



GreenbergTraurig

Coronavirus Disease 2019 (COVID-19) Update for NY and NJ Employers - A Greenberg Traurig Webinar

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Agenda

- NJ Stay Home Order
- NYS PAUSE Order
- Families First Coronavirus Response Act
- Salary reductions, furloughs and layoffs
- NJ and NY paid sick leave laws and employer PTO policies
- NJ and NY unemployment benefits
- Federal WARN and NJ WARN
- NY WARN
- Q&A

“New Jersey Stay At Home”

- Effective Saturday, March 21st at 9:00 pm
- Governor Murphy announced the "New Jersey Stay Home Order, implementing certain restrictions related to the spread of the Coronavirus
- Outlines the limited reasons for citizens to leave their homes
- Orders the closure of all non-essential businesses statewide
- “Essential Businesses” are not subject to the in-person restriction



Wendy Johnson Lario
Shareholder, New Jersey

What is an Essential Business?

- Recreational and entertainment
- Certain Retail
- Health care or medical services
- Access to essential services for low-income residents, such as food banks
- Media
- Law enforcement
- Federal government



Wendy Johnson Lario
Shareholder, New Jersey

Essential Business Operation

- Essential Businesses must accommodate their workforce for telework or work-from-home arrangements to the greatest extent possible
- Best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue
- Implement social distancing with employees and customers/visitors
- Letter provided to necessary staff



Wendy Johnson Lario
Shareholder, New Jersey

New York State on “PAUSE”

- Friday, March 20th, Governor announced the "New York State on PAUSE" executive order, implementing certain restrictions in an attempt to stem the spread of the novel coronavirus
- All non-essential businesses statewide were ordered closed for in-office personnel functions effective at 8PM on Sunday, March 22
- “Essential Businesses” are not subject to the in-person restriction



Jerry Goldberg
Shareholder, New York



Bryan Grimaldi
Of Counsel, New York

What is an Essential Business?

- Essential Health Care Operations
- Essential Infrastructure
- Essential Manufacturing
- Essential Retail
- Essential Services
- News Media
- Financial Institutions
- Providers of Basic Necessities to Economically Disadvantaged Populations
- Construction
- Defense
- Essential Services Necessary to Maintain the Safety, Sanitation and Essential Operations of Residences or Other Essential Businesses
- Vendors that Provide Essential Services or Products, Including Logistics and Technology Support, Child Care and Services
- The full list: [Guidance on Essential Businesses](#)



Jerry Goldberg
Shareholder, New York



Bryan Grimaldi
Of Counsel, New York

Requirements for Essential Operation

- Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health)
- Guidance on preparing your [Workplace](#)
- Businesses that provide essential services must implement rules that help facilitate social distancing of at least six feet



Jerry Goldberg
Shareholder, New York



Bryan Grimaldi
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Requesting an Essential Designation

- Intent of the Executive Order
- Requests by businesses to be designated an essential function as described above, should only be made if they are NOT covered by the [guidance](#)
- Restrictions on requesting designation as an essential business:
 - Any business that only has a single occupant/employee has been deemed exempt and need not submit a request to be designated as an essential business.
 - Businesses ordered to close on Monday, March 15, 2020 under the restrictions on any gathering with 50 or more participants, including but not limited to, bars, restaurants, gyms, etc.
- Requests for an Essential Business Designation [here](#)



Jerry Goldberg
Shareholder, New York



Bryan Grimaldi
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Tips for Essential and Non-Essential Businesses

- Essential Businesses

- limit work in the facility to those who cannot perform work remotely
- issue a limit on Company letterhead to employees who will need to come to the place of business
- if employees do not want to come to work but the facility is open, the emergency sick pay rules do not apply
- if employees cannot come to work for a qualifying circumstance, s/he is entitled to the sick pay benefits
- comply with terms of collective bargaining agreements



Jerry Goldberg
Shareholder, New York



Bryan Grimaldi
Of Counsel, New York

Tips for Essential and Non-Essential Businesses

- Non-Essential Businesses
 - encourage workers who cannot work remotely to file for unemployment insurance benefits
 - federal law may permit employees who cannot work remotely to collect benefits due to the “stay at home” order
 - limited exceptions where work is performed for an essential service
 - comply with the terms of governing collective bargaining agreements



Jerry Goldberg
Shareholder, New York



Bryan Grimaldi
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Families First Coronavirus Response Act (“Families First”)

- The Families First legislation contains two sections that address leave:
 - (1) Emergency Family and Medical Leave Expansion Act
 - (2) Emergency Paid Sick Leave Act



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Emergency Family Medical Leave Expansion Act

- Modifies longstanding FMLA that provided 12 weeks of *unpaid* leave
- Applies to employers with “fewer than 500” employees (not “50 or more employees”)
- Creates new reason for protected FMLA leave related to the epidemic



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Emergency Paid Sick Leave Act

- Paid sick leave related to COVID-19
- Top 5 Questions
 - What employers must provide it?
 - Which employees can receive it?
 - How much leave must be provided?
 - How does this interact with state law?
 - What are the possible penalties for violations?



