

New Jersey Passes Amendments to WARN Act

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Source: Saiber Employment Law Alert

On January 10, 2023, Governor Phil Murphy signed Assembly Bill No. 4768 into law, implementing significant changes to New Jersey's WARN Act (officially known as the "Millville Dallas Airmotive Plant Job Loss Notification Act") (NJ WARN). These amendments were initially slated to take effect 90 days after the termination of the Governor's Declaration of a State of Emergency related to COVID-19. Because the State of Emergency remains in effect, the amendments to NJ WARN will take effect 90 days from Governor Murphy's signature – on April 10, 2023.

The substantial changes to NJ WARN include:

- *Extended Notice Requirement*: Timing of required advance notice before the employment action is taken under NJ WARN has been increased from 60 days to 90 days.

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More Employers Affected: The amendments eliminate the distinction between part-time employees and full-time employees, making NJ WARN applicable to all employers with 100 or more employees anywhere in the United States, as long as the employer has operated in New Jersey for more than three years, irrespective of tenure or hours worked.

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Employers' Locations Are Aggregated: The NJ WARN amendments expand the definition of "establishment" to incorporate all of an employer's New Jersey locations in operation for longer than three years, requiring employers to consider employment actions happening at all their locations cumulatively within the state. NJ WARN is now applicable in all instances where 50 or more employees, located anywhere in the state, are terminated (*i.e.*, the calculation of 50 or more employees are not counted separately at different sites of employment).

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Obligatory Severance Requirements: Even when proper notice is given, severance pay is automatic. NJ WARN now requires employers to provide one week of severance pay for each year of completed service to employees impacted by an action protected under NJ WARN. Importantly, employees may not waive their right to severance under NJ WARN without state or court approval.

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Severance Penalty: If an employer does not provide proper notice of layoffs, the

employer will now be required to pay each impacted employee an additional 4 weeks of severance pay.

Notably, there is a lawsuit pending in New Jersey federal court that argues that the NJ WARN severance provisions are preempted by ERISA. There has not yet been a ruling on this point.

Employers operating in New Jersey who are considering a mass layoff, plant closure, transfer of operations, or termination of operations on or after April 10, 2023, should be prepared to comply with the requirements of the amended law, and should confer with counsel to review current NJ WARN Act obligations, as well as the pending amendments and federal WARN ACT requirements when navigating a reduction in their workforce.