

Client Alert **Employment and Labor**

Employers Considering Reducing Their Workforce Take Heed: NJ WARN Amendments Loom Large for 2023

As we [previously reported](#), NJ WARN was dramatically amended in January 2020 and we have [reminded employers](#) not to lose sight of these impending amendments, which include increasing the employers who are covered (impacted) by the obligations, and creating mandatory severance pay requirements regardless of notice compliance among other changes.

WARN requirements have long been part of both federal and state law, and set forth employer obligations, including requiring notice to impacted employees, as well as certain government entities, when an employer is reducing its workforce. The 2020 NJ WARN amendments increase employer obligations over and above both previous state obligations and the federal WARN Act requirements.

The NJ WARN amendments were already signed into law in 2020, but their implementation has been delayed for over two years due to the pandemic, when the government sought to avoid impacting employers struggling with pandemic related layoffs. The 2020 NJ WARN amendments currently are set to become effective 90 days following termination of the Governor's Executive Order No. 103, which is the Governor's Order declaring and maintaining a State of Emergency due to COVID. The Executive Order remains in effect, holding the amendments in abeyance. Yesterday, December 19, the New Jersey Legislature passed Bill A4768 (the "Bill"), which implements the 2020 NJ WARN amendments 90 days from its passage. The Bill has now passed both houses of the New Jersey Legislature and is headed to the Governor's desk to be signed into law.

This new legislative effort to revive the deferred NJ WARN amendments puts New Jersey employers on notice to prepare for implementation in early 2023.

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Significant Amendments to NJ WARN

Originally passed in 2007, NJ WARN currently requires employers of 100 or more full-time employees to provide notice 60 days in advance of covered plant closing and covered mass layoffs, and only requires severance be paid to impacted employees when the employer fails to provide proper notice. Here are the critical highlights of the forthcoming amendments, which increase and broaden employers' obligations:

More Employers Impacted – NJ WARN obligations currently apply only to employers with 100 or more full-time employees, which is defined as employees working for the employer for more than 6 months and for more than an average of 20 hours per week. The amendments eliminate the distinction between full-time and part-time employees, making NJ WARN applicable to all employers of 100 or more employees regardless of hours worked or length of tenure. The full-time and part-time distinction is also eliminated for the purpose of determining whether an employment action is covered by NJ WARN. Whereas a plant closing, operations transfer, or mass layoff is currently required to meet a certain threshold number of full-time employees terminated, the amendments make NJ WARN applicable in all instances resulting in the termination of 50 employees.

Locations Are Aggregated – The amendments will broaden the definition of “establishment” to include all of an employer’s New Jersey locations operating for longer than three years, whereas previously it was defined as a single site or a group of related (contiguous) locations. This will require employers to consider employment actions occurring at all such locations cumulatively within the state.

Increased Timing of Notice – The amendments increase the timing of required advance notice before the employment action is taken from 60 days to 90 days. The persons and entities who must be notified remain (1) each impacted employee, (2) the chief elected official of the municipality where the employer is located, and (3) the Commissioner of Labor and Workforce Development.

Mandatory Severance Requirements – Even when proper notice is given, the amendments require employers to provide one week of severance pay for each year of completed service to employees impacted by a covered action.

Severance Penalty – An employer must pay each impacted employee an additional 4 weeks of severance if it does not provide proper notice of layoffs.

Employers operating in New Jersey who are contemplating a mass layoff, transfer of operations, or termination of operations should confer with counsel to review current NJ WARN Act obligations as well as the pending amendments and federal WARN Act requirements when navigating a reduction in their workforce.

Our Sills Cummis Employment and Labor Practice Group attorneys are available to advise on these evolving issues.

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