January 19, 2022

2021 Recap and What's New for 2022: Updates to New Jersey Employment Law

Employers must be aware of the number of noteworthy changes to New Jersey's employment laws that occurred in 2021, and/or become effective in 2022, else they risk significant liability.

The following changes were enacted in 2021:

Amendments to the New Jersey Law Against Discrimination

As we previously stated here, significant amendments were made to the New Jersey Law Against Discrimination (NJLAD) in 2021. On October 5, Governor Phil Murphy signed into law amendments that expanded the scope of protections against age discrimination. Specifically, the amendments remove the "safe harbor" provision that permitted employers not to hire or promote employees who were over the age of 70. The amendments also expand the remedies available to employees forced to retire due to their age beyond reinstatement and back pay, to include all remedies available under the NJLAD, such as front pay, emotional distress damages, punitive damages and attorneys' fees.

Amendments to Workers' Compensation Act

On September 24, Governor Murphy signed into law amendments to New Jersey's Workers' Compensation Act that require employers with 50 or more employees to provide a "hiring preference" to employees who have reached maximum medical improvement following a work-related injury but are unable to return to their previous position. Under these amendments, employers must provide qualifying employees a preference for any existing and unfilled positions for which they can perform the essential duties. The amendments, however, raise several unanswered questions. For one, they do not define "hiring preference" or provide any guidance on employers' obligations. Additionally, the amendments are silent on legal avenues or remedies available to aggrieved employees, as they do not expressly permit employees to sue their employers or provide a forum in which aggrieved employees can bring such claims.

Independent Contractor Misclassification Laws

On July 8, Governor Murphy signed into law four bills that crack down on misclassification of employees as independent contractors. Unlike employees, independent contractors are generally not entitled to benefits and protections under wage, benefit and tax laws. This legislative package was designed to limit such misclassifications. One of these new laws (S-3920) authorizes the Commissioner of Labor and Workforce Development (DOL) to issue stop-work orders against all locations of an offending business, not just the location of the violation. The law also provides the DOL a judicial remedy against employers who violate stop-work orders, including injunctive relief and pursuit of individual or class claims, if necessary. Employers may be fined up to $5,000 per day for each day they conduct business in violation of such stop-work orders. Workers affected by such stop-work orders must still be paid by their employer for the first 10 days of work lost resulting from such stop-work orders. Another law (S-3922) renders employers that "knowingly" or "purposely" misclassify employees as independent contractors to evade insurance premiums liable under the New Jersey Insurance Fraud Prevention Act (NJIFPA). Employers that violate the NJIFPA may be subject to penalties for fraud, which can include fines starting at $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation.

Updates on New Jersey Cannabis Law

On February 22, Governor Murphy signed into law three cannabis reform bills that legalize the use and possession of recreational marijuana and impose new restrictions on employers with respect to employees who use marijuana, both medically and recreationally. The Cannabis Act, one of the bills enacted, establishes workplace nondiscrimination rules for recreational cannabis or marijuana users. Despite the protections under the Cannabis Act, employers are not required to accommodate cannabis use in the workplace and may still maintain drug- and alcohol-free workplaces. The Cannabis Act also establishes procedures for employer drug testing, but expressly prohibits employers from taking adverse employment actions against employees based merely on the presence of cannabis items found in a positive drug test result, even against those in safety-sensitive positions. One of the other newly-enacted laws (Section 15 of the decriminalization law) prohibits employer inquiries related to an applicant's marijuana-related criminal history. This prohibition does not apply to applicants for positions in law enforcement, corrections, the judiciary, homeland security or emergency management.

