

# Locke Lord QuickStudy: Significant Changes Are Coming to the New Jersey WARN Act – What Large Employers Need to Know

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Most employers are generally familiar with the federal Worker Adjustment and Retraining Notification Act (“WARN”), which offers protection to workers by requiring employers to provide notice sixty (60) days in advance of covered mass layoffs and plant closings. In 2020, New Jersey Governor Murphy signed into law Senate Bill 3170, which amended New Jersey’s Millville Dallas Airmotive Plant Job Loss Notification Act (also generally referred to as the “NJ WARN Act”). This amendment, once effective, would impose several additional requirements on New Jersey employers. The amendments to the NJ WARN Act were supposed to take effect in 2020, but they were delayed due to Governor Murphy’s Executive Order 103, which was enacted in response to the COVID 19 pandemic. Although Executive Order 103 remains in effect, on January 10, 2023, Governor Murphy signed into law Senate Bill 3162, which implements the amendments **effective April 10, 2023**.

Employers with New Jersey employees and/or offices in New Jersey should familiarize themselves with the following amendments to the NJ WARN Act, which are in addition to the existing requirements under the federal WARN Act. This new law applies to all employers with 100 or more employees nationwide that have employees in New Jersey.

### **Mandatory Severance Pay**

Under the existing NJ WARN Act, employers that employ more than 100 employees nationwide must pay severance pay to New Jersey employees effected by a mass layoff, termination of operations, or transfer of operations if the employer fails to provide a required notice. Effective April 10, 2023, employers are also required to provide “severance pay equal to one week of pay for each full year of employment” to all New Jersey employees who are subject to the mass layoff, termination of operations, or transfer of operations—even if notice is properly provided. Notably, New Jersey is the only state to require severance pay for all employees who are subject to a mass layoff, termination of operations, or transfer of operations in New Jersey even if provided with ample advance notice. There is, however, a lawsuit pending in New Jersey federal court that requests a judgment that the severance pay requirement is preempted under the Employee Retirement Income Security Act (ERISA). See *The ERISA Industry Committee v. Robert Asaro-Angelo*, Case No. 3:20-cv-10094 (D.N.J.).

### **Additional Notice Requirements**

Under the current NJ WARN Act, employers are required to provide sixty (60) days’ notice to New Jersey

employees in advance of a mass layoff, termination of operations, or transfer of operations. Effective April 10, 2023, employers with 100 or more employees nationwide must provide at least ninety (90) days' notice to affected employees in New Jersey in advance of discharging the first employee as part of a mass layoff, termination of operations, or transfer of operations in the state. The only exception to providing the required 90-day notice is the natural disaster exception, such as when there is a flood, fire, or other emergency. This is far more limited than the federal WARN Act, which allows for unforeseeable business circumstances, such as when the company meets the faltering business exception or if there is a natural disaster. Moreover, if an employer fails to comply with the ninety (90) day notice requirement, *it must pay an additional four (4) weeks' severance to each New Jersey employee impacted by the layoff, termination, or transfer of operations.*

### **Reduction of the Current Employee Threshold**

Under the current NJ WARN Act, a mass layoff is considered a discharge of at least (a) 500 employees at a work establishment or (b) 50 employees representing at least 33 percent of the total workforce of the establishment. Effective April 10, 2023, employers must comply with the NJ WARN Act's notice, severance, and other mandatory requirements if a layoff in New Jersey effects at least 50 employees at or reporting to an establishment—even if less than 33 percent of the employees at the establishment are impacted.

### **Inclusion of Part-Time Employees**

Under the current NJ WARN Act, part-time employees are not counted for purposes of the above-referenced thresholds (i.e., number of employees subject to the layoffs). Effective April 10, 2023, part-time employees must be counted for purposes of the above-referenced 50-employee threshold (number of employees subject to layoffs or termination of operations). They also must be counted for purposes of the NJ WARN Act's 100-employee nationwide threshold for determining whether an employer is covered by the Act. This means that many more New Jersey employers than before will be soon covered by the expanded NJ WARN Act.

### **Expansion of the Definition of "Establishment"**

Under the current NJ WARN Act and similar to the federal WARN Act, "establishment" is defined as "a single location or a group of contiguous locations, including groups of facilities which form an office or industrial park or separate facilities just across the street from each other." Effective April 10, 2023, the term "establishment" is broadened and "may be a single location or a group of locations, including *any* facilities located in [the state of New Jersey]." (Emphasis added.) Accordingly, employers that have employees in New Jersey and have more than one location in the state must aggregate the employees working at those locations for purposes of the amended NJ WARN Act.

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These amendments impose significant obligations on employers with 100 or more employees nationwide – unparalleled by any other state in the nation. Unless the legal challenge to the law is effective, employers with employees in New Jersey that are planning to reduce their workforce as of April 10, 2023 should closely consider these new requirements and the significant liability that may follow a failure to satisfy its strict requirements. Those employers with close to 100 employees nationwide may be well advised not to exceed that threshold if there is an

imminent possibility of a mass layoff, modification or termination of operations in New Jersey.

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