

# New Jersey Significantly Expands State Mass Layoff and Plant Closing Statute

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On January 21, 2020, the governor of New Jersey signed into law arguably the most stringent provisions governing plant closings and mass layoffs in the nation. Senate Bill 3170, which goes into effect on July 19, 2020, amends the 2007 Millville Dallas Airmotive Plant Job Loss Notification Act (“Act”) to, among other things, require guaranteed severance for all employees impacted by a mass layoff, transfer of operations, or termination of operations, and increase the required notice period for the same.

As background, the Act has historically required covered employers to provide 60 days’ advance notice of any mass layoff, transfer of operations, or a termination of operations. In many respects, the Act mirrored the federal Worker Adjustment and Retraining Notification (“WARN”) Act. One key difference has always been that, under the Act, if an employer fails to provide the required 60-day notice of termination, the employer must pay the employee one week of pay for each full year of employment in addition to any other severance paid for any reason, including pursuant to company policy or a collective bargaining agreement. Such a payment obligation is not contained in the WARN Act, which guarantees payment for only the 60-day notice period.

## Key Changes to the Law

The amended New Jersey Act will further differentiate itself from its federal counterpart and cement New Jersey as one of the strictest states in the nation with respect to mass layoffs and plant closings. While the Act’s amendments include many changes, the following four changes are the most significant:

- **Increased Notice Requirement:** The amended Act requires covered employers to provide a minimum of 90 days’ advance notice of a layoff (as does the New York State WARN Act), rather than the previously required 60 days’ notice. Employers who fail to provide 90 days’ notice of a layoff are required to pay employees four weeks’ severance pay, in addition to the mandatory severance discussed below.
- **Mandatory Severance:** The amended Act requires covered employers to provide one week’s pay to any employee impacted by a mass layoff, transfer of operations or termination of operations for each full year of service – even if the company gives the required 90-day advance notice. The amended Act classifies this severance as *compensation* that is considered *earned* as of the termination date. This is a major departure from the current law, which requires payment of severance only as a penalty for failing to provide the required notice.
- **Prohibition on Waivers:** The amended Act makes clear that employers *cannot* obtain a waiver of the severance obligations unless approved by a court or by the Commissioner of Labor and Workforce Development (neither of which is likely to occur and most employers will not want to invite scrutiny by a court or the New Jersey Labor Department).
- **Definition Expansion:** The amended Act also expands the definition of covered employees and covered employers. Under the amended Act, all full-time and part-time employees will count in calculating whether an employer has the requisite 100 employees to be covered by the Act and whether the employer has met the requisite 50-employee minimum to constitute a layoff. Historically, part-time employees (i.e., employees who work fewer than 20 hours a week or employees who have been employed for fewer than six out of the preceding 12 months) were not counted in determining whether an employer is a covered employer or whether a layoff met the 50-employee threshold. The amended Act also expands the definition of “employer” to ensure that nearly any

business relationship between an employer and its workforce will constitute employment under the law. This ensures that all employers in New Jersey who employ more than 100 people will be covered by the Act regardless of the manner in which the business is organized.

## Key Implications

The Act's amendments have sweeping implications for employers with operations in New Jersey and illustrate the importance of extensive planning prior to the commencement of any mass layoff, transfer of operations, or termination of operations. Employers planning a downsizing or reduction in force should carefully consider the financial implications associated with these actions, including the mandatory severance payment. Employers must also consider how the mandatory severance payments interact with their existing severance plans (e.g., whether they offset other severance obligations the company may have) and whether changing severance plans in light of the Act's requirements may be desirable.

The amended Act will also impact how employers obtain release agreements associated with mass layoffs, transfers of operations, and terminations of operations. Now that the Act mandates payment of severance and treats it as compensation, it is questionable whether those payments will constitute sufficient consideration for a release agreement. Thus, employers will likely have to enhance their separation payments beyond the statutory requirements in order to obtain valid release agreements.

New Jersey employers should consult with counsel before undertaking a mass layoff, transfer of operations, or termination of operations in New Jersey. Vedder Price has significant experience advising New Jersey employers under the Act and we are standing by to assist.

If you have any questions regarding the topics discussed in this article, please contact **Jonathan A. Wexler** +1 (212) 407 7732, **Alex C. Weinstein** +1 (312) 609 7853 or any Vedder Price attorney with whom you have worked.

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