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Question 1: What employers must provide paid leave? “500 or fewer”

- Any person engaged in commerce or any industry or activity affecting commerce that:
 - Private entities – those that employ “*fewer* than 500 employees”
 - Public agencies/other non-private entities that employ more than 1 employee
 - Public agency as defined in Section 3(x) of the FLSA



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Question 2: Which employees can receive it?

An employee:

1. subject to a “quarantine or isolation” order
2. advised by HCP to self-quarantine due to “concerns related to COVID-19”
3. experiencing symptoms of COVID-19 and seeking medical diagnosis
4. caring for an individual subject to an order in (1) or (2)
5. **caring for a son or daughter if school or daycare center has been closed or childcare provider is unavailable due to COVID-19 precautions**
6. experiencing “any other substantially similar condition specified by the Secretary of Health in Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor”



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Question 3: How much leave must be provided?

- Full-time employees: 80 hours (two weeks)
- Part-time employees: Average hours worked over 2 weeks
- Amount of \$ depends on reasons for leave
 - Not less than greater of employee’s regular pay/federal min wage/state min wage
 - Will not exceed \$511 per day and \$5,110 for reasons in paragraph (1), (2), (3)
 - Will not exceed \$200 per day and \$2,000 reasons described in (4) or (6)
 - Will not exceed \$200 per day and \$12,000 in the aggregate over 12-week period (2 weeks paid leave + 10 weeks expanded FMLA leave)
- Note: No required payout of unused leave at termination



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Question 4: How does Families First interact with state law?

- Employer may not require employee to use other available paid leave the employer provides before the employee may use leave allowed under the Emergency Paid Sick Leave Act
- The Act is mean to “add to” existing leave. The Act does not diminish rights employee entitled to under any other federal, state or local law, CBA, or existing employer policy



Noel Lesica
Associate, New Jersey

Families First Coronavirus Response Act (“Families First”)

Question 5: What are possible penalties for violating the law?

- Enforcement (Section 5105)
 - Failure to provide paid sick leave considered failure to pay minimum wage
 - Willful violation of non-discrimination provisions (unlawful termination) considered an FLSA violation
 - Available penalties under the FLSA apply



Noel Lesica
Associate, New Jersey

Salary Reductions, Furloughs and Layoffs for Non-Union Employees

- Salary reductions for non-exempt employees
 - Comply with minimum wage requirements for jurisdiction
 - Pay for all hours worked (and overtime)
- Salary reductions for exempt employees
 - Preserving exempt status
 - State v. Federal minimum salaries
 - Are the work duties different now? (May justify switch to hourly status)
- Consider:
 - Wage notices in compliance with state law
 - Partial unemployment may be available
 - Impact on eligibility for benefits



Kristine Feher
Shareholder, New Jersey

Salary Reductions, Furloughs and Layoffs for Non-Union Employees

- Furlough/Temporary layoff
 - What is it?
 - Consider benefits that may be available during furlough
 - Consider impact on benefits
 - Consider length of furlough and state-law implications
- Layoff
 - Required payouts (based on jurisdiction and policy)
 - Consider WARN issues
 - Employees may apply for unemployment
 - Issue COBRA notices
 - Consider severance packages providing for some separation pay or COBRA subsidy in exchange for release



Kristine Feher
Shareholder, New Jersey



New York Emergency Sick Leave

- March 18, 2020 implementation
- Requires mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Dept. of Health, a Local Board of Health, or any government entity duly authorized
- The requirements vary based on the employer's size:
 - 11-99 employees -- five (5) days of paid sick leave
 - More than 100 employees -- are fourteen (14) days of paid sick leave



Danielle Gonnella
Associate, New Jersey

Additional New York Benefits

- NYC/Westchester Sick Leave:
 - Employers with five (5) or more employees who work more than 80 hours a calendar year in New York City
 - 40 hours of paid safe and sick leave every calendar year, which may be used 120 days after start of employment
 - Accrued at the rate of 1 hour for every 30 hours worked
- Disability and Paid Family Leave benefits may be payable concurrently to an eligible employee



Danielle Gonnella
Associate, New Jersey

New Jersey Earned Sick Leave (“ESL”)

- Not changed by COVID-19, no state-specific emergency benefit
- If an employee is laid off, furloughed, or told to work from home due to the ongoing pandemic, the employee does not automatically qualify for ESL due to the public health emergency
 - May qualify if employee is told to work from home because of exposure, or self-quarantine
- If employees are furloughed, they are still employed, and should have access to their ESL
- If any employee is exposed to someone who is or may be positive for COVID-19 at work, and is told to quarantine, they qualify for ESL, and may subsequently qualify for workers’ compensation
- If an employee is taking care of a family member with COVID-19, they may use ESL, and may thereafter qualify for paid family leave



