

Caveat Propola – A WARNing to All Retailers in New Jersey

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We often hear *caveat emptor* (let the buyer beware). However, New Jersey enacted a law better described as *caveat propola* (let the retailer beware). On April 10, 2023, the long-awaited amendments to the Millville–Dallas Airmotive Plant Job Loss Notification Act (NJ WARN) went into effect. The amendments, in large part, were enacted to discourage retailers from closing locations in New Jersey without providing advance notice and rewarding employees for their service.

Prior to the amendments, retailers who closed smaller locations in New Jersey did not often trigger advance notice requirements under the federal Worker Retraining and Notification Act (WARN) or NJ WARN because each location would not have 50 or more full-time employees impacted by the closing. As a result, companies could close several retail stores in the state without advance notice or any severance obligations. With the amendments to NJ WARN, this likely has changed.

NJ WARN now mandates that companies with at least 100 employees provide 90 days advance notice and mandatory severance (in an amount of one week for each full year of employment) if there is a mass layoff, transfer of operations or termination of operations affecting at least 50 employees in New Jersey.

The amendments expanded the scope of NJ WARN, making it easier to trigger the notice and severance requirements by:

- Eliminating the definitions of *full-time employee* and *part-time employees* so that all employees are now counted to determine whether a mass layoff or transfer or termination of operations has occurred.
- Revising the definition of *mass layoff* to mean a reduction in force that results in the termination of employment at an *establishment* during any 30-day period for 50 or more employees at *or reporting to* the establishment. There is no longer a requirement that the terminations represent one-third or more of the full-time employees at the establishment. Thus, a *mass layoff* under NJ WARN arguably could occur if only 50 or more employees (whether full-time or part-time) are terminated at any of an employer's facilities in the state, even though such action likely would not trigger notice requirements under federal WARN. The revised definition arguably expands the application of NJ WARN to out-of-state employees, *e.g.*, field employees or remote employees, who only *report to an establishment* within New Jersey.
- Revising the definition of *establishment* to mean a single location or group of locations, including any facilities and buildings located in the state. Any retailer with multiple locations that implements a layoff impacting 50 or more employees must arguably meet the notice and severance obligations in the Act. Thus, a retailer with operations at five separate locations, terminating at least 10 employees (whether full-time or part-time) at each location, arguably will be required to provide 90 days' notice and severance pay due to the inclusion of "*any facilities located in this State*" to the definition. If

interpreted this way, any time at least 50 employees suffer a *termination of employment* within a 30-day or 90-day period in New Jersey, an employer could trigger the notice and severance requirements under NJ WARN.

- Adding a separate provision defining *employer* to likely include private equity or venture capital firms within the definition. The expanded definition of *employer* suggests that an individual with no ownership interest but who was directed to reduce headcount, reorganize operations, or develop and implement cost-saving measures resulting in a covered employment action may be held liable.

Companies with operations in New Jersey must undertake a broader analysis of the legal implications associated with any terminations impacting at least 50 employees (full-time or part-time) in a 30-day or 90-day period. A company must determine whether the notice and severance obligations apply to any contemplated action to ensure that the company maintains sufficient funding to meet any obligations imposed by NJ WARN, among other considerations.

Whether intended or not, NJ WARN now appears to make it more difficult for existing businesses to leave the state. It poses substantial challenges to companies seeking to reorganize, transfer operations or reduce headcount. Retailers considering relocating to New Jersey or expanding operations into the state should consider the potential financial consequences associated with NJ WARN. Retailers already operating within the state must evaluate the financial consequences of complying with NJ WARN. Put simply, the cost to operate (and cease operations) in New Jersey has increased substantially. *Caveat Propola!*

Please contact a Jackson Lewis attorney if you have any questions.

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