



NEW JERSEY LAW REQUIRES ADVANCE NOTICE OF MASS EMPLOYEE TERMINATIONS

The New Jersey Legislature recently passed the Millville Dallas Airmotive Plant Job Loss Notification Act, which will require qualified employers to provide advance notice of certain mass employee terminations. The law is effective immediately, as of December 20, 2007. It is essentially the New Jersey analog to the Federal WARN Act, 29 USC § 2101 *et seq.*, (the Worker Adjustment and Retraining Notification Act). The New Jersey law was essentially designed to address the Federal statute's shortcomings.

The Act specifically provides for required notices to employees in the event of certain termination events, including mass layoffs or a termination of operations. In general, the statutory notice is required:

- In the event of a mass layoff consisting of the termination of employment at an establishment during any 30-day period for 500 or more full-time employees OR 50 or more of the full-time employees that represent one-third or more of the full-time employees at that establishment;
- With certain exceptions for events such as a fire, flood, court order, if a business establishment (which has been operated for more than three years) shuts down an establishment for 30 or more days, resulting in the termination of 50 or more employees; or
- If a business establishment (or operating units within an establishment) is permanently or temporarily transferred to another location, whether inside or outside of New Jersey, if such transfer results in the termination of 50 or more employees.

Upon the occurrence of any of the above-described events, the New Jersey Act imports several obligations on the employer. Employers employing 100 or more full-time employees must provide statutory notice at least 60 days' before the first termination of employment, termination of transfer of operations or mass layoff. For this purpose, full-time employees are defined as employees working with the company for more than six months, and who work 20 or more hours a week. Moreover, the notice must comport with the statute's requirements and be submitted to: (a) the Commissioner of Labor and Workforce Development; (b) the chief elected official of the municipality in which the business establishment is located; (c) each employee whose employment is going to be terminated; and (d) any collective bargaining units of employees working at the establishment.

The Act provides six-prongs which must be included in the written notification. Further, the Act requires that the Commissioner of Labor and Workforce Development issue a form for notification which must be made available by March 19, 2008. At that time, the notice must be made on that form.

Notably, the 60-day notice period was revised per a previous gubernatorial veto, in order to match the notice period set forth in the Federal WARN Act. However, the

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New Jersey legislature originally sought 90 days' notice and the Act provides that the notice period will automatically change to match that of the Federal Act.

In accordance with the Act, an employer who fails to provide timely and proper notice must pay each full-time employee who was terminated with severance. The statute further provides that such severance payment shall be equal to one week of pay for each full year of employment. The applicable pay rate is calculated as the higher of (a) the employee's average regular rate of compensation over the past three years; or (b) the final regular rate of compensation paid to the employee. This severance requirement is in addition to any severance that may be required under an applicable collective bargaining agreement.

Furthermore, the Act provides for a civil remedy for the aggrieved employee. An employer who fails to timely provide the appropriate notice may be liable for damages including lost wages, benefits and attorneys' fees.

We therefore recommend the following:

- New Jersey employers should consult with counsel at the outset with regard to any major corporate strategy change, including closing an office or engaging in any significant termination or layoff plan;
- Employers should ensure that their employment agreements are properly drafted to provide as much flexibility with regard to termination as the law will allow;
- Any severance paid, whether with regard to the Act's requirements or separate, should be paid pursuant to a severance agreement, including a release that is signed by the employee. That severance agreement should be carefully drafted and reviewed by counsel.

This newsletter is not a substitute for legal advice. Therefore, contact legal counsel as to the specific approach you should take given your particular facts.

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