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GRIST

US: New Jersey expands mass layoff law, severance entitlement

By Mercer's Fiona Webster and Stephanie Rosseau
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From July 19, 2020, New Jersey employers will face new requirements, including the payment of guaranteed severance to affected employees, when reducing their workforce through a layoff or a transfer of operations. [Senate Bill 3170](#), recently signed by the governor, expands the current [New Jersey WARN Act](#) and deviates from the federal [Worker Adjustment and Retraining Notification \(WARN\) Act](#).

Highlights

- **Scope.** The law will apply to employers with 100 or more employees, regardless of their tenure or if they work part-time. Currently, employers can exclude employees working fewer than 20 hours per week and individuals with fewer than six months of service. Part-time employees also will be entitled to 90 days' notice and severance.
- **Employee threshold.** For the new law to apply, 50 or more employees who are located at, or who report to, an "establishment" operated by the employer for three years or more are affected; it does not have to cover 33% or more of the organization's workforce as under the current law. Terminations or transfer of operations that occur within a continuous 30-day period in any location in the state, or within a 90-day period if the employer can't prove that the terminations have occurred for different reasons, must be aggregated to determine if the law applies.
- **Notice requirement.