

April 20, 2020

COVID-19 Update: NJ WARN Enhanced Severance and Notice Requirements for Lay-Offs Delayed Until 90 Days After State of Emergency Lifted; Does Not Apply to COVID-19 Required Layoffs

Key Takeaways

- The effective date of the New Jersey WARN law requiring additional advance notice and severance compensation for certain employment terminations, has been postponed from July 19, 2020 until at least August 6, 2020.
- The law has also been clarified to permit exceptions as a result of natural disasters or national emergencies.

In January 2020, New Jersey amended its mini-WARN statute (sometimes referred to as “NJ WARN”) which significantly expanded liability with respect to certain terminations of employment in the state of New Jersey. As revised, NJ WARN was scheduled to be effective on July 19, 2020.¹ However, on April 14, 2020, in response to the COVID-19 pandemic, New Jersey delayed the effective date of the amended NJ WARN to 90 days after Governor Phil Murphy lifts Executive Order 103 declaring a state of emergency related to COVID-19. The Executive Order is currently set to expire on May 8, and therefore the effective date of the new law will be August 6, 2020 (this date will be extended if Executive Order 103 is extended).

If an employer who is subject to NJ WARN implements a mass layoff (generally a reduction in force that affects 50 or more employees (including part-time employees)) throughout the state of New Jersey, then the employer must provide 90 days’ advance written notice of such terminations. In addition to advance notice, NJ WARN requires the employer to provide mandatory severance of one week of pay per year of service, and this severance may not be waived without approval from a court or the Commissioner of the NJ Labor and Workforce Department.

If the 90 days’ advance notice is not provided, then in addition to the requirements described above (including to pay the employees for the 90 days), severance of four weeks’ pay per affected employee is required.

In response to the COVID-19 pandemic, NJ WARN was amended and clarified to provide that, retroactive to March 9, 2020, mass layoffs that would otherwise trigger NJ WARN, and which are implemented as a

¹ See our prior alert dated February 11, 2020. <https://www.paulweiss.com/media/3979338/11feb20-nj-warn.pdf>

result of natural disasters or natural emergencies generally do not trigger NJ WARN. In light of the fact that NJ WARN was amended specifically in response to the COVID-19 pandemic, it would appear that the COVID-19 pandemic will be treated as a natural disaster or national emergency for purposes of NJ WARN.

Notwithstanding these welcome changes, employers that are considering reductions in force in New Jersey should review the revised version of NJ WARN and its requirements and potential liability, whether in connection with ongoing operations, mergers and acquisitions, restructurings and bankruptcy or otherwise.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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