WARNING? New Jersey's Amended Warn Act Is Here!



July 10, 2023

New Jersey's WARN Act requires employers to give their employees advance notice of mass layoffs or similar actions that would result in a substantial reduction in force if certain triggering criteria are met. Failure to provide the required advance notice subjected employers to the penalty of having to pay a terminated employee severance.

Some of the most significant changes to the New Jersey WARN Act are as follows:

• Companies with over 100 employees are now obligated to comply, irrespective of the number of hours the employees work or how long they have been employed with the company. There is no longer a distinction between full time and part employees and exclusion of employees tenured for less than six months has been eliminated.

• The threshold for a "mass layoff" has been reduced substantially. Previously a mass layoff was triggered by the termination of (i) 50 or more employees comprising 1/3 of the workforce at the establishment; or (ii) 500 or more employees. Under the new law, a mass layoff means the termination of 50 or more employees at a covered establishment in a 30-day period.

• The scope of employees that are counted toward the 50-employee threshold for a "mass layoff" has been expanded. Previously, the threshold for a mass layoff included 50 or more employees only "at" the establishment. Now, employees "at" the establishment and "reporting to" the establishment are counted, which also includes employees working remotely both in New Jersey and in other states as well.

• The definition of a covered "establishment" has also been expanded to include a non-contiguous group of locations within the State, whereas it previously only applied to contiguous worksites. This amendment appears to be targeting retail companies with

multiple locations in New Jersey, but it is still not clear how this could apply to largely or entirely remote workforces.

• The 60 days advance notice requirement for a mass layoff was extended from 60 days to 90 days.

• Paying a terminated employee severance is no longer a penalty for failing to provide the required notice. Instead, each terminated employee must be paid one week's pay for each full year of service, irrespective if advance notice was provided.

• If the company fails to provide the requisite advance notice, each employee must be paid an additional four weeks' severance pay.



When a company is obligated to provide its terminated employee with notice, the notice must be made in writing, state the reason for the termination, the number of other employees that were also terminated, and the rights available to the employee under the termination. Notice must be provided to all affected employees at least 90 days before the first termination occurs. In the event that the employer fails to properly provide notice, the employee is entitled to one week of severance pay for each full year of employment. The rate of pay for the purposes of severance the higher of wither the final regular rate of pay at termination or the average rate of pay over the course of the employee's last three years of employment.

The New Jersey WARN Act also permits former employees to bring lawsuits against their former employers. If successful, these employers can be liable for to their former employees for compensatory damages, claims for lost wages (capped at the amount of severance pay required), benefits, other remuneration and reasonable attorneys' fees and costs, which can be in addition to any remedies available under the federal WARN ACT. If a company violates both the federal WARN Act and the New Jersey WARN Act, the employee can recover the higher amount of damages available under both of these laws.

Further, failure to comply with the notice and severance provisions of the New Jersey WARN Act creates personal liability for "any person or group of persons acting directly or indirectly in the interest of an employer." This includes any person who functions as the nominal employer, owns a corporate subsidiary that owns and operates the nominal employer, or makes the decision that gives rise to the mass layoff or termination or transfer of operations. For those who fall within this expanded definition of "employer," it is unclear if the definition of severance constitutes "wages," which could then place this individual on the hook for treble damages (triple the amount of severance) in a lawsuit brought by the employee.

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