



New Jersey Approves Greater Protections For Employee Mass Layoffs

Insights

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Thanks to a new law just signed into effect by Governor Phil Murphy, New Jersey employers will soon be required to provide severance pay and increased advance notice to most workers affected by a mass layoff or termination or transfer of operations. With the January 21 expansion of the Millville Dallas Airmotive Plant Job Loss Notification Act – otherwise known as the New Jersey WARN Act – most doing business in the state will have to provide a week’s worth of pay for each year of service under an employee’s belt as part of any mass layoff or termination or transfer of operations. The law making New Jersey the first state in the country to mandate severance pay during layoffs won’t take effect until July 19, 2020, but employers should begin to prepare now. Below is a summary of the law’s key points, along with a series of FAQs to help with your compliance efforts.

Mandatory Severance For Terminated Employees

Under current state law, a covered employer is only required to provide severance if it provides less than the required number of days’ notice in the event of a qualifying mass layoff or termination or transfer of operations. Under the new law, however, covered employers will have to provide mandatory severance in all mass layoffs or termination or transfer of operations, even if they provide timely notice. Covered employers will need to pay those impacted the equivalent of one week of pay for each year of service the worker had with the company.

Notice Period Increases To 90 Days

The revised law also requires covered employers to provide employees with not less than 90 days’ notice before the first termination of employment that occurs as a result of a qualifying mass layoff or termination or transfer of operations. The previous version of the law required 60 days’ notice.

Individual Liability

The new law will impose personal liability for failures to carry out the notice and severance provision upon “any person or group of persons acting directly or indirectly in the interest of an employer.” This includes any person who operates as the nominal employer, or owns a corporate subsidiary that owns and operates the nominal employer, or makes the decision responsible for the employment action that gives rise to a mass layoff or termination or transfer of operations.

Frequently Asked Questions About The New Law

The new law raises a series of questions, which are answered below.

How do we calculate how much money we need to provide as severance?

You will need to first determine the average regular rate of compensation received during the employee's last three years of employment, and compare it to the final regular rate of compensation paid to the employee. You will then need to make the mandatory payment based on whichever figure is higher.

What is considered a "mass layoff" under the new state law?

Under current law, a mass layoff occurs when there is a termination of 500 or more full-time employees, or 50 or more full-time employees representing one third or more of full-time employees over a 30-day or, in some cases, 90-day period.

Under the new law, the threshold of 50 employees that applies to a transfer of operations or termination of operations now applies to a mass layoff, even if less than one-third of employees are laid off. Moreover, the new law expands the number of employees that can be swept up into the 50-employee threshold by counting employees "reporting to" a location in New Jersey.

Which employees do we consider when determining whether 50 are being laid off?

The current law states that only employees who have been employed for more than six of the last 12 months, or who work more than an average of 20 hours a week, are to be counted in determining whether the 50-employee threshold is met. But once the new law takes effect, all employees are counted, even part-time workers who fall under the current levels.

Can we avoid the law by laying off workers in several waves?

Not likely. Under state law, any reduction in force that results in the termination of 50 or more workers within a 30-day period is considered a triggering event. And if you can't prove that multiple rounds of layoffs are for separate and distinct causes, the timeframe is expanded to a 90-day period.

What happens if we don't provide proper advance notice?

If a covered employer provides less than the required 90 days of notice, they must pay each affected employee an additional four weeks of pay.

Which employers are covered under the new law?

The number of employers covered by the statute will soon expand. Existing state law says that only employers with at least 100 full-time employees are deemed subject to the state WARN Act (excluding those with less than six months of service or who work less than 20 hours per week). Starting July 19, all workers will be considered when making the determination of whether a business has 100 employees, including part-time workers.

What about employers with multiple locations in New Jersey?

Under current law, the provisions of the law are only triggered if a "single place of employment" carries out a qualifying transfer or termination of operations that results in the termination of 50 or more full-time employees or a mass layoff. This could include a "single location" or a group of

“contiguous locations,” including groups of any facilities which form an office or industrial park or separate facilities just across the street from each other.

The new law makes no such distinction. It expands the definition to include all of an employer’s locations throughout New Jersey. So, for example, if a covered employer terminates 20 employees at a Newark site and 30 employees at an Atlantic City site, the terminations are aggregated for purposes of determining whether the applicable threshold is met.

Are any employers excluded from coverage?

Just as with current state law, an employer will still need to have been operating for at least three years in order to be covered under the new state WARN Act.

What kinds of employee departures are excluded under the new state law?

The new law leaves the definition of “termination of employment” unchanged, which excludes, among other incidences, a voluntary departure, retirement, discharge or suspension for misconduct, layoff of a seasonal employee, or a situation where an employee is offered an equivalent position, benefits, and pay within New Jersey and not more than 50 miles from the previous place of employment.

How is severance pay treated under state wage law?

Under the new law, mandatory severance will be considered as compensation due to an employee for back pay and losses relating to their termination from employment. The mandatory severance is deemed earned upon an employee’s termination. That means that terminated employees may have priority status for unpaid wages in bankruptcy. That also means that employers hoping to bind terminated employees to a release of claims agreement will have to provide additional payment or some other form of consideration beyond mandated severance.

Can we ask an employee to waive their right to severance?

Not necessarily. Waiver of the right to severance may only be obtained with approval of the Commissioner of Labor and Workforce Development or a court with jurisdiction over the issue.

How broadly will the individual liability provision be interpreted?

While the statutory language creating individual liability is undoubtedly broad, legislative history indicates that the new definition is meant to target individuals responsible for the employment action that results in a qualifying mass layoff or termination or transfer of operations. We will have to wait to see how courts interpret this new statutory provision, however.

What’s Next?

Any layoff can potentially activate an employer’s obligations under the new law, which goes into effect on July 19, 2020 – 180 days after the governor’s signature. Given the serious ramifications, covered employers currently undergoing a qualifying mass layoff or transfer or termination of operations should ensure they are able to effectuate such changes within the 180-day window. If not,

compliance with the new law's provisions will be critical, and covered employers anticipating a qualifying action or event should start taking proactive steps immediately.

If you need any assistance preparing for these new requirements, contact the [Fisher Phillips New Jersey office](#) at 908.516.1050 or your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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