



# New Jersey's WARN Act

## Publication:

Riker Danzig Labor & Employment Alert March 31, 2016

### **Welcome To The Garden State New Jersey Employment Law For The Out-Of-State Employer**

This is the fourth in a series of Alerts we are preparing to help acclimate out-of-state employers to the nuances of New Jersey law. We appreciate any feedback to help us better serve both our New Jersey based and out-of-state clients.

### **New Jersey's WARN Act**

Employers in New Jersey may be subject to the Millville Dallas Airmotive Plant Job Loss Notification Act, commonly referred to as the NJ WARN Act, N.J.S.A. 34:21-1, et seq., in addition to the federal WARN Act, 29 U.S.C. § 2101, et seq. There are several differences between New Jersey's statute and the federal law.

Both the federal WARN Act and the NJ WARN Act require employers with at least 100 full-time employees to provide advance notice of large layoffs. The statutes apply to the temporary or permanent shutdown of a workplace if the shutdown results in an employment loss for 50 or more full-time employees. 29 U.S.C. § 2101(a)(2); N.J.S.A. 34:21-1. They also both require notice for a mass layoff of 500 or more full-time employees or 50 or more full-time employees representing at least one third of full-time employees. 29 U.S.C. § 2101(a)(3); N.J.S.A. 34:21-1. The NJ WARN Act also requires notice before the permanent or temporary transfer of a single establishment to another location that results in the termination of 50 or more full-time New Jersey based employees. N.J.S.A. 34:21-1 and -2.

Both statutes aggregate smaller layoffs if they occur within a 90-day look back/ahead period. If employment losses on two or more dates at a single establishment would, by themselves, not affect the required number of employees, but taken together do, the terminations will trigger the application of the Federal and NJ Warn Acts,

unless the employer can prove that the two terminations are unrelated. 29 U.S.C. § 2102(d); N.J.S.A. 34:21-2.

The Federal Warn Act and the NJ Warn Act require 60-calendar-days notice prior to any covered event. 29 U.S.C. § 2102(a); N.J.S.A. 34:21-2. The Federal Warn Act also permits employers to refer to a 14-day period during which termination is expected to occur, but requires notice 60 days before the first day of the 14-day window. 20 C.F.R. § 639.7(b).

The federal WARN Act grants exceptions to the notice requirement if a company is “faltering” or there are “unforeseen business circumstances.” 29 U.S.C. § 2102(b). New Jersey does not provide these exceptions. Instead, the NJ WARN Act has a more limited exception to the 60-day notice requirement if a layoff that was expected to be for six months or less is extended beyond six months because of not reasonably foreseeable business circumstances. N.J.S.A. 34:21-1. New Jersey’s exception for “natural disaster” is also narrower than the federal WARN Act, applying only to the termination of operations and not to a mass layoff. N.J.S.A. 34:21-1; 29 U.S.C. § 2102 (b).

Separate written notice must be given to each affected employee and any representative of affected employees, the chief elected official of the unit of local government, and the New Jersey Commissioner of Labor and Workforce Development. 20 C.F.R. § 639.7(b)-(f); N.J.S.A. 34:21-3a-f. New Jersey has a required form for the notice available on the New Jersey Department of Labor and Workforce Development's website. N.J.S.A. 34:21-3a-f.

Both the Federal and the NJ Warn Acts provide for a private right of action in the event of a violation. 29 U.S.C. § 2104(a); N.J.S.A. 34:21-6. The Federal Warn Act provides a penalty of back pay for each day of violation. 29 U.S.C. § 2104. The NJ Warn Act requires one week of severance pay for each full year of employment for each affected employee, which may be reduced by back pay paid pursuant to the Federal WARN Act. N.J.S.A. 34:21-2b.

If you have any questions about how New Jersey’s WARN Act or the federal WARN Act could affect your organization, please contact [Scott Ohnegian](#), [Daniel Zappo](#), or any member of Riker Danzig's [Labor & Employment Group](#).

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