



Planning a Cutback? New Jersey Employers Must Use Caution

Insights

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New Jersey employers with 100 or more employees contemplating a transfer or closure of operations that impacts 50 or more employees at a New Jersey facility must comply with the recently enacted Millville Dallas Airmotive Plant Job Loss Notification Act (NJ Warn Act).

The NJ Warn Act creates financial penalties for employers who fail to provide sixty days notification to workers of impending job losses, which apply not only to closures but to "mass layoffs" as well. Drafted to address perceived shortcomings in the federal Worker Adjustment and Retraining Notification Act (WARN Act) that came to light when the Millville Dallas Airmotive Plant in Cumberland County was closed, the NJ Warn Act requires additional notice to employees and increased penalties for failure to provide required notice.

What Notice is Required?

Employers must provide written notice at least sixty days in advance of a "mass layoff," which is one that results in the layoff or termination of 500 or more full-time employees, or 50 or more employees that represent one-third of the workforce at a single site. Notice must also be provided if there is a "transfer of operations" or "termination of operations."

The sixty day period will be extended automatically if the federal WARN Act notice requirement is lengthened. Employers must provide notice to each impacted employee, governmental officials, and any collective bargaining agent of the affected employees, which includes the following information:

- the number of employees who will be terminated;
- the date when each termination will occur;
- the reasons for the mass layoff or "transfer or termination of operations";
- a statement of employment available at any other establishment operated by the employer;
- a statement of employee rights with respect to wages, severance pay, benefits, pension or other terms of employment;
- disclosure of the amount of severance pay being provided for the employer's failure to make timely notice (if applicable); and
- a statement of the employees' right to receive information, referral and counseling from the New Jersey Department of Labor and Workforce Development's Response Team.

The Commissioner of the New Jersey Department of Labor and Workforce Development is currently preparing official notification forms which will be available for use by employers by March 14, 2008.

What Triggers the Notice Requirement Under the NJ Warn Act?

Although the terminology differs, the same events which trigger an employer's obligation under the federal WARN act, also generate the additional information required under the NJ Warn Act, unless the employer has operated the facility for less than 3 years.

In addition, unlike the federal WARN Act, the transfer of a number of small operating units that results in the layoff or termination of as few as 50 employees at an employer's establishment in New Jersey would also be enough to trigger the notice requirement.

Employee terminations must take place within a single thirty day period; however, layoffs of two or more groups that occur within a ninety day period may be combined under some circumstances.

Penalties

Employers who fail to provide adequate notice must pay impacted employees severance of one week of pay for each full year of employment. This severance payment is **in addition to** any other severance the employer is required to pay to terminated employees.

Still unclear is whether an employer may amend its severance policy or plan to include a provision offsetting any NJ Warn Act severance from benefits payable under the policy or plan. If employees are represented by a union, any change would require notice to and bargaining with the union.

Exceptions

Exceptions to the NJ Warn Act's notice requirements are less comprehensive than those provided in the federal WARN Act. For example, there is no provision for reduced notice for a business that is faltering or for unforeseen business circumstances.

In addition, the NJ Warn Act does not require notice in the event of a termination of operations that is made necessary by fires, floods, natural disasters, national emergencies, acts of war, civil disorders, industrial sabotage, or decertification from participation in the Medicare and Medicaid programs or license revocation pursuant to federal law. Notice is required when a transfer of operations or mass layoff occurs due to one of these events.

Due to the substantial financial penalties, private employers in New Jersey should pay careful attention to the requirements of *both* the federal WARN Act and the NJ Warn Act when contemplating a plant closure or mass layoff.

For more information contact any attorney in the New Jersey office of Fisher Phillips at 908.516.1050.

This Legal Alert is intended to provide an overview of a particular statute. It is not intended to be, nor should it be considered as, legal advice for any specific factual situation.