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New Jersey Becomes First State in the Country To Require Severance in Mass Layoffs

On January 21, Governor Phil Murphy signed into law sweeping amendments to New Jersey's existing WARN Act that will impact how New Jersey employers handle mass layoffs after its July 19 effective date. The Millville Dallas Airmotive Plant Job Loss Notification Act (the NJ WARN Act), enacted in 2007, requires New Jersey employers to provide advance notice to employees in the event of transfer or termination of operations or mass layoff (as those terms are defined in the law). These amendments require employers to provide mandatory severance pay to employees in a mass transfer or termination of operations or mass layoff, expand the definition of "mass layoff," extend the current 60 day notification requirement to 90 days, and enhance the penalties available for noncompliance with the NJ WARN Act.

Employers in New Jersey may be subject to both the NJ WARN Act and the federal Worker Adjustment and Retraining Notification (WARN) Act. Under the federal WARN Act, employers with 100 or more full-time employees must provide impacted employees 60 days' advance written notice when either a "plant closing" or a "mass layoff" occurs. A plant closing is defined by federal law to include a shut down of a single site of employment or "operating unit" that results in an employment loss for 50 or more employees (excluding part-time employees) during any 30-day period. Meanwhile, a "mass layoff" under federal law happens if (1) there is an employment loss of at least 33% of the workforce (so long as 50 or more employees are affected) within a 30-day period at a single site of employment, or (2) 500 or more employees at a single site of employment lose their jobs during a 30-day period. Two or more employment actions occurring within 90 days of each other that individually would not meet the minimum employee threshold may be aggregated (thus triggering WARN's notice requirements).

The NJ WARN Act initially shared many similarities with the federal WARN Act, including the basic employee threshold requirements and covered events (although New Jersey also included as a "covered event" any "transfer of operations" — the permanent or temporary transfer of operations to a location outside of New Jersey, irrespective of the distance of the relocation). Like its federal counterpart, the NJ WARN Act will aggregate separate events occurring within 90 days of each other.

The NJ WARN Act's amendments completely rewrite the book on mass layoffs. The most dramatic change is to require an employer to provide severance **regardless** of whether the employer provides sufficient advance notification. New Jersey is the first state to go this far in its mass layoff law. As of the effective date of the amendments, employers conducting a mass layoff or other covered event must provide each terminated employee with severance pay equal to one week of pay for each full year of employment. The severance mandate applies **even if** the employer complies with the law's notice requirements. Notably, as written, the severance requirement appears to apply irrespective of whether the employer has 100 or more employees, so long as the employer engages in a covered event as defined by the law. Further, there is no requirement that employees who are provided severance sign a release — creating additional risk issues for the employer.

The amendments also include a new penalty for employers that fail to provide sufficient notice. If an employer fails to comply with the law's notice requirements (regardless of whether the notification is a day late or 90 days' late), the employer must **also** provide, to each affected employee who did not receive sufficient notice, an additional four weeks of severance pay.

While the mandatory severance pay requirement is the biggest change to the law, employers should note several other major amendments to the NJ WARN Act, including the following:

- The amendments lengthen the notice requirements under the NJ WARN Act for employers conducting a transfer or termination of operations, or a mass layoff, from 60 days to 90 days.
- The amendments **remove** the requirement that a covered event must happen at a "single site" of employment to be considered a "mass layoff." Instead, even a group of non-contiguous New Jersey facilities will be aggregated as one "establishment" to determine whether a covered event occurred.
- The amendments substantially change the definition of "mass layoff," eliminating the threshold requirement that one third of the workforce at an establishment are terminated; thus, a layoff of 50 or more employees (aggregated across New Jersey locations) triggers the NJ WARN Act. Additionally, the amendments make clear that the 50-employee threshold includes employees "reporting to" the establishment even if those employees do not physically work in New Jersey.
- The amendments remove any distinction between part-time and full-time employees when counting toward thresholds. All part-time and full-time employees are counted toward the 50-employee threshold for a mass layoff.
- The amendments also emphasize that even individuals or groups of individuals may be considered "employers" subject to the NJ WARN Act, if they act directly or indirectly in the interest of an employer. The definition of employer also includes any person who owns or operates an employer, and any person who makes the decision to conduct a mass layoff or other covered event.

With less than six months remaining before the effective date, employers should familiarize themselves with the amendments. Employers should also keep the NJ WARN Act's expansion on July 19 in mind as they conduct workforce planning for 2020. More importantly, they should seek out counsel and closely scrutinize any potential layoffs and plant closings in 2020 and beyond to ascertain their risk under the NJ WARN Act and other unanticipated costs of mass layoffs and transfers or terminations of operations.

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