership at job sites, to provide service workers with the name and contact information of the new owner, and to provide the new owner with a list of current employees. New Jersey's new Service Worker Retention Law places substantial restrictions on an employer's right to make certain personnel decisions following the purchase of covered locations and to immediately terminate the employment of certain service workers. New Jersey employers should be aware of their rights and

obligations when purchasing businesses that are covered locations, and they should seek counsel to assist with any such transitions.

Groundbreaking Changes to Temporary Workers' Rights in New Jersey

As we previously discussed **here** earlier this year, Gov. Murphy signed into law the Temporary Workers' Bill of Rights (TWBOR), a new law that greatly expanded the protections afforded to New Jersey's temporary service workers. As of August 5, 2023, all provisions of the TWBOR have gone into effect. The New Jersey Department of Labor and Workforce Development (NJDOL) issued proposed rules providing clarification of certain provisions of the TWBOR last summer, but final rules have not yet been issued. The proposed rules include:

- Recordkeeping requirements for both temporary staffing agencies and third-party clients, as well as a prohibition against retaliation.
- Clarification that the TWBOR applies to New Jersey residents assigned to work outside New Jersey.
- Descriptions of the method for calculating the hourly rate of pay that the temporary help service must pay the temporary laborer, including guidance on how to determine "whether a temporary laborer and an employee of a third-party client are performing substantially similar work."

Significantly, temporary staffing agencies and employers that hire workers through these agencies bear the cost and burden of compliance. A temporary worker may bring a lawsuit under the new law against both the temporary staffing agency and the third-party client, and both entities can be held jointly and severally liable for payment of wages or any other violation. To protect employers from potential liability for violations committed by a temporary staffing agency, employers should have strong indemnification protection in their agreements with any temporary staffing agency with which they do business. While the proposed rules may not be in their final form, they do offer employers and temporary staffing agencies necessary and valuable information to ensure compliance with the key requirements of the TWBOR. Employers that contract with temporary staffing agencies should thoroughly review and understand their new obligations under the TWBOR and should seek legal counsel to ensure compliance.

District of New Jersey Reiterates What Is Just Not Reasonable

As we previously discussed **here**, the U.S. District Court for the District of New Jersey reaffirmed that an employee's request for an indefinite period of light duty or unpaid medical leave is not a reasonable accommodation under the New Jersey Law Against Discrimination. The court's decision in *Wraith v. Wayfair, Inc.* adds to the growing body of case law holding that while employers are still required to provide disabled employees with reasonable workplace accommodations under both state and federal antidiscrimination laws, such accommodations do not include indefinite periods of light duty or indefinite periods of unpaid medical leave. Employers need to continue to engage in the interactive process whenever an employee indicates that they are unable to perform the essential functions of their position due to a medical condition that may rise to the level of a disability. If during the interactive process an employee is unable to provide the employer with a reasonable and firm timeline for their return to full duty, the employer may be able to deny requests for certain open-ended accommodations, such as indefinite unpaid medical leaves and light duty assignments.

New Jersey Employers Face New Reporting Requirements Under Unemployment Insurance Law

As we previously discussed **here**, Gov. Murphy signed amendments to the New Jersey Unemployment Compensation Law in November 2022, and it became effective on July 31, 2023. These amendments contain new reporting obligations for employers, penalties for noncompliance and timeline changes to the unemployment benefits determination process. Among other things, the amendments

- require employers to provide additional information to the NJDOL;
- make clear that an employer's failure to provide the required information to the NJDOL subjects the employer to increased fines and penalties; and

- modify certain deadlines relating to the unemployment benefits determination process.

The amendments impose new requirements on employers that they have not previously had to consider, and noncompliance may result in significant penalties. Employers should review their current practices regarding addressing claims for unemployment benefits and ensure that their employee separation procedures align with these new requirements.

After COVID-19 Delay, New Jersey WARN Act Amendments Took Effect

As we previously discussed **here**, the amendments to the New Jersey Worker Adjustment and Retraining Notification Act (NJ WARN Act) took effect on April 10, 2023, after a nearly three-year reprieve due to the COVID-19 pandemic. The NJ WARN Act amendments are significant; among other things, they require New Jersey employers to provide mandatory severance pay to employees following a qualifying event, provide for lower thresholds used to determine when a qualifying event has occurred and increase the notice period from 60 days to 90 days.

New Jersey Lifts COVID-19 Testing Requirements for Healthcare and Congregate Care Employees

On April 4, 2023, Gov. Murphy signed Executive Order 325, which rescinds COVID-19 testing requirements put in place for employees in certain healthcare and high-risk congregate care settings. The executive order also removes vaccination requirements for employees in congregate care settings. Employees of healthcare facilities are still required to provide proof of COVID-19 vaccination to protect the higher-risk populations that they serve.

Increase in New Jersey's Minimum Wage

On January 1, 2024, New Jersey's statewide minimum wage increased to $15.13 per hour for most workers. This increase is part of legislation signed by Gov. Murphy in February 2019 that gradually raised the minimum wage to $15 per hour by this year for most employees. The NJDOL sets the minimum wage for each year using the rate specified in the law or a calculation based on the Consumer Price Index, whichever is higher. Different rates and requirements apply to employers with fewer than six employees, employers in the agricultural industry, and employers with seasonal or tipped workers. Failure to comply with the New Jersey minimum wage law may subject employers to significant liability, including civil penalties and treble damages for unpaid wages.

What May Be on the Horizon for 2024

New Jersey Businesses May Be Required to Provide Pay Transparency

A pay transparency bill (A3937) currently pending in the New Jersey State Assembly requires New Jersey businesses with five or more employees to provide pay transparency in employment listings and for promotional opportunities. This bill received an initial Assembly labor committee hearing on March 23, 2023, and business groups were able to convince the bill sponsor to remove language about the possibility of enforcement by civil litigation. No action has been taken since this hearing.

New Jersey Bill Seeking to Limit Restrictive Covenants Still Alive

New Jersey Assembly Bill 3715 (A3715) is still pending before the New Jersey Legislature. If passed, the bill would immediately impose some of the most stringent procedural requirements on New Jersey employers seeking to restrict their employees' post-employment activities, limit the permissible scope and enforceability of certain restrictive covenants, and greatly increase the associated costs of enforcing restrictive covenants against former employees. New Jersey employers should closely monitor the bill and review their existing restrictive covenant agreements to ensure they are narrowly tailored and comply with existing law.

Takeaways

Employers must continually monitor the ever-changing landscape of New Jersey employment laws. With the arrival of the new year, employers in New Jersey should review their current policies and practices and seek counsel to ensure they are in legal compliance and are being proactive to plan for what is coming around the bend.

Authors



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201
New York, NY | (212) 297-5800
rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168
tkelly@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416
Stamford, CT | (973) 966-8416
jleva@daypitney.com



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536
New York, NY | (212) 297-5800
dlschwartz@daypitney.com



Alexis Abuhadba
Associate

Parsippany, NJ | (973) 966-8113
aabuhadba@daypitney.com