

**Major Revisions to New Jersey's WARN Act
Require Payment of Severance,
Expand Notice Requirements, and
Increase Liability for Mass Layoffs**

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On January 21, 2020, New Jersey Governor Murphy enacted major revisions to the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act, commonly referred to as the New Jersey WARN Act ("NJ WARN Act"), that make this the most draconian and costly state law WARN in the nation.

Once effective, the amended [NJ WARN Act](#) (the "Law") will not only require 90 days' advance notice of mass layoffs or of a transfer or termination of operations—rather than the current 60 days' notice—but most significantly, New Jersey will now be the first state in the nation to mandate statutory severance pay for all employees who lose their job in a WARN event such as a "mass layoff." In addition, the amendments substantially change the methodology for determining whether a WARN event is triggered by (1) eliminating the "one-third" of the workforce threshold for mass layoffs and (2) requiring aggregation of all terminations at all employer worksites within the state, rather than by treating terminations on a site-by-site basis. Further, the Law now applies to all employees, not just full-time workers. With these changes, the Law creates significant financial liability for covered New Jersey employers that undergo a triggering WARN event, and makes it significantly more likely that NJ WARN Act notice and severance obligations will apply.

When enacted in 2007, the NJ WARN Act largely tracked the federal Worker Retraining and Notification ("WARN") Act by requiring New Jersey private employers with 100 or more full-time workers to provide 60-day notice to affected full-time employees in the event of a mass layoff or a transfer or termination of operations. The WARN Act then applied to establishments with a single location or in a group of contiguous locations (such as a group of buildings in an office park) and mandated payment of severance only when a covered employer failed to provide affected full-time employees with the required amount of notice of termination or layoff.

Under the Law, which becomes effective July 19, 2020 (180 days after enactment), New Jersey employers will be required to give affected employees 90 days' notice and

severance pay of one week's pay for every full year of employment, irrespective of whether the employer complied with the state's WARN Act notice requirements. Where an employer fails to give the required amount of notice, the required amount of severance pay is increased by an additional four weeks' pay per affected employee. These severance amounts cannot be conditioned on obtaining a release of claims from the employee, and the amounts apply to both full- and part-time employees.

The Law, enacted in response to recent corporate bankruptcies—most notably that of Toys R Us, which resulted in job losses for thousands of New Jersey employees—does not limit severance pay liability to the employer entity alone. Significantly, the Law imposes the obligation to pay severance on the decision-makers directly or indirectly responsible for the layoff or termination decision—potentially including individuals—by defining the term “employer” exceedingly broadly. For the purposes of responsibility for payment of severance, the term “employer” includes:

any individual, partnership, association, corporation, or any persons or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and includes any person who, directly or indirectly owns and operates the nominal employer or makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification.

As such, if an employer fails to satisfy its severance obligations, liability can potentially attach to an individual who makes a decision responsible for the employment action that gives rise to the mass layoff, even if that person was not directly employed by the employer.

In addition, among other things, NJ WARN now:

- expands the advance notice requirement from 60 days to 90 days;
- removes the distinction between “part-time” and “full-time” employees, such that part-time and short-service employees are now:
 - counted in determining whether an employer meets the 100-employee threshold for being a covered employer; and
 - counted in determining whether a termination, transfer, or layoff meets the threshold for required notice;
- removes the requirement that to trigger a “mass layoff,” at least one-third of the employer’s workforce at a worksite experiences a loss of employment; and
- broadens the definition of “Establishment” to include all of an employer’s New Jersey locations (not just those that are contiguous), eliminating the site-by-site analysis of terminations to determine if NJ WARN Act notice is required.

In short, within any 30/90 day counting period, the termination of as few as 50 employees across all of an employer's New Jersey worksites—regardless of the percentage of the workforce impacted—will trigger the expanded NJ WARN notice and severance requirements.

What Employers Should Do Now

- Employers that have severance plans should review their program to ensure that it comports with the requirements of the Law in circumstances of a mass layoff of New Jersey employees.
- Employers who condition severance on an employee's release of claims should ensure that severance agreements for mass layoffs provide more severance than required by the Law.
- Investigate whether the company's D&O/E&O insurance will cover potential individual liability for payment of severance if the company goes bankrupt or is otherwise unable to pay mandated severance. If coverage is lacking, determine if additional coverage is available.
- If contemplating a relocation or reduction of operations that may result in a mass layoff of New Jersey employees, include the potential costs of mandated severance in the financial analysis and consider whether to accelerate implementation to a date before July 19, 2020.

In sum, even though the effective date of the Law is six months away, employers who are considering a reduction-in-force of New Jersey employees should start careful planning as soon as possible. Whether the reduction is by job elimination or relocation, such planning will be more critical than ever to avoid significant financial exposure to the company—as well as to avoid potentially significant financial exposure to any supervisor, manager, executive, officer, director, or owner who was directly or indirectly involved in the decision-making process.

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