

Employers Must Comply with WARN Acts During COVID-19 Pandemic

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Many New Jersey employers who are struggling to keep their doors open in light of the downturn in the economy resulting from the COVID-19 pandemic have considered reducing their workforce in order to survive. For some of these employers, there is a federal law, the Worker Adjustment and Retraining Notification (WARN) Act, and a New Jersey law, the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey Mini-WARN Act) which may require that the employer provide its employees with 60 days notice prior to its first employee termination. Employers subject to these laws are those with:

- 100 or more full-time employees (employees who work over 20 hours per week and have been employed for at least 6 out of the last 12 months), or
- 100 or more employees, including part-time employees, who, in combined total, work at least 4,000 hours per week.

Employers are subject to the federal and state WARN Acts if they engage in an action which results in a “loss of employment” for at least 50 employees. These actions may include plant closings, mass layoffs or drastic cuts to employee work hours. An employer that closes a plant is subject to the WARN Acts when a shutdown of a single site of employment, results in the loss of employment of 50 or more employees during a 30 day period. Under the New Jersey Mini-WARN Act, a plant closing is called a “termination of operations.” Secondly, an employer may be subject to the WARN Acts when it engages in a mass layoff wherein 33% of the workers at a single site of employment have suffered a loss of employment, as long as a minimum of 50 employees are terminated. Employers should note that if 500 employees or more are terminated, the 33% requirement does not apply. Thirdly, a loss of employment under the Acts also occurs if an employer cuts its employees hours so they work less than 50% of the usual amount of hours worked for each month during a 6 month period of time.

Both Acts state that if employees are laid off for less than six months, then the 60 day notice is not required. This is true as long as the employer makes it clear in its layoff notice that the layoff is temporary, and the employer intends to return the employees back to work within six months. The employer must rehire the employees within six months, unless there are unforeseen business circumstances at the time of rehire.

Although there are exceptions to both the federal and state WARN Acts, they are complex. The same exceptions do not apply to both Acts and New Jersey has exceptions which apply to some, but not all, of the three types of employer actions. Moreover, the penalties for violating the WARN Acts are steep, particularly for violations of the New Jersey Mini-Warn Act. The New Jersey Mini-WARN Act provides a severance penalty of one week's pay for each year of completed service for any failure to give a proper notice (offset by any back pay damages paid "because of a violation of" the federal WARN Act).

Takeaway: Determine whether, as an employer, you are subject to the WARN Acts before you take any action.

If you are an employer and need help navigating the WARN Acts during this COVID-19 crisis, or have any other employment law concern, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law Team](#).

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