

## **Alert** | Labor & Employment



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### **New Jersey’s Mini-WARN Act Amendments, Including Mandatory Severance, Now in Effect**

On Jan. 10, 2023, New Jersey Gov. Phil Murphy signed legislation (P.L. 2023 c.142) that implements the long-delayed 2020 amendments to New Jersey’s mini-WARN Act, the Millville Dallas Airmotive Plant Job Loss Notification Act (NJ WARN).

**Go-To Guide:**

- Mandatory severance required in New Jersey RIFs
- New Jersey expands requirements for employee layoffs under state’s mini-WARN Act.

NJ WARN – like the federal WARN Act and other states’ mini-WARN Acts – requires larger employers to provide notice to employees in advance of a mass layoff, plant closing, or reduction-in-force. Failure to give advance notice typically results in the employer having to pay additional wages to the impacted employees.

The amendments to NJ WARN are unique in that they require employers to pay mandatory severance to employees terminated in a qualifying layoff, even if the employer provides timely notice to the employees. The amendments are in effect as of April 10, 2023. As a result, New Jersey employers planning layoffs must now comply with NJ WARN’s costly new requirements:

- As amended, NJ WARN now applies to employers with at least 100 employees nationwide without regard to full-time or part-time status, years of employment, or hours worked per week. (NJ WARN previously did not count or consider part-time employees or employees employed for less than six months);
- NJ WARN is now triggered by a termination of 50 or more employees in a 30-day period who “report to” a place of employment, or “Establishment.” Multiple rounds of layoffs within a 90-day period will be aggregated for this purpose unless the employer can demonstrate a separate cause for each round of layoffs. (NJ WARN previously was triggered by a termination of 500 or more employees or the termination of 50 or more employees representing 1/3 of the full-time employees at an Establishment);
- The term “Establishment,” which used to mean a single, contiguous place of employment, has been expanded to include all locations within New Jersey. (This means that NJ WARN may be triggered by the termination of 50 employees working anywhere in New Jersey, including employees who may be located outside of New Jersey, but who “report to” a site in New Jersey);
- The notice period is increased to 90 days. (Previously 60 days);
- NJ WARN now requires that the employer pay one week of severance for each year of service to each terminated employee, automatically and without conditioning such severance on the employee’s execution of a release of employment claims. (This was previously the penalty for failure to give the required notice to employees, but now applies even if the employer gives timely notice of the layoff);
- If the 90-day notice is not given, NJ WARN requires employers to pay an additional four weeks of severance pay to each terminated employee;
- Employees may not waive their right to the severance pay under NJ WARN without state or court approval. However, the severance pay requirement may be satisfied in whole or in part by payment of severance, back pay, or penalties under other WARN Acts, agreements, or collective bargaining agreements.

These changes to NJ WARN were originally passed on Jan. 21, 2020 (P.L. 2019 C.423). However, on April 14, 2020, the New Jersey legislature delayed the effective date of the NJ WARN amendments until 90 days after the end of the pandemic-related state of emergency announced by Gov. Murphy in Executive Order 103. Executive Order 103 has never been lifted, and the state of emergency remains in effect in New Jersey. However, on Jan. 10, 2023, Gov. Murphy signed separate legislation (P.L. 2022 c.142) allowing the NJ WARN amendments to take effect despite the ongoing state of emergency.

Following these amendments, NJ WARN’s reach is much broader than federal WARN:

- Federal WARN only applies to employers with 100 or more employees, excluding part-time employees working less than 20 hours per week and employees who have worked less than six months in the last year;
- Federal WARN is triggered only by
  - the closing of a single work site or facility, if it results in the termination of 50 or more employees in any 30-day period;
  - the termination of 50 or more employees at a single work site or facility in any 30-day period, if they make up 1/3 or more of the employer’s work force; or
  - the termination of 500 or more employees at a single work site or facility in any 30-day period;

- Like NJ WARN, multiple rounds of layoffs within a 90-day period will be aggregated to meet these employee thresholds.
- The “site of employment” under federal WARN is limited to single offices, buildings, office campuses, or other contiguous workplaces, and terminated employees are not aggregated across facilities in separate locations;
- The notice period under federal WARN is 60 days;
- Federal WARN requires no severance payments to terminated employees, but if the 60-day notice is not given or is given late, federal WARN requires employers to pay back pay to each terminated employee for the full period of non-compliance;
- Employees may not waive their rights under federal WARN in advance but may settle their claims under federal WARN after-the-fact, without state or court approval.

In light of New Jersey’s more expansive requirements, employers conducting any layoffs impacting New Jersey employees should review their workforce reduction plans and policies to ensure they remain compliant.

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