Danielle Gonnella
Associate, New Jersey

NJ & NY Unemployment Benefits Overview

- New Jersey Unemployment
 - Waived “actively seeking employment” requirement for COVID-19 related applications
 - Has implemented specific times for applications based on SSNs
- New York Unemployment
 - Waived 7 day waiting period
 - New York exemptions for “actively seeking employment”?
- New York Shared Work Program



Courteney Lario Caine
Associate, New Jersey

NJ & NY Unemployment COVID-19 Scenarios

- Reduction of hours
- Furloughs
- State-ordered shut down of business
- Personal refusal to physically go to work
- Quarantined employee



Courteney Lario Caine
Associate, New Jersey

Federal WARN Act

- Applies to employers with more than 100 full-time employees
 - Includes those who have worked at least six months in the last 12 months and who work an average of 20 or more hours per week
- Requires 60-day (calendar) notice for:
 - Facility closure affecting at least 50 full-time employees at a single employment site
 - Mass layoff affecting at least 500 (or 50-499 constituting 1/3 of total active workforce) full-time employees at a single employment site during a 30-day period
 - Temporary layoff of less than 6 months meeting either of the above criteria above that is later extended for more than 6 months
 - Reduction of hours of work for at least 50 employees by 50% or more for each month in any 6 month period
- Does not require 60-day notice for:
 - Closure of temporary facility or completion of temporary project
 - Closure of facility due to strike/lockout not intended to evade WARN



Ryan O'Connor
Associate, New Jersey

Federal WARN Act

- Smaller layoffs occurring over a 90-day period which do not individually meet the applicable threshold but which aggregated together do require notice unless employer can show they are separate and distinct actions not intended to evade WARN requirements
- Exceptions to notice requirement:
 - “Faltering company”
 - Unforeseeable business circumstances
 - Natural disaster
- Note these exceptions do not excuse notice, just 60-day requirement – employer must still give notice “as soon as practicable”



Ryan O'Connor
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New Jersey WARN

(Millville Dallas Airmotive Plant Job Notification Act)

- Like federal, applies to employers with > 100 total full-time employees
- 60-day notice is required for:
 - Temporary (more than 6 months) or permanent shut down of workplace resulting in employment loss for 50+ full-time employees
 - Mass layoff involving 500 or more total employees or 50 or more full-time employees representing at least one-third of full-time employees
 - Temporary (more than 6 months) or permanent transfer of a single establishment to other location resulting in employment loss for 50+ full-time NJ-based employees
- Again, like federal WARN, smaller layoffs will be aggregated if they occur within a 90-day look-back/look-ahead period
- NJ does **not** include the exceptions provided by federal WARN
 - BUT full notice need not be provided if a layoff that was expected to be for 6 months or less is extended beyond 6 months because of “not reasonably foreseeable business circumstances” (notice must be given when it becomes “reasonably foreseeable”)



Ryan O'Connor
Associate, New Jersey

New Jersey WARN

(Millville Dallas Airmotive Plant Job Notification Act)

- Significant amendment to NJ WARN enacted in January; effective July 19, 2020
- Changes include:
 - Applies to employers with 100 total employees period (no minimum hours/tenure)
 - Notice requirements now “triggered” by a termination of 50 employees across all of NJ, regardless of tenure or hours of work
 - 90-day notice period
 - Terminated employees now entitled to one week severance automatically
 - Previously only entitled to one-week severance if employer failed to provide notice; terminated employees now entitled to four weeks severance if adequate notice not provided
 - Employees may not waive severance without state or court approval



Ryan O'Connor
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New York State WARN Act General Provisions

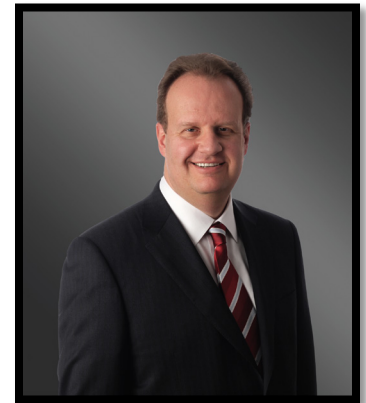
- Applies to employers with 50 or more employees within New York State
- Provides for 90-day advanced notice of employment loss
- Plant Closing - shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, for 25 or more employees
- Mass Layoff – results in an employment loss of at least 25 employees (excluding part-time employees) constituting at least 33% of the employees at the site (excluding part-time employees), or at least 250 employees (excluding part-time employees) regardless of whether they constitute 33% of the employees at the site



Eric Sigda
Shareholder, New York

New York State WARN Act Unforeseeable Business Circumstance

- Provides an exception to the 90-day notice requirement where the employment loss was caused by business circumstances that were not reasonably foreseeable
- New York Department of Labor is not suspending the 90-day notice requirement “because the WARN Act already recognizes that businesses cannot predict sudden and unexpected circumstances beyond an employer’s control, such as government-mandated closures, the loss of your workforce due to school closings, or other specific circumstances due to the coronavirus pandemic”
- To qualify for this exception, include as much information as possible to the Department of Labor when filing the WARN notice about the circumstances of the employment loss



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Questions?



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