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Amendments to NJ WARN Act Bring Stricter Requirements than Previous NJ WARN and Federal WARN Acts

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What You Need to Know:

- The implementation of amendments to the NJ WARN Act, initially signed into law in 2020 and delayed by the pandemic, will now take place on April 10, 2023.
- The amended Act expands which employees are covered and how they are counted, expands advance notice requirements, lowers the threshold for triggering compliance obligations, and imposes mandatory severance requirements.
- Employers facing significant changes to their business operations and/or workforce should pay careful attention to their potential obligations under the amended statute to avoid costly economic consequences.

On January 10, 2023, New Jersey Governor Phil Murphy signed into law a bill (A-4768) that sets April 10, 2023, as the date on which long-delayed changes to the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act (NJ WARN Act) will become effective. The NJ WARN Act, along with its federal WARN Act counterpart, requires subject employers to provide advance notice to employees as part of a mass layoff or the termination or transfer of business operations.

The amended NJ WARN Act differs significantly from the previous state law in a number of far-reaching aspects and is also stricter than the federal WARN Act. The following is an overview of the key differences between the amended NJ WARN Act and both the previous NJ WARN Act and the federal WARN Act:

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- **Who is Impacted.** The amended NJ WARN Act is applicable to all private business entities with 100 or more employees that have conducted business operations in New Jersey for longer than three years. There is no distinction made between full-time and part-time employees, length of employment, or whether employees report to single or multiple locations either within or outside of New Jersey. The previous NJ WARN Act was only applicable to employees at a single location and did not require employers to aggregate their employee headcount at locations throughout the state. With limited exceptions, the federal WARN Act applies to a single employment location.
- **Notice Requirements.** The amended NJ WARN Act requires businesses to provide 90-day advance notice to affected employees prior to the first dismissal of a workforce member. The previous NJ WARN Act required 60-day advance notice, as does the federal WARN Act.
- **Triggering Events.** Under the amended NJ WARN Act, the triggering event for a mass layoff notice requirement is the termination of 50 or more employees over a 30-day period, regardless of the employer's total number of employees. The notice requirement under the previous NJ WARN Act was the termination of either 500 employees, or 50 employees who represented at least one-third of the company's total workforce. The federal WARN Act concerns terminations of 500 or more employees.
- **Severance Requirements.** The amended NJ WARN Act requires employers to pay one week of mandatory severance to all impacted full-time and part-time employees for each full year of their service, regardless of whether they received the required 90-day advance notice. However, in the event the 90-day notice requirement is not met, a penalty of an additional four weeks of severance per employee will be imposed. The previous NJ WARN Act required payment of severance only as a penalty for failure to provide 60-day advance notice. The federal WARN Act has no mandatory severance provision but imposes a penalty requiring payment of wages for each day for which the requisite 60-day advance notice is not provided.

By way of background, legislation amending the NJ WARN Act was first signed into law by Governor Murphy on January 21, 2020 – the changes were set to be implemented in the summer of 2020. By Executive Order, however, the Governor put off that implementation until 90 days after the pandemic-related “state of emergency” ended. With the recent passage of A-4768, the New Jersey legislature disassociated implementation of the amended NJ WARN Act.

Of further note, advance notice of mass layoffs or other NJ WARN-triggering events must be provided to each employee to be terminated, as well as to any collective bargaining units, the chief elected official of the municipality, and the Commissioner of Labor and Workforce Development.

Next Steps for Employers

Employers who may be facing a significant reduction in their workforce or another change in their business operations that may trigger compliance requirements under either the amended NJ WARN Act or the federal WARN Act should pay careful attention to their obligations under both statutes to avoid costly economic consequences.

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Please contact the author of this Alert with questions or to discuss your specific business circumstances.

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