

Publications

Significant Changes To New Jersey's WARN Act

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In January 2020, New Jersey enacted significant changes to the state's existing Millville Dallas Airmotive Plant Job Loss Notification Act, commonly referred to as NJ WARN. The COVID-19 pandemic had delayed implementation of those changes, which will now become effective on **April 10, 2023**. The NJ WARN is far more expansive than the federal WARN Act (see comparison chart below). Contact your Vorys lawyer if you have questions about NJ WARN's impact (or that of the federal WARN or similar state plant closing laws) on your operations.

Expansion of NJ WARN's Mandatory Severance Pay

NJ WARN already required that employers pay **full-time** employees affected by mass layoffs severance pay equal to one week of pay for each full year of employment when the employer failed to provide the requisite 60 days' notice.

As of April 10, 2023, however, employers must provide severance pay to all affected employees (full-time and part-time) – regardless of whether the employer provides 90 days' notice of the mass layoff, termination or transfer of operations. Severance is paid at the rate of one week of pay for each full year of employment. In addition, if the employer provides less than 90 days' notice, the employer must provide the affected employees with an **additional** four weeks of pay. Employees cannot waive their right to severance without the approval of the New Jersey Labor Commissioner or the court.

Finally, the definition of "employer" has been expanded to mean "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." This change creates potential personal liability for any such person who fails to comply with the law's notice and severance requirements.

Comparison of key Provisions of the Federal WARN Act and NJ WARN ACT NJ WARN AS AMENDED Employer Coverage

Any business enterprise with 100 or more employees, excluding part time; or 100 or more employees, including part time, who work a combined total of at least 4,000 regular hours per week

An individual or private business entity operated by an employer for a period longer than three years and employs 100 or more employees (both full-time and part-time) at an establishment **Covered Actions**

Plant Closings: the permanent shutdown of a single site of employment, if the shutdown results in an employment loss during any 30-day period for 50 or more employees

Mass Layoffs: results in an employment loss of at least 33% of the workforce at a single site of employment during any 30-day period, provided at least 50 employees are affected. If 500 employees are affected, the one third requirement does not apply

A transfer of operations, a termination of operations, or a mass layoff during any continuous period of 30 days which results in the termination of employment of 50 or more employees (both full-time and part-time) **Notice Requirement** 60 days 90 days **To Whom Notice Must be Provided**

- The affected employees or their bargaining representative
- The chief elected official of the unit of local government
- The state dislocated worker unit
- Each terminated employee
- Any collective bargaining units
- The chief elected official of the municipality
- The Commissioner of Labor and Workforce Development **Notice Content**
- The name and address of the employment site where the plant closing or mass layoff will occur
- Whether the action is expected to be permanent or temporary and, if the entire plant is to be closed a statement to that effect
- Job titles of affected positions and the number of affected employees in each job classification
- Whether bumping rights exist
- Name and telephone number of a company official to contact
- The number of employees to be terminated and the date or dates of the mass layoff or termination of operations
- The reason for the mass layoff or transfer or termination of operations
- A statement of employment available to employees at other establishments operated by the employer, and information regarding benefits, pay and other terms and conditions of that employment and the location of the other establishment

- A statement of any employee rights concerning wages, severance pay, benefits, pension, or other terms of employment related to termination, including rights based on a collective bargaining agreement or other employer policy
- The amount of severance pay
- The employees' right to receive from the state response team, information, referral and counseling regarding public programs which may make it possible to delay or prevent the transfer, termination of operations or mass layoff; public programs and benefits to assist the employees; and employee rights based on law