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New Jersey to require employers to provide severance pay

On January 21, Governor Phil Murphy signed legislation making New Jersey the first state to mandate severance pay for employees impacted by plant closings, transfers, or mass layoffs. The new law will affect businesses that lay off 50 or more employees within a 30-day period, starting July 19, 2020. Employers contemplating layoffs should factor the new obligations into their workforce planning and severance programs.

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Background

New Jersey's mini-WARN law, the [Millville Dallas Airmotive Plant Job Loss Notification Act](#) (NJ WARN or Act), requires employers with at least 100 full-time employees to provide 60 days' advance notice of a "mass layoff" or a "transfer" or "termination" of operations at a covered "establishment" within the state. Under existing state law:

- An establishment is a single location (other than a temporary construction site) or a group of contiguous locations operated by an employer for longer than three years.
- A transfer of operations is the permanent or temporary transfer of a single establishment, or one or more facilities or operating units within a single establishment, to another location inside or outside the state.
- A termination of operations is the permanent or temporary shutdown of a single establishment, or of one or more facilities or operating units within a single establishment (referred to as a "plant closing" under the federal Worker Adjustment and Retraining Notification (WARN) Act).
- A mass layoff is a reduction in force — not the result of a transfer or termination of operations — resulting in the termination at an establishment during any 30-day period of either (1) 500 or more full-time employees, or (2) at least 50 full-time employees representing one-third or more of the full-time employees at the establishment.

Transfers and terminations of operations that result in at least 50 full-time employees losing their jobs during a 30-day period and mass layoffs trigger certain notification requirements. Employers that fail to provide at least 60 days' advance notice of those job losses are required, as a penalty, to pay severance to affected employees. Each full-time employee who is terminated with less than the statutorily mandated notice is entitled to one week of severance for each full year of employment in addition to any severance pay the employer provides pursuant to a collective bargaining agreement or for any other reason.

Amended NJ WARN

On January 21, Governor Phil Murphy signed [SB 3170](#) into law, significantly expanding NJ WARN coverage and imposing new employer obligations in the event of a covered mass layoff or a transfer or termination of operations. Effective July 19, 2020, the amended law will:

- Expand the definition of “employer”
- Expand the definition of “establishment” to include all of an employer’s New Jersey locations
- Include both “full-time” and “part-time” employees in calculating the 100-employee coverage threshold and the 50-employee layoff minimum
- Broaden the definition of “mass layoff” to include all reductions in force that result in 50 or more employees at any group of locations within New Jersey losing their jobs
- Increase the advance notice period of a transfer or termination of operations or mass layoff from 60 to 90 days
- Require employers to pay one week’s severance for each full year of service to employees impacted by a covered transfer or termination of operations or a mass layoff — even when proper notice is provided
- Assess a penalty of an additional four weeks of severance pay when employers fail to provide at least 90 days’ advance notice
- Prohibit waivers of employees’ right to severance without approval by the Labor Commissioner or a court

Expanded definitions

The new law expands certain key definitions, including:

Covered employers

The new law expands the definition of “employer” to include “any individual, partnership, association, corporation, or any person 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 owns a corporate subsidiary that, 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.” Notably, the expanded definition extends potential liability to individuals who act in the interest of an employer, including owners and management personnel responsible for such decisions.

Establishment

Removing the “contiguous” requirement, the amended law considers *all* of an employer’s facilities within New Jersey to be one aggregated “establishment,” excluding only operations in effect for three years or less and temporary construction sites from the definition. It eliminates the site-by-site analysis current law requires to determine whether NJ WARN obligations are triggered.

Mass layoff

The new law revises the definition of “mass layoff” to mean a reduction in force, during a 30-day period, that results in the termination of 50 or more full- or part-time employees, removing the current 500-employee and one-third of the workforce requirements. In addition to aggregating terminations at all employer worksites in the state, it also counts employees “at” and “reporting to” an establishment, lowering the threshold triggering employer notice and severance obligations.

Severance pay

Unlike the federal WARN Act, the amended state law includes a severance benefit requiring employers to provide employees who lose their jobs in a covered transfer or termination of operations or a mass layoff one week of severance pay for each full year of employment — even when proper notice is provided. It also adds a severance penalty for an employer’s failure to provide at least 90 days’ notice of impending layoffs. In such circumstances, the employee will be entitled to an additional four weeks of severance pay, as well as any other amounts recoverable by law.

Buck comment. Because affected employees will be statutorily entitled to severance, New Jersey employers that plan to seek a valid release of claims should ensure that any severance agreements offer more than is required by law.

The rate of pay for calculating the amount of severance is the higher of the employee’s average rate of compensation during the last three years or the employee’s final rate of pay. Employees who are entitled to severance under a collective bargaining agreement “or for any other reason” will receive either the statutorily mandated severance or the severance provided pursuant to the agreement or for such other reason, whichever is greater.

In closing

Starting July 19, 2020, businesses that operate in New Jersey will be required to pay severance to employees impacted by certain layoffs, transfers or terminations of operations. Companies that are contemplating related workforce reductions should carefully consider what, if any, obligations they may have under the amended law and revisit their severance programs to ensure compliance.

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