

Employment Alert: New Jersey Enacts Mini-WARN Act

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New Jersey recently became the 16th state to enact its own plant closure and mass-layoff notification law that supplements the Federal Worker Adjustment and Retaining Notification Act of 1988 (the "Federal WARN Act"). Like the Federal WARN Act, New Jersey's act, entitled the Millville Dallas Airmotive Plant Job Loss Notification Act (the "New Jersey WARN Act"), applies generally to employers with 100 or more full-time employees, but it differs from the Federal WARN Act in several important respects, including providing for broader coverage and notification requirements and more stringent penalties for compliance failures. The New Jersey WARN Act provides the same mandatory notice period of 60 days prior to a mass layoff or plant closing. However, the New Jersey WARN Act provides additional protections to employees, as described below.

New Jersey WARN Act May Be Easier to Trigger

As summarized below, the New Jersey WARN Act requires employers to provide notice to employees in situations where they are otherwise relieved from this responsibility under the Federal WARN Act:

The New Jersey WARN Act fails to include many of the Federal WARN Act's exceptions, such as exceptions for a faltering business, unforeseeable circumstances, strikes or lockouts. The New Jersey WARN Act also includes a narrower natural-disaster exception than the Federal WARN Act, and does not transfer WARN notice obligations from the seller to a buyer upon the sale of a business.

An employee does not experience an "employment loss" under the Federal WARN Act unless the employee is laid off for six months or more; the New Jersey WARN Act allows for a "termination of employment" (the equivalent term to the Federal WARN Act's "employment loss") for a layoff shorter than six months where the employer fails to provide "a commitment to reinstate the employee to his previous employment within six months of the layoff."

The New Jersey WARN Act provides a narrower exclusion for employees offered a transfer. Under the Federal WARN Act, an employee does not incur an employment loss if he or she is discharged as part of a relocation or consolidation, and is offered a transfer to a new location within a reasonable commuting distance. The New Jersey WARN Act, by contrast, requires that the transfer offer be to a position with equivalent terms and conditions, not more than 50 miles away from the original plant location, and to another plant inside New Jersey. Thus, even an employee offered a transfer with only a 5% salary reduction across the state border to a nearby New York facility suffers an employment loss.

Unlike the Federal WARN Act, the New Jersey WARN Act does not permit an employer to allocate a two-week period in the notice for the termination to occur, and employers cannot provide supplemental notice when delaying a WARN event by up to 60 days. However, the New Jersey WARN Act is more employer-friendly than the Federal WARN Act in that the New Jersey WARN Act only applies to the termination or transfer of operations at an establishment that the employer has operated for three years or more. There is no similar length-of-operation requirement under the Federal WARN Act.

New Jersey WARN Notices Must Contain Additional Information

The New Jersey WARN Act requires employers to provide certain information not required in federal WARN notices, including:

a statement of the number of employees whose employment will be terminated in connection with the mass layoff, or transfer or termination of operations of the establishment; and the date or dates on which the mass layoff, or transfer or termination of operations, and each termination of employment will occur;

a statement of the reasons for the transfer or termination of operations, or mass layoff;

a statement and certain information regarding employment available to employees at any other establishment operated by the employer;

a statement of an employee's rights regarding wages, severance pay, benefits, pension or other terms of employment as they relate to the termination of employment;

a disclosure of the amount of severance pay that is payable as a penalty for failure to provide the required 60 days notice, a statement of the employees' right to receive information, referral and counsel from the Department of Labor and Workforce Development's response team.

Employers Must Provide Response Team with Access to Worksite

The New Jersey WARN Act requires employers to provide the response team designated by the New Jersey Department of Labor and Workforce Development with the amount of on-site work access to affected employees that the response team deems is necessary to carry out its responsibilities.

The New Jersey WARN Act Provides Stiffer Penalties for Failure to Comply

The New Jersey WARN Act requires employers, in the event of a violation, to provide terminated employees with severance pay equal to one week of pay for each year they were employed. In fact, this penalty applies even if the employer's WARN notice is late by a single day. Further, an employer must provide the New Jersey WARN Act severance in addition to any other severance to which the terminated employees are entitled pursuant to company policy. By comparison, the Federal WARN Act requires employers to provide employees with up to 60 days of back pay calculated on a daily basis for each day during the 60-day advance notice period in which it fails to provide notice to terminated employees. It remains uncertain if there is a similar requirement to provide additional severance pursuant to company policy.

The New Jersey WARN Act prevents employers from being penalized by both the New Jersey and Federal WARN Acts. Where the New Jersey WARN Act liability exceeds the Federal WARN Act liability, the New Jersey WARN Act permits employers to offset the Federal WARN Act penalty amounts against the amounts owed under the New Jersey WARN Act. And where the Federal WARN Act liability exceeds the liability under the New Jersey WARN Act, the employer is only obligated to provide the Federal WARN Act penalty amount.

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Employers are well advised to seek the advice of employment counsel to help comply with New Jersey's new mini-WARN Act. If you have any questions regarding the subject covered in this Alert, or any related issue, please feel free to contact an attorney listed below or any of Mintz Levin's Labor, Employment and Benefits practice attorneys.

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