

New Jersey WARN Amendments Broaden Employer Obligations

The Bottom Line

- Amendments to the NJ Mini-WARN Law create broader employer coverage, new definitions of “mass layoff” and “establishment,” and notice and severance requirements.
- New Jersey employers implementing layoffs should consult with counsel to determine whether the NJ Mini-WARN Law applies to their actions and prepare strategies for compliance if the Law’s obligations are triggered.

Several changes recently went into effect for New Jersey’s law requiring employers to provide notice when shutting down a facility or conducting a mass layoff. The changes, effective April 10, 2023, came with amendments to the Millville Dallas Airmotive Plant Job Loss Notification Act, more commonly known as the NJ Mini-WARN Law.

Key changes from the amendments include:

1. increasing the notice period for a qualifying event to 90 days,
2. reducing the employment termination threshold for triggering a qualifying event to 50 employees, regardless of the size of the workforce at the establishment,
3. mandatory severance pay for affected employees,
4. including part-time employees for purposes of determining coverage under the law and whether a qualifying event has occurred and
5. an expanded definition of “establishment” to include any facilities located in New Jersey.

Given the current economic climate and the forecast for 2023, employers may be implementing cost-cutting measures in the coming months, including workforce reductions. In addition to considering whether the federal Worker Adjustment and Retraining Notification (WARN)

Act will be triggered by such measures, employers also need to consider whether they are implicating state Mini-WARN Laws, such as the newly amended law in New Jersey.

Definition of Employee

Previously, the NJ Mini-WARN Law's obligations only applied to employers with 100 or more full-time employees nationwide. Now, the Law's requirements apply to employers with 100 or more total employees nationwide (including full-time and part-time employees). Similarly, both full-time and part-time employees are now to be counted when determining whether a "mass layoff" has occurred.

Mass Layoff

A "mass layoff" will trigger notice and other obligations under the NJ Mini-WARN Law. Previously, a mass layoff was defined as termination of 500 or more full-time employees at an establishment, or termination of 50 or more full-time employees at an establishment representing at least a third of all full-time employees. In addition to removing the "full-time" employee requirement as noted above, the amendment removes both the 500 employee and one-third requirements. The amended definition also includes employees reporting to an establishment. Thus, a mass layoff occurs when a reduction in force results in the termination of 50 or more employees at, or reporting to, an establishment.

Establishment

Under the amended law, an "establishment" is defined as a single location or a group of locations, including any facilities located in New Jersey. As such, there is a mass layoff when 50 employees working in or reporting to New Jersey locations are terminated within any 30-day period (or any 90-day period for two or more groups of terminations unless the employer shows that the cause of the terminations for each group is separate and distinct).

Notice Period and Mandatory Severance

The Law previously required employers to provide 60 days notice before the first termination in connection with a mass layoff or other qualifying event to the Commissioner of Labor and Workforce Development, the chief elected official of the municipality where the establishment is located and each employee being terminated. If employers failed to do so, they would be required to provide one week of severance pay per full year of employment to each terminated employee. The Law will now have a 90-day notice requirement. Further, as amended, the Law requires one week of severance pay per full year of employment to each terminated employee even if timely notice is provided (and does not contain language permitting such severance

payments to be conditioned on a release of claims). If timely notice is not provided to an employee, that employee is entitled to receive an additional four weeks of severance pay on top of the legally required week of severance per full year of service.

Looking Ahead

New Jersey's expanded WARN requirements make it more likely that New Jersey employers may trigger the NJ Mini-WARN Law's requirements when conducting layoffs. New Jersey employers considering or conducting layoffs should consult with legal counsel to determine whether such actions implicate the NJ Mini-WARN Law and prepare strategies for compliance if there will be a qualifying event under the Law.

For More Information

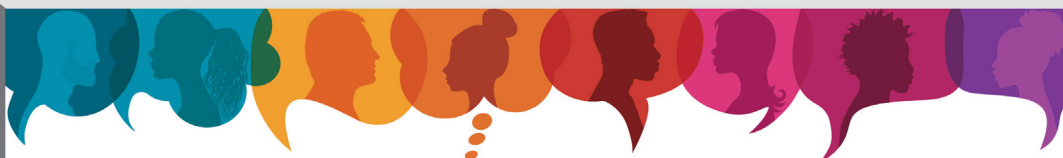
Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

Gregg Brochin**Partner**

212 468 4950

gbrochin@dglaw.com**Ryan Schneider****Associate**

212 468 4817

rschneider@dglaw.com

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