

**Alert | Health Emergency Preparedness Task Force:  
Coronavirus Disease 2019**



**April 16, 2020**

## **New Jersey Expands Family Leave Benefits and Expressly Excludes Pandemic-Based Layoffs from WARN Requirements in Further Response to COVID-19**

On April 14, New Jersey Gov. Phil Murphy signed into law a series of bills designed to address the ongoing COVID-19 pandemic. Two of these bills have immediate (indeed, retroactive) impacts on Garden State employers as they continue to deal with the crisis.

First, Senate Bill 2374, effective March 25, expands existing protections under New Jersey’s Family Leave Act (NJFLA) for employees affected by the COVID-19 pandemic, as well as future pandemics. That same bill also expands the definition of “disability” under the state’s Temporary Disability Benefits Law to include expressly actual and suspected illness due to a communicable disease.

Second, Senate Bill No. 2353, effective March 9, redefines “mass layoffs” under the state’s “mini-WARN” law to exclude layoffs caused by the COVID-19 pandemic, as well as other disasters. It also delays applicability of a recent amendment to New Jersey’s mini-WARN (that requires, among other things, employers to pay severance in the event of mass layoffs or facility closures) to 90 days after termination of Gov. Murphy’s March 9, 2020, Executive Order No. 103, declaring a statewide state of emergency.

### Senate Bill 2374 – Expansions of Family Leave and Temporary Disability Benefits

Senate Bill 2374 expands existing NJFLA protections specifically to address pandemics and other communicable disease crises in several ways:

- **Epidemic provides a basis for family leave.** Under the amendments, leave necessitated by a declared state of emergency due to: (i) an epidemic of a communicable disease; (ii) a known or suspected exposure to the communicable disease; or (iii) efforts to prevent the spread of the communicable disease, is now protected.
- **Leave permitted to care for a child during school closure or a family member subject to quarantine.** Like recent expansions of the federal FMLA, epidemic-based leave is now available to employees: (i) when the employee needs to care for a child whose school or care facility has closed; or (ii) when the employee needs to care for a family member whose presence in the community is declared hazardous to “the health of others,” or where the family member is told to “voluntarily undergo self-quarantine as a result of suspected exposure.”
- **Limited medical certification required.** The bill limits an employer’s right to seek medical certifications for epidemic-related care. It specifically defines the parameters under which such certifications, when required, “shall be sufficient” to support a request for leave.
- **Intermittent leave available.** Leave for the three epidemic-based scenarios may be taken intermittently if the employee: (i) provides the employer with prior notice “as soon as practicable”; (2) “makes a reasonable effort to schedule the leave so as not to unduly disrupt” the employer’s operations; and (3) if possible, provides the employer with a regular schedule of requested intermittent leave.
- **Definition of “serious health condition” includes actual, suspected, or efforts to prevent epidemic-based illness.** The definition of “serious health condition” includes not only an actual epidemic-based illness, but also a suspected illness, or efforts to prevent the spread of a communicable disease.

Senate Bill 2374 also amends New Jersey’s Temporary Disability Benefits Law to clarify that certain known or suspected epidemic-based conditions qualify as a “disability.” During a governor-declared state of emergency, or when indicated by a public health authority, “disability” now includes: (i) illness caused by an epidemic of a communicable disease; (ii) known or suspected exposure to the communicable disease; or (iii) efforts to prevent the spread of the communicable disease requiring in-home care or treatment.

### Senate Bill 2353 – Exceptions to NJ-WARN

Senate Bill 2353 amends the Millville Dallas Airmotive Plant Job Loss Notification Act, also known as New Jersey’s “mini-WARN,” to exclude from the definition of “mass layoff” those layoffs necessitated by “fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial sabotage, decertification from participation in the Medicare and Medicaid programs ... or license revocation pursuant to P.L. 1971, c.136.” This new language now mirrors the existing definition of “termination of operations” under the state’s mini-WARN, and thus excludes from mini-WARN notice requirements (although not federal WARN Act requirements) mass layoffs and facility closures related to COVID-19.

Senate Bill 2353 also delays the effective date of a significant amendment to the mini-WARN that requires (among other things) employers pay severance in the event of a mass layoff or facility closure. The prior amendment will now become effective 90 days after the termination of Gov. Murphy’s March 9, 2020,

Executive Order declaring a state of emergency resulting from COVID-19 (instead of the amendment's original effective date of July 19, 2020).

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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