

You've Been Warned: Onerous Amendments to NJ Warn Act Take Effect April 10

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On January 10, Governor Murphy signed [Assembly Bill No. 4768](#), paving the way for a series of previously enacted amendments to New Jersey's WARN Act, [N.J.S.A. 34:21-1, et seq.](#), ("NJ WARN Act" or the "Act") to finally take effect after nearly three years of delay. Originally passed in January 2020 and scheduled to take effect in July 2020, the New Jersey Legislature decided to defer the implementation of the amendments until 90 days after the termination of Governor Murphy's [Executive Order 103](#), which established a pandemic-related state of emergency. Because Executive Order 103 has not yet been rescinded and because the amendments had been pending for nearly three years, New Jersey lawmakers introduced Assembly Bill No. 4768 to enable the amendments to take effect without regard to Executive Order 103. Now that Governor Murphy has signed that bill into law, the amendments to the NJ WARN Act will take effect on **April 10**.

Originally passed in 2007, the NJ WARN Act — officially titled the "Millville Dallas Airmotive Plant Job Loss Notification Act" — is New Jersey's analogue to the federal Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. § 2100 *et seq.* Like its federal counterpart, the NJ WARN Act requires employers that meet certain criteria to give employees notice in advance of mass layoffs or similar actions that would result in a substantial reduction in force.

The amendments are significant and broaden the scope of the NJ WARN Act in important ways. These include, among other things, broadening the definition of "mass layoff;" loosening the criteria for determining which employers are subject to the NJ WARN Act; extending the employee notice period from 60 to 90 days; entitling all affected employees to severance payments based on their tenure with the company; and dramatically expanding the liability — including potential *personal* liability — employers may face for noncompliance.

Some of the most important amendments to the NJ WARN Act are further discussed below.

Expanded Notice Obligations

The current NJ WARN Act has a 60-day notice requirement and applies only to employees with 100 or more full-time employees, defined as employees with at least six months tenure and who work for more than 20 hours per week on average. The amended NJ WARN Act extends the notice period to 90 days. It also eliminates both the full-time/part-time distinction and the six-month tenure requirement, making its notice provisions applicable regardless of average number of hours worked or the length of the employee's tenure. [N.J.S.A. 34:21-2\(a\)](#). Notice must be provided not only to (1) each impacted employee, but also to (2) the chief elected official of the municipality where the employer is located, as well as (3) the commissioner of the Department of Labor and

Workforce Development.

The amended Act also requires the notice to include various statements, providing information to employees and apprising them of certain rights. These include, among other things, a statement of:

- The number of employees whose employment will be terminated in connection with the mass layoff or transfer or termination of operations;
- The reasons for the mass layoff or transfer or termination of operations;
- Any employee rights with respect to wages, severance pay, benefits, pensions, or other terms of employment as they relate to the termination; and
- A disclosure of the amount of the severance pay that is payable pursuant to the severance provision of the amended NJ WARN Act, N.J.S.A. 34:21-2(b).

Mandatory Severance (and Potential Penalties)

Significantly, the amended Act makes major changes to employers' severance obligations. See [N.J.S.A. 34:21-2\(b\)](#). Under the current NJ WARN Act, an employer needs to pay severance only if it fails to provide the required 60-day notice. Under the amended Act, however, employers must pay severance to all impacted employees *regardless of compliance with the new 90-day notice period*.

The amount of severance is based on the length of the employee's tenure with the company and must be paid at a rate of one week's pay for each full year worked. This is calculated based on the employees' average pay over the preceding three years or the employee's final rate of pay at the time of termination, whichever is greater. If the employer fails to provide the required 90 days' notice, the employer must provide — in addition to the tenure-based severance noted above — a further severance payment equal to four weeks of regular pay. Finally, if an affected employee is entitled to severance under a separate employment contract or collective bargaining agreement, then the employer must pay either the contractual severance or the WARN Act severance, whichever is greater.

More Employers and Locations Impacted

The amendments contain a number of changes designed to make a greater number of employers — and employers' locations — subject to the NJ WARN Act.

First, the current version of the NJ WARN Act defines an employer's "establishment" as a "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." The amended Act broadens this definition to include any "place of employment which has been operated by an employer for a period longer than three years" (except a temporary construction site). As a result, whether the amended Act has been triggered will depend on whether the employer is terminating 50 or more employees on a cumulative basis at any of its locations throughout the state.

Second, the amended NJ WARN Act eliminates the distinction between full-time and part-time employees for the purpose of determining the number of employees that would need to be affected to trigger a "mass layoff." Under

the current Act, a “mass layoff” is defined 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 employer’s total workforce. The amended Act eliminates both of these tests in favor of a simpler (and broader) criterion: If a mass layoff, transfer of operations, or termination of operations affects at least 50 employees in the aggregate at the employer’s locations throughout the state, then the Act will be triggered.

Finally, the amended Act states that for purposes of analyzing the 50-employee termination threshold for a mass layoff, employees at or reporting to a New Jersey location must be counted. Accordingly, while it remains an open question, this may mean that remote workers “reporting to” a New Jersey location may still be counted, even if they do not actually reside in New Jersey.

Expanded Employer Liability

Subsections 2(b) and 2(d) of the amended NJ WARN Act contain expanded definitions of the terms “severance” and “employer,” respectively, which could dramatically increase employer liability — including *personal* liability — for failing to comply with its notice and severance obligations.

Subsection 2(b) defines “severance” as “compensation due to an employee for back pay and losses associated with the termination of the employment relationship, and earned in full upon the termination of the employment relationship.” N.J.S.A. 34:21-2(b). This definition of severance as “back pay” could raise the question — which will likely need to be resolved by the courts — of whether severance payments should be considered the payment of “wages” triggering liability under New Jersey’s various wage laws. If so, employers could potentially face treble damages for noncompliance.

Subsection 2(d) provides that the term “employer” includes “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.” While the precise meaning of this expansive definition will almost certainly be the subject of litigation, it appears that a failure to comply with these provisions could create *personal* liability for any person or group of persons acting directly or indirectly in the interest of an employer. As written, this definition could conceivably include managers, consultants, or other individuals who lack an ownership interest in the employer but were involved in the reduction in force decision.

Takeaways

The amended NJ WARN Act will have a profound impact on the employment landscape. Many of the amendments are sweeping in nature and impose a number of expanded legal obligations and compliance challenges on New Jersey employers. To stay ahead of the curve, New Jersey employers should keep the following in mind:

- Employers considering a mass layoff, termination of operations, or transfer of operations should consider giving notice to all affected employees no later than **February 8**. This will ensure compliance with the current NJ WARN Act’s 60-day notice requirement and avoid any confusion or employee claims that the more onerous provisions of the amended NJ WARN Act (such as mandatory severance) arguably apply.

- Large employers will be particularly hard hit by the amended NJ WARN Act. The 50-employee threshold for triggering a “mass layoff” sets a low ceiling for large employers, such that even a modest reduction in headcount could technically constitute a “mass layoff” that triggers the notice, severance, and other provisions of the Act. For example, an employer with 2,500 employees that reduces its workforce by just 2% (50 employees) — would be subject to the amended Act.
- Do not wait until the last minute to get up to speed on all relevant changes, many of which may pose novel questions of law. Coordinate with in-house counsel, outside employment counsel, and company stakeholders to ensure compliance with the amended NJ WARN Act and minimize the chance of inadvertent (and costly) violations, especially during the transition period shortly before and after the amendments take effect.

For assistance with developing company policies and navigating these issues, please contact a member of [Troutman Pepper’s Labor + Employment Practice Group](#).

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