Expansion of Family Leave Entitlements

On October 18, the New Jersey Division of Civil Rights, the agency responsible for enforcing the New Jersey Family Leave Act (NJFLA), adopted final changes to a number of NJFLA rules and regulations to reflect numerous NJFLA amendments enacted over the years. These changes generally broaden the application of the NJFLA and include:

- expanding the definition of "covered employer" to include employers with 30 (previously 50) or more employees worldwide, consistent with the 2019 amendments to the NJFLA;
- expanding the definition of "eligible employee" to include persons who were laid off or furloughed (up to 90 days thereafter) due to slowed business operations resulting from COVID-19 or other states of emergency;
- expanding the definition of "family member" to include additional family members such as an employee's parent-in-law, sibling, grandparent, grandchild or domestic partner; an employee's other blood relatives; and any other individual with whom an employee can show a close association equivalent to a family relationship;
- expanding the definitions of "parent" and "child" to include parent-child relationships within LGBTQ families and other parent-child relationships resulting from a valid written agreement with a gestational carrier;
- eliminating employers' discretion to deny family leave requests from their highest-paid employees when the employee's request is related to a declared public health emergency involving an epidemic of a communicable disease; and
- specifying that employees may provide their employers with less than 30 days' advance notice of their intent to take family leave in some situations, including when the employee is seeking family leave to provide care for a family member due to a communicable disease epidemic.

Small Business Retirement Marketplace Act

On March 28, 2019, Murphy signed into law the New Jersey Small Business Retirement Marketplace Act. The Act requires employers that do not already offer a qualified retirement plan such as a 401(k) or 403(b) plan to automatically enroll their employees in the New Jersey Secure Choice Savings Program. Employers subject to the Act are those that have been in business for at least two years and have at least 25 New Jersey employees. Employers with less than 25 employees may voluntarily participate in the Program, but are not obligated to do so.

The Act generally requires an employer to automatically enroll a new employee within three months of the employee's date of hire with three percent of wages deposited into a fund established under the Program. Enrollees may change their contribution level once per calendar quarter, and annual deferrals may not exceed the deductible amount for IRA contributions under the Internal Revenue Code ($6,000 for 2022; $7,000 for employees aged 50 or older). Employees may opt out of the Program at any time. Any employee who chooses to opt out must have an opportunity to enroll in the Program at least once per year.

Under the Act, employers must provide information about the Program and forms employees can use to opt out or elect a level of contribution other than three percent. While the enrollment period began in March 2021, qualifying employers were only required to enroll their employees in the program before the end of 2021.

The following changes were enacted earlier than 2021, but become effective in 2022:

Increase to New Jersey Minimum Wage

Effective January 1, 2022, New Jersey's statewide minimum wage increases to $13 per hour for most workers. This increase is part of legislation signed by Governor Murphy in February 2019 that will gradually raise the minimum wage to $15 per hour by 2024 for most employees. Different rates and requirements apply to employers with fewer than six employees, employers in the agricultural industry, and employers with seasonal and 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.

Amendments to the NJ WARN Act

As we previously discussed here, on January 21, 2020, Governor Murphy signed into law significant amendments to New Jersey's Millville Dallas Airmotive Plant Job Loss Notification Act, otherwise known as the New Jersey WARN Act (NJ WARN). NJ WARN generally requires that New Jersey employers provide advance notice to employees of certain qualifying events, such as mass layoffs, business transfers or business closures. The amendments to NJ WARN were set to go into effect on July 19, 2020. As we previously discussed here, following the onset of the COVID-19 pandemic, the effective date of these amendments was postponed until 90 days following the expiration of Executive Order 103 (which declared a State of Emergency due to the pandemic and which was extended for an additional 45 days on January 11, 2022). When the amendments eventually do go into effect, they will generally expand the application of NJ WARN, such as by requiring New Jersey employers to provide mandatory severance pay to employees following a qualifying event, lowering the threshold employee requirement for qualifying events, increasing the notice period prior to a qualifying event, and expanding coverage to all employees of qualified employers.

The Bottom Line

Employers must continually monitor the ever-changing landscape of New Jersey employment law. With the arrival of 2022, employers in New Jersey should review their current policies and practices and seek counsel when needed to ensure they are in compliance.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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