Update to the Mini-WARN ACT Provides Additional Worker Protections in New Jersey

May 31, 2023

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Employment Law Monthly

We are at the end of May and Spring has sprung in New Jersey. Employers awaking from a long winter's nap will find that the employment landscape in New Jersey has changed once again. One of the biggest changes is the long-delayed implementation of the Mini-WARN Act, which became effective on April 10, 2023.

In 1988, Congress passed the Worker Adjustment and Retraining Notification Act (WARN) to provide workers with time to retrain or seek new employment prior to losing their jobs. Under WARN, employers were required to provide 60 days advance notice to workers who were going to be laid-off or terminated in certain circumstances. The original federal act has been replicated at the state level in many states across the country, in many cases adding more protections for workers. These state-level WARN acts commonly are referred to as a mini-WARN acts. New Jersey's mini-WARN act always has gone further than federal law.

New Jersey originally passed its mini-WARN, the Millville-Dallas Airmotive Plant Job Loss Notification Act, in 2007 ("the Act"). The most recent expansion to this mini-WARN Act was signed into law in January 2020. The amendments to the Act originally were slated to come into effect in July 2020. However, as a result of the Coronavirus Pandemic, the State delayed implementation of the new requirements, which further expand employer responsibility and financial obligation in workforce reductions. Provisions covering notice timelines, severance obligations, and payments for failure to provide notice all have been amended. Employers may now be held to the provisions of the Act if total workforce reduction across the state triggers the provisions of the Act, rather than at an individual location. For companies that operate in multiple locations state-wide, this provision needs special attention. To explore some of the differences between the previous version of the Act, and the recently-enacted amendments, we can look to the actions and experiences of Bed Bath & Beyond.

Recently, Bed Bath & Beyond announced layoffs of 1,300 workers to take effect in April 2023. Under the previously active provisions, WARN protections may not have applied to all 1,300 employees. Rather, each individual location would have been subject to the 50-employee requirement for the protections under the law to “kick in.” Meaning that, Bed Bath & Beyond only would have been required to provide the required notice to employees when it was laying off more than 50 employees at a single location (or single contiguous properties). However, under the newly amended Act, Bed Bath & Beyond became responsible to provide the required notice (and now severance payments) for all 1,300 employees, regardless of how many were set to be laid off at each individual location. This is because the Act now provides for layoffs or terminations across multiple locations to counting the aggregate if they occur within 90 days of each other.

The most surprising change for many companies is the newly-expanded definition of “establishment” which appears to require employers to consider all of their locations when determining if the Act applies. Previously, employers needed only

consider the layoff, termination, or transfer at a "single location or group of contiguous locations, including groups of facilities which form an office or industrial park or separate facilities just across the street from each other." *N.J.S.A.* 34:21-1. Now, state-wide layoffs, transfers, or terminations that impact 50 or more workers will come under the Act, even if those locations are spread throughout the state. Employers who have locations statewide will need to take extra care when planning employment actions.

In addition to expanding the definition of what triggers the requirements of the Act, another new provision is the imposition of mandatory severance pay. Under the newly implemented version of the Act, employers are mandated to provide severance pay to affected employees equal to one week of pay for each full year of employment. This payment is required whether an employer complies with the new, and expanded, notice obligation or not. This provision alone makes larger layoffs, terminations, or transfers significantly more expensive. Moreover, the changes to the Act can cause an impact in other unexpected ways.

The expansion of the establishment provision also altered the transfer provision of the Act. Under the Act, if employees are transferred to a location more than 50 miles from their original place of employment, they are considered "terminated." *N.J.S.A.* 34:21-1. It is not difficult to imagine a scenario where a company, like Bed Bath & Beyond, might consolidate locations, moving only a few employees from several stores to one central location. However, if the total number of employees being moved more than 50 miles is equal to or greater than 50, the provisions of the Act apply. For example, the Act's notice and severance requirements would apply if a company with two locations more than 50 miles apart makes a determination to close one location and significantly expand the second location, even if it is not laying off any employees and simply is transferring the employees from one location to the newly-expanded location.

The care required of employers is further increased by the aggregation of employment actions within a 90-day window. If employers structure layoffs, terminations, or transfers too close together, or follow up with additional layoffs, terminations, or transfers for any reason within the 90-day window, those actions will be aggregated. This can trigger the Act, and with it, significant financial consequences. Given that Bed Bath & Beyond took its action only one month ago, it still has nearly 60 days where any layoff would be covered by the original action. In this way, even a layoff of only 20 additional workers would be subject to the provisions of the Act because of its proximity to the original layoffs.

Strict compliance with the above provisions is critical. Failure to follow the specifics of the Act could result in penalties, including the payment of additional severance to employees. This expansion of the mini-WARN Act is another example of where many states, including New Jersey, provide greater protection to workers (and more significant obligations for employers) than federal law. Therefore, it is important that employers understand and comply with both federal and state law in these circumstances. Employers with locations and employees in multiple states should confer with New Jersey-specific counsel before taking employment action to ensure compliance.