

LABOR AND EMPLOYMENT

ALERT

FEBRUARY  
2020

## WARNING for Garden State Employers: New Rules for Reductions in Force

*By Brian M. Wallen and Michael J. Wietrzychowski*

New Jersey continued its march to becoming one of the most employee-friendly jurisdictions in the country upon Governor Phil Murphy signing Senate Bill 3170, amending New Jersey's mini-WARN statute (the Millville Dallas Airmotive Plant Job Loss Notification Act). The highlights of the new law include: a change in the definition of employer; mandatory severance for employees impacted by a mass layoff or closing; part-time employees being included for purposes of triggering notice obligations; extending the notice period for affected workers; and specific protections for employees of businesses which undergo a change in control. The changes will be effective on July 19, 2020 and represent a drastic shift in state requirements. These changes also go far beyond what is required under federal law.

### THE LAW PRIOR TO SB 3170

Laws similar to the federal Worker Adjustment and Retraining Notification (WARN) Act have been adopted in many states, and the federal statute has been in place since 1988. In general, WARN laws provide protections for workers subject to plant closings or mass layoffs.

Until the adoption of SB 3170, the law in New Jersey had more or less paralleled the federal law. It required New Jersey employers with 100 or more full-time employees to provide 60 days' notice of a plant closing impacting 50 or more full-time employees. Notice must be given to employees, the Commissioner of Workforce Development, the employees' representative if applicable, and the chief elected

official of the municipality where the business is located. Additionally, employers with 100 or more employees were required to provide notice of a mass layoff affecting 50 or more full-time employees where that number of employees represents at least one-third of the employees at a single location. Alternatively, employers were required to provide notice of a mass layoff of 500 or more employees at a single site. Employees were not entitled to any severance in connection with a layoff or shutdown.

### NEW REQUIREMENTS UNDER SB 3170

Starting July 19, 2020, employers with 100 or more employees for any mass layoff or shutdown impacting 50 or more employees will be required to provide 90 days' notice. Part-time employees are included in the headcount of affected employees under the new law.

Employers will now be defined more broadly as "any individual, partnership, association, corporation, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and includes any person who, directly or indirectly, owns and operates the nominal employer, or owns a corporate subsidiary that, directly or indirectly, owns and operates the nominal employer or makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification."

Upon separating employees as part of a covered reduction in force, employers will be required to pay each impacted employee one week of severance for each year of service to the employer. The penalty for

not providing the required notice is four weeks of severance pay in addition to the other severance pay required. In comparison, the penalty under the former state law for inadequate notice was one week of severance pay per year of employment without any other mandated severance.

In addition to the changes outlined above, there will be new provisions for employees who work at least 90 days for an employer before the employer undergoes a material change in ownership or makes a filing seeking bankruptcy protection. These provisions exempt managerial employees, supervisory employees, temporary employees and part-time employees who worked less than 20 hours per week for at least 90 days prior to the change in control.

For example, the new law provides that an employer who has 50 or more employees and experiences a change in control, may only terminate employees for cause during the six month transition period following the change in control. Moreover, employers must maintain covered employees' total compensation during the transition period. Once an employer has completed a change in control, the successor employer may not reduce the total number of employees who are otherwise protected under this law for two years without the Commissioner of Workforce Development's approval. Approval will only be granted if an employer demonstrates that the elimination of these employees is necessary for the continued solvency of the business.

## TAKEAWAYS

New Jersey employers should become familiar with these changes and assess the impact on any planned reduction in force. The penalties for non-compliance are severe. For example, if an employer is one day late in providing notice of a layoff or shutdown, then the employer would be responsible for a minimum of 200 more weeks of severance pay to affected workers on top of any other legally required severance payment.

The inclusion of part-time employees makes it more likely that reductions in force will be covered by New Jersey's mini-WARN without triggering federal WARN requirements. Given the law's broad definition of "employer," issues also will surely arise regarding

responsibility for severance payments by joint employers and by individual managers.

In addition, sales of businesses involving locations in New Jersey will now be more complicated. Successor employers will need to ensure compliance with all requirements under the change in control section of the new law. Even more concerning for successors is that integrating new acquisitions involving New Jersey locations may require up to two years, since the Commissioner of Workforce Development must approve certain reductions in force until that point.

As always, careful planning and thorough review of the complex state and federal rules can help employers to avoid costly problems when considering and implementing reductions in force. The new law in New Jersey raises the stakes much higher than ever before. See the attached chart for additional details. ◆

*This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.*

*For more information about Schnader's Labor and Employment Practices Group or to speak with a member of the firm, please contact:*

*Jo Bennett  
Co-Chair, Labor and Employment Practices Group  
215-751-2134  
jbennett@schnader.com*

*Michael J. Wietrzykowski  
Co-Chair, Labor and Employment Practices Group  
856-482-5723  
mwietrzykowski@schnader.com*

*Brian M. Wallen  
Associate  
215-751-2031  
bwallen@schnader.com*

www.schnader.com

© 2020 Schnader Harrison Segal & Lewis LLP  
All rights reserved.

\* See: [www.schnader.com/jakarta](http://www.schnader.com/jakarta)

	<b>Federal Law</b>	<b>Current New Jersey Law</b>	<b>New Jersey Law as of July 19, 2020</b>
<b>Employers covered</b>	Employers are covered under WARN if they have: 100 or more full-time employees; or 100 or more full- and part-time employees who work a combined total of at least 4,000 hours per week, excluding overtime.	Private employers are covered if they employ 100 or more full-time employees for more than three years at a single location or contiguous locations.	Private employers are covered if they employ a combined total of 100 or more full-time and part-time employees for longer than three years, at a single location or a group of locations.
<b>Triggering mass layoff</b>	A mass layoff refers to a reduction-in-force—other than a plant closing—at a single site of employment that causes employment loss to 50 or more full-time employees and at least 33 percent of full-time employees during any 30-day period. If 500 or more full-time employees are affected by a mass layoff, the 33 percent requirement does not apply.	Mass layoff means a reduction in force which is not the result of a transfer or termination of operations and which results in the termination of employment at an establishment during any 30-day period for 500 or more full-time employees or for 50 or more of the full-time employees representing one-third or more of the full-time employees at the establishment.	Mass layoff means a reduction in force which is not the result of a transfer or termination of operations and which results in the termination of employment at an establishment during any 30-day period for 50 or more of the employees at or reporting to the establishment.
<b>Severance pay</b>	None.	None.	One week of pay per year of employment.
<b>Penalties/Remedies for improper notice</b>	One day of pay and benefits for each day notice is late.	One (1) week of pay per year of employment.	Four weeks of severance.
<b>Obligations for employers who undergo a change in control</b>	None.	None.	Employers who employ fifty (50) persons or more and undergo a change in control must provide certain notice, continued employment, and must receive approval from the Commissioner of Labor and Workforce Development to conduct reductions in force impacting covered employees.