

Client Alert **Employment & Labor**

No Relief in Sight for NJ Employers: Six Newly-Enacted State Employment Laws to Tackle

On January 21, 2020, New Jersey Governor Phil Murphy signed five employee-friendly bills into law, including statutorily mandated requirements that increase penalties on employers that misclassify workers and obligate employers to pay severance to workers impacted by mass layoffs. Also, on December 19, 2019, the Governor signed the “Create a Respectful and Open Workplace for Natural Hair Act” (“CROWN Act”), which clarifies that discrimination based on hair textures and styles violates the New Jersey Law Against Discrimination (“LAD”).

In line with states like California and New York, the enactment of these new laws places New Jersey among a handful of states that provide markedly heightened protections for employees. The amalgamation of these new laws dramatically expands employee rights in the workplace.

Increased Employer Fines for Misclassification

Effective immediately, [A.B. 5839](#) authorizes the state’s Department of Labor and Workforce Development to assess fines against employers for misclassifying workers. Under the new law, New Jersey employers or staffing agencies that misclassify workers may be issued up to a \$250 fine per employee for the first violation and up to \$1,000 per employee for subsequent violations. The amount of the penalty to be assessed will depend on such factors as the history of prior violations, the severity of the violation, the size of the employer’s business and the good faith of the employer. In addition, an employer found to have misclassified a worker may have to pay a fine to the misclassified worker of up to 5% of their gross earnings over the previous year.

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New Employer Posting Requirement

Effective March 1, 2020, [A.B. 5843](#) requires employers to post a conspicuous notice regarding employee misclassification. The New Jersey Department of Labor and Workforce Development will issue a form of notice, which will include a prohibition on misclassification, description of what constitutes worker misclassification, employee rights and remedies, and the process for reporting employer misclassifications.

In addition, the newly enacted statute prohibits employer retaliation against workers who make complaints about potential unlawful employee misclassifications. Employer retaliation carries a fine of \$100 to \$1,000 for each offense, and employees found to be terminated in retaliation for such protected conduct are entitled to reinstatement in addition to back pay and legal fees.

Managers Potentially on the Hook

Effective immediately, [A.B. 5840](#) amends New Jersey's recently passed Wage Theft Act and provides that employers and labor contractors will be jointly and severally liable for state wage and hour law violations and tax law violations, including with respect to worker misclassifications. The law broadly provides that any person acting on "behalf of an employer," including an owner, director, officer or manager of the employer, may be held liable as the employer.

Business Shutdowns for Violations

Effective immediately, [A.B. 5838](#) permits state regulators to issue "stop-work orders" upon seven days' advance notice to sites where employers are found to have violated state wage, benefits, or tax laws, subjecting employers to a steep penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order.

The law gives the state's Commissioner of Labor and Workforce Development the authority to issue stop-work orders requiring cessation of all business operations at the specific place of business where any wage, benefit, or employment tax law violation is found. Employers subject to a stop-work order will have 72 hours following receipt of the order to exercise their right to make a written appeal to contest the stop-work order. Importantly, while employers may appeal the finding, that process may take weeks, risking potentially large losses for the implicated business.

Severance for Mass Layoffs

Effective July 19, 2020, [S.B. 3170](#) dramatically amends the New Jersey state WARN Act in several significant respects. In the event of a covered mass layoff or termination or transfer of operations, the amendment increases the advance notice required to affected employees from 60 days to 90 days. New Jersey was previously aligned with the federal WARN Act which requires 60 days in advance of certain mass layoffs or plant

closings. With respect to the length of notice now required in New Jersey, the new 90-day prior notice period mirrors New York State's advance notice requirement, though threshold standards defining when notice must be given under these statutes differ. Upon the effective date, New Jersey employers now will need to consider two different statutory schemes to determine to what extent advance notice is required.

The amendment requires covered employers to provide severance pay to employees when there is a mass layoff or termination/transfer or operations impacting at least 50 full-time workers laid off in a 30-day period. Under the statute, severance is calculated at one week's pay for each full year the worker has been employed and is required even when the requisite notice has been provided. In addition, when an employer fails to meet its advance notice mandate, the new law requires employers to give affected employees an additional four weeks of severance pay. In contrast, severance is currently a penalty for non-compliance with the New Jersey WARN Act.

Further, the required severance must be paid to the affected employee at the same time as the final paycheck. The severance cannot be used as consideration to negotiate a general release of claims from the terminated employee. Employers can, however, obtain a release of claims where additional consideration is offered to the impacted employee for that specific purpose.

The Crown Act

[S.B. 3945](#) amends the LAD to clarify that race discrimination includes discrimination on the basis of "traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles." Governor Murphy enacted the CROWN Act exactly one year after an incident involving an African-American high school wrestler who was forced to cut off his locks in order to compete in a match. The wrestling incident prompted the introduction of S.B. 3945 and garnered widespread media attention. We reported on the CROWN Act in detail in our [October 2019 alert](#). Effective immediately, the CROWN Act codifies guidance issued by the New Jersey's Division on Civil Rights (DCR) stating that the DCR considered "hairstyles closely associated with Black people," such as "twists, braids, cornrows, Afros, locks, Bantu knots, and fades" to be included in the definition of racial characteristics protected under the LAD.

New Jersey has become the third state to ban discrimination based on natural hair and hairstyles, following New York (effective on July 12, 2019) and California (effective on January 1, 2020). The New York City Commission on Human Rights issued similar guidance in February 2019 that clarifies that the New York City Human Rights Law includes discrimination based on natural hair and hairstyles as a form of race discrimination. Several other states and municipalities have similar legislation pending. Also, Senator Cory Booker introduced federal legislation on December 5, 2019 that would ban discrimination based on hair textures and hairstyles that are commonly

associated with a particular race or national origin, and Representative Cedric Richmond introduced companion legislation in the House of Representatives.

Takeaways:

New Jersey continues to take steps to dramatically increase employee rights in the workplace. New Jersey employers should take appropriate measures now to ensure that (i) owners, directors, officers, managers, and others involved in the process of classifying workers are mindful of the new employee classification requirements for businesses and their potential exposure based on individual liability for misclassifications, (ii) their businesses are compliant with new posting requirements regarding New Jersey's recently passed employee misclassification laws, and (iii) managers and supervisors are trained on the new retaliation protections afforded employees who report alleged violations concerning employee misclassification.

New Jersey employers also should review their grooming policies to determine whether they discourage natural hairstyles and hair textures, and determine whether any policies pertaining to appearance or aesthetics implicate any other proxies to race. With similar laws in other states, like New York, and pending elsewhere, employers across the nation should review their policies regarding grooming, appearance and aesthetics.

Lastly, the amendments to the New Jersey WARN Act will require careful analysis to determine an employer's obligations and to minimize risks in connection with a mass layoff or transfer/termination of operations. The new severance obligations undoubtedly will impose substantial financial burdens on employers who have made the decision to reduce costs and/or operations.

Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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