Insights: Alerts

New Jersey WARN Act Amendments Expanding Coverage and Employer Obligations Now Effective

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On January 2020, New Jersey Governor Phil Murphy signed into law Senate Bill 3170, which amended and greatly expanded New Jersey's Millville Dallas Airmotive Plant Job Loss Notification Act (“NJ WARN Act” or “Act”). The amendments were originally scheduled to take effect in July 2020, however, the New Jersey legislature delayed the effective date after the onset of the COVID-19 pandemic. On January 10, 2023, Governor Murphy signed a bill implementing the amendments, effective April 10, 2023.

Now effective, the amendments significantly expand (1) the circumstances under which the Act's notice requirements are triggered, (2) the Act's notice period, and (3) mandate severance payments for all affected employees.[1]

Expanded Coverage

The NJ WARN Act requires employers with 100 or more employees nationwide to provide notice where 50 or more employees at a covered “establishment” are terminated during a 30-day period (sometimes 90 days). Previously, the phrase “establishment” was defined as a “single location or a group of contiguous locations….” Under the amended law, a covered “establishment” may be “a single location or a group of locations, including any facilities located in” New Jersey. Layoffs at an employer's New Jersey facilities will now be aggregated for purposes of determining whether the Act is triggered.

Additionally, the NJ WARN Act previously defined a mass layoff as the termination of either (1) 500 or more employees or (2) at least 50 employees where that number represents at least one-third of the full-time employees at an establishment. Under the amendments, a “mass layoff” triggering the Act's notice requirements includes situations where 50 or more employees are laid off, regardless of whether they are part- or full-time, or whether they amount to one-third or more of the total workforce at an establishment.

Expanded Notice Period

Previously, the NJ WARN Act required employers to provide 60 days' advance notice for mass layoffs or terminations of operations (*i.e.*, a plant closing). The amended law requires employers to provide 90 days' advance notice.

Mandatory Severance Payments for Affected Employees

Prior to the amendments, affected employees were entitled to severance only when the employer failed to provide the required 60 days' notice. The amended Act requires employers to provide all affected employees—regardless of whether they were provided the 90 days' notice—with severance at the rate of one week of pay per full year of employment. If an employer fails to provide the required 90 days' notice, each affected employee is entitled to an additional four weeks' pay. The rate of pay must be calculated using either the employee's final rate of regular pay or the employee's average rate of regular pay over the previous three years.

Where an employee is covered by a collective bargaining agreement ("CBA") or some other severance plan (*i.e.*, one reflected in an employment contract), he or she is entitled to the greater of any severance amount outlined in the CBA or the contractual severance amount.

Key Takeaways

The amendments to the NJ WARN Act impose onerous obligations on employers with 100 or more employees. Employers with employees in New Jersey that plan to reduce their workforce in New Jersey should consider the increased likelihood of triggering the Act's notice requirements and the financial costs associated with complying with the law's mandatory severance requirements.

If you have any questions about this Alert or the effect of the amendments to the NJ WARN Act, please contact the author or one of the attorney(s) in our firm with whom you are regularly in contact.

Footnotes

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[1] The amended law was challenged by the ERISA Industry Committee trade association in the United States District Court for the District of New Jersey. The trade association sought to enjoin the amendments and declare them preempted by ERISA. The federal court granted the Commissioner of the New Jersey Department of Labor and Workforce Development's cross-motion for summary judgment on grounds that the trade association lacked standing to challenge the law. *See ERISA Indus. Comm. v. Asaro-Angelo*, No. 3:20-cv-10094 (ZNQ), 2023 WL 2808105 (D.N.J. Apr. 6, 2023).

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