

# Extended Notice and Required Severance: Impending Expansions to New Jersey's WARN Act

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## OVERVIEW

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On December 19, 2022, the New Jersey Senate passed [Assembly Bill No. 4768 \(A-4768\)](#), which, when effective, will implement a drastic expansion to New Jersey's Millville Dallas Airmotive Plant Job Loss Notification Act (NJ WARN Act) and require that employers provide their employees with 90 days' notice and severance pay in connection with mass-layoff events. These new provisions of the NJ WARN Act will become effective 90 days after Governor Phil Murphy signs the bill.

## IN DEPTH

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All New Jersey employers who choose to discharge a significant number of employees, whether in connection with a transaction or not, will need to pay careful attention to the requirements of the state and federal laws that apply to mass layoff events and plant closings. Substantial additional requirements could be imposed on New Jersey employers as early as April 2023.

## WARN ACTS GENERALLY

Federal and New Jersey state law require employers with 100 or more eligible employees to provide notice in connection with a mass layoff or plant closing. This requirement stems from the federal Worker Adjustment and Retraining Notification (WARN) Act, and some states, like New Jersey, have enacted their own statutes that exceed the federal baseline. Under federal and existing New Jersey law, employers are required to provide employees with 60 days' notice if they plan to reduce their workforce by either of the following:

- 500 or more full-time employees at a single worksite; or
- 50 or more full-time employees at a single worksite, if those employees represent at least 33% of the full-time employees at the worksite.

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## DELAYED IMPLEMENTATION

In January 2020, New Jersey passed a [law](#) that would dramatically expand the state's requirements under the NJ WARN Act. The law's implementation has been delayed for more than two years due to the outbreak of the COVID-19 pandemic.

However, last month, both houses of the New Jersey legislature passed a bill ([A-4768](#)) that would fast track the implementation of the NJ WARN Act expansion. The changes to New Jersey's layoff law will take effect 90 days after Governor Phil Murphy signs the bill.

## REQUIREMENTS UNDER THE REVISED NJ WARN ACT

The revised NJ WARN Act would impose a number of additional requirements on certain employers who reduce their workforces. A brief overview of the requirements follows:

- The law will apply to employers with 100 or more employees, regardless of whether those employees are full-time or part-time workers, regardless of how long the employees have worked with the employer, and regardless of whether the employees are in one or multiple establishments within or outside of New Jersey.
- The law will apply to any "establishment," which is a single location or group of locations within New Jersey operated by the employer for at least three years, but excluding a temporary construction site.
- The revised NJ WARN Act's requirements are triggered as soon as a company terminates 50 or more full-time or part-time employees at an "establishment" for any reason (including layoff, transfer or termination of operations) within a 30-day period. Unlike federal WARN requirements, the revised NJ WARN Act may be triggered regardless of whether those terminations occurred at separate worksites within the state and regardless of whether the layoff affected 33% of the company's workforce.
- The law will require employers to provide 90 days' notice to affected employees, as opposed to the prior 60-day requirement.
- The law will mandate that employers provide terminated employees with severance pay equivalent to one week of pay for each full year that the respective employee worked. The law does not provide any limit on the amount of severance pay that must be distributed to employees. The rate of severance pay must be the higher of (a) the average regular rate of compensation received during the employee's last three years of employment or (b) the final regular rate of compensation.
- If employers fail to give 90 days' notice to their employees, employers are required to provide each affected employee with an additional four weeks of severance pay. Employers will be permitted to credit any amount paid under the federal WARN Act to the amount owed in severance pay under the NJ WARN Act.
- Employees cannot waive their severance benefit under the law without state or court permission.

Interestingly, the broad definition of the term “employer” in the statute seems to leave open the potential for individual liability to individual owners of the employing entity (or an entity controlling the employing entity) to the extent such person is responsible for the termination action or operational closure. It remains to be seen how this portion of the law will be applied in practice.

## **PREPARING FOR 2023 AND BEYOND**

New Jersey businesses contemplating workforce layoffs or closures in 2023 and beyond should be mindful of these impending restrictions and requirements under the NJ WARN Act. In addition, employers and investors in New Jersey healthcare businesses specifically should be aware of recent changes in state law that impact healthcare transactions and buyer and seller obligations to notify and retain healthcare workers, as discussed in our client alert here.

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