

New Jersey Amends WARN Act to Exclude Mass Layoffs Resulting from the COVID-19 Pandemic

New Jersey Governor Phil Murphy recently signed Senate Bill S-2353, which excludes employers from severance requirements under the New Jersey WARN Act ("NJ WARN"). The amendment delays, by a minimum of 90 days, the effective date of the new changes to NJ WARN, set to begin on July 19, 2020. It is not known if and when, this amendment will, in effect, expire.

New Jersey enacted sweeping changes to NJ WARN earlier this year, and in doing so, made it one of the toughest and most costly laws for employers, in the country. Those modifications require employers to provide mandatory severance pay to employees affected by a mass transfer, termination of operations or mass layoff, expanded the definition of "mass layoff," increases the notice requirements to employees, and enhances the penalties available for noncompliance with the notice requirements. Now, they are delayed for at least 90 days, significantly easing the burden on the business community.

Similar to the Federal WARN Act ("Federal WARN"), NJ WARN requires advance notice to be provided to employees when employers conduct a "termination of operations" (i.e., the shutdown of a single site of employment resulting in at least 50 employment losses) or a "mass layoff" (i.e., a layoff that does not result in the shutdown of a single site of employment, but results in at least 50 employment losses representing at least one-third of the workforce). However, Federal WARN exempts the notice requirements if they are caused by, among other reasons, "natural disasters" and "unforeseeable business circumstances." Notably, prior to this amendment, NJ WARN only provided exceptions for "terminations of operations," not mass layoffs.

Perhaps, most significantly, the amendment is retroactive to March 9, 2020, thereby potentially impacting hundreds of business decisions made under the pre-July 2020 effective date.

Employers with 100 or more employees must remember that even if they are eligible for an exception under NJ WARN, they still must comply with Federal WARN. In addition, there may be local ordinances with which to comply, further entangling businesses that are seeking to preserve jobs.

In this challenging and unprecedented time, the Kaufman, Dolowich & Voluck attorneys look forward to assisting employers who are grappling with complex issues in an effort to mitigate the impact of the COVID-19 pandemic on their employees and businesses. KD's Labor and Employment Law Group is continuing to monitor New Jersey directives and will provide updates accordingly. For guidance and/or more information, please contact Karol Corbin Walker, partner, at (201) 708-8245 - email kcorbinwalker@kaufmandolowich.com, or Krystle Nova, attorney, at (201) 708-8215 - email knova@kaufmandolowich.com, experienced members from KD's Labor & Employment Law Practice Group