

Bill Amending New Jersey WARN Act to Mandate Payment of Severance Benefits Sent to Governor

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The New Jersey Legislature has passed [an amendment](#) to the Millville-Dallas Airmotive Plant Job Loss Notification Act (New Jersey WARN Act) to require companies with at least 100 employees to provide 90 days' notice and pay severance to all affected employees when a layoff satisfies the definition of a mass layoff, transfer of operations, or a termination of operations.

The bill has been sent to Governor Phil Murphy for signature. If signed, the new law will take effect immediately.

The amendment's 100-employee threshold includes full-time and part-time employees. New Jersey employers would be mandated to pay affected employees one week of severance for every year of employment, even if the employer had provided the required amount of New Jersey WARN Act notice.

Changes under Amendment

The New Jersey WARN Act and the federal Worker Adjustment and Retraining Notification Act require covered employers to provide 60 days' written notice to affected employees of a mass layoff, transfer of operations, or a termination of operations.

Not only would the amendment increase the notice period to 90 days, it significantly changes when an employer must give notice. For instance, a "mass layoff" is defined as the termination of at least 50 employees at or reporting to an establishment. The amendment eliminates the requirement that the mass layoff affect at least 50 *full-time* employees representing at least one-third of the full-time employees. Additionally, "establishment" would be changed to mean a single location or a group of locations, including any facilities located in the state. Therefore, the notice requirements could be triggered if a mass layoff affects at least 50 employees at an employer's various locations around the

state.

The amendment also provides a 90-day look-back period to determine whether the number of affected employees reaches the statutory threshold of 50 individuals. A covered employer must provide 90 days' notice to all affected employees, the Commissioner of the Department of Labor, the chief elected official(s) of the municipalities in which the establishments are located, and to any affected collective bargaining units.

If the amendment is signed, [New Jersey will become the first state](#) to force employers to pay severance to employees who experience an employment loss by a mass layoff, transfer of operations, or termination of operations. Under the amendment, an employer must pay each affected employee one week of severance for each full year of employment, even if the employer provides the full 90 days' notice. If an employer fails to provide the full 90 days' notice, it must pay each employee an additional four weeks of severance pay.

The rate of severance is the higher of (1) the employee's average regular rate of compensation during the last three years of employment, or (2) the employee's final regular rate of compensation.

If the affected employees are entitled to severance under a collective bargaining agreement "or for any other reason," the employer must pay the higher amount of severance (*i.e.*, the statutorily mandated severance or the severance provided under another agreement, plan, or policy).

Moreover, the amendment provides that the severance constitutes "compensation due to an employee for back pay and losses ... earned in full upon the termination of the employment relationship." Therefore, severance must be paid together with any final paycheck issued to the affected employee. The amendment does not provide any minimum or maximum amount of severance an employer may be required to pay an employee.

Implications

If signed by the Governor, the law will place substantial burdens on companies with at least 100 employees that seek to reduce headcount for financial reasons, operational changes, or for any other purpose. Not only must an employer keep employees employed during the 90-day notice period under the amendment, it also will be required to ensure proper (and potentially substantial) funding to cover the severance liabilities mandated.

Companies with operations in New Jersey should consider contingency plans to meet the amendment's notice and severance requirements in the event an economic downturn results in a mass layoff or other covered event.

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