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Client Advisory

I Kid You Not - New Jersey Becomes the First State Ever to Mandate Severance Pay in the U.S.

Sparked by recent bankruptcies, on January 21, 2020, Governor Phil Murphy signed a bill amending the Millville Dallas Airmotive Plant Job Loss Notification Act, otherwise known as the "N.J. WARN Act," lowering the standard required to issue notices and mandating severance payments to employees involved in certain plant closings, transfers, or mass layoffs. Now is a good time to strategize if you are contemplating any of these transactions since the law is not effective until July 19, 2020.

Under the federal Worker Adjustment and Retraining Notification Act (WARN), notice of layoffs must be made at least 60 days before the layoffs or else the company will be liable for back pay and benefits for the period of the violation, up to 60 days. Less than half of the states have enacted their own mini-WARN Acts, which tend to be more burdensome than the federal law. The original N.J. WARN Act required that companies, with 100 or more full-time employees that laid off 50 or more full-time employees during a continuous 30-day period, provide notice to the employee at least 60 days prior to the layoff, otherwise be subject to a penalty in the form of severance. The new law, first of its kind in the U.S., and regardless of being compliant with the notice requirements, mandates that companies pay **1 week of severance pay for each year of service the employee performed, with no cap!** Thus, a single employee with 20 years of service will be entitled to 20 weeks of severance pay. Moreover, if you are non-compliant with the notice requirements, the company will be liable for an additional 4 weeks of severance for each employee laid off.

The new law now requires that the WARN Act notice be provided no less than 90 days from the date of the transaction and mandates one week of severance pay per year of service to employees if the transaction resulted in 50 or more employees being laid off within a 30-day period. Companies that would be affected must have 100 or more employees. Under the new law, employees counted for the 100 employee threshold will now include not only full-time employees, but also part-time employees.

In the case of terminations of employment for two or more groups when each group has less than 50 employees terminated, the law now requires the company to add all group of terminations anywhere in the State within a 90-day window, unless the company can prove the terminations are separate and distinct from the causes of the other terminations. The previous law required any group of locations to be contiguous.

The new law also broadens the definition of employer to include "any individual, partnership, association, corporation, or any person or any 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 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." This definition exposes management to potential personal liability for severance payments.

Furthermore, typically when providing severance, companies require that employees sign a contract releasing it of any and all claims. This requires that the employee's signature was provided knowingly and voluntarily. One of the many factors courts look at in determining knowingly and voluntarily is whether the consideration given in exchange for the waiver exceeded the benefits to which the employee was already entitled by contract or law. Since the severance payments would be mandated by statute, companies will have to explore what additional consideration must be given to obtain valid releases.

Companies contemplating any plant closing, transfers, or reductions in force should consult with counsel since the impact of this new law can have a huge financial impact. For more information, or if you have any questions regarding this alert, you may contact Archer attorney [José M. Jara](mailto:jjara@archerlaw.com) at jjara@archerlaw.com or any of Archer's [Labor and Employment Law](#) attorneys at (856) 795-2121.

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