

Labor and Employment Alert: New Jersey Requires Paid Severance in Mass Layoffs

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The federal Worker Adjustment Retraining and Notification Act (WARN Act) requires employers to provide employees with advance notice of certain plant closings and mass layoffs. Twenty-four states – including New Jersey – and one city (Philadelphia) have adopted their own mini-WARN Acts. New Jersey recently expanded the scope of its notification law (the Millville Dallas Airmotive Plant Job Loss Notification Act) to include requiring employers provide severance pay as part of a mass layoff or plant closing. New Jersey is the first state to mandate severance pay in these cases.

Effective July 19, 2020, New Jersey's law requires employers having 100 or more employees at an "establishment" in the state to provide 90 days' notice of a plant closing or mass layoff that will involve 50 or more employees over a period of 30 days or less.

This significantly expands the scope of the Millville Dallas Act in three ways. First, previously the law required a 60-day notice period (similar to federal WARN Act), and the 100-employee threshold was determined by counting only full-time employees. Now, an employer's full-time and part-time workforce must be considered in determining whether the 100-employee threshold is reached.

Second, a "mass layoff" was a reduction in force of 500 or more employees or 50 or more employee who represented a third of the workforce. Now, a mass layoff occurs when 50 or more employees at the establishment or "reporting to the establishment" are separated. It is unclear from the statutory language whether employees who are "reporting to" an establishment in New Jersey, but who are located outside the state, would be included in this count.

Third, the law also expands what constitutes an "establishment." Previously, an establishment was a single site of employment, which may include a group of contiguous locations. Now, however, "establishment" is no longer defined as a "single" site or a "contiguous" group of sites. Instead, an "establishment" may be a single location or group of locations of any facilities located in New Jersey. This differs

from the WARN Act's definition of establishment.

The most significant change to the Millville Dallas Act is that employees who are subject to covered mass layoff, transfer of operations, or plant closing must receive at least one week of severance pay for every year of service. The severance pay is calculated by taking the greater of the employee's average rate of pay during his or her last three years or the employee's final rate of pay. If a contract, policy, or collective bargaining agreement provides for greater severance, then the employee received the greater amount. Any backpay that an employer pays to an employee for a violation of the federal WARN Act are credited toward the severance payments an employer must make under the New Jersey law. The law prohibits waiving the right to severance without the approval of the State Labor Commissioner or a court.

Employers with New Jersey operations that are considering a plant closing or mass layoff should consider how the expanded Millville Dallas Act affects those plans. Contact your Vorys lawyer if you have questions about implementing a mass layoff or plant closing.