June 28, 2021

A WARNing to New Jersey Employers Contemplating Mass Layoffs or Other Business Change

New Jersey employers were given a reprieve from having to comply with the January 2020 amendments to the NJ WARN Act when the July 19, 2020 effective date was put on hold as a result of the COVID-19 pandemic. That reprieve is coming to an end, and employers who intend to transfer or terminate their operations or conduct mass layoffs will soon need to provide employees with greater notice of their actions, pay severance to affected employees and pay more significant monetary penalties for non-compliance.

Summary of Amendments

As previously reported here, the amendments to the NJ WARN Act (officially named the Millville Dallas Airmotive Plant Job Loss Notification Act) are significant and include:

- Easing the triggering threshold of "mass layoff" to include any event involving the termination of employment of more than 50 employees at an "establishment," including those who report into such establishment even if those employees do not physically work in New Jersey (the previous threshold was 500 employees or 50 or more employees comprising 33% of the workforce at an establishment and excluded part-time employees in the calculation);
- Expanding the definition of "establishment" to include all of an employer's non-contiguous locations within New Jersey (rather than a "single site");
- Lengthening the required notice period from 60 days to 90 days; and
- Requiring the payment of severance in the amount of one week for each year of employment to all affected employees (even if the requisite notice is given). Employers that fail to provide the requisite 90-day notice, even by a single day, must pay an *additional* four weeks of severance to each affected employee.

The New Effective Date

In March 2020, Governor Murphy issued Executive Order 103, declaring the COVID-19 Public Health Emergency. In April 2020, the New Jersey Legislature extended the amendments' July 19, 2020, effective date until 90 days following the termination of Executive Order 103. Executive Order 103 is scheduled to terminate, effective July 4. As a result, the amendments ***will go into effect October 2***.

Takeaways

The impact of the NJ WARN Act amendments is significant for employers considering a transfer or termination of operations or a mass layoff. There are a number of unanswered questions relating to the interpretation and administration of the amendments, and the amendments substantially differ from the provisions of the federal WARN Act. Given these factors and the quickly approaching effective date of the amendments, employers should seek assistance from legal counsel to appropriately formulate their business plans for actions prior to the effective date and/or to ensure compliance thereafter.

Authors



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

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

hbrochin@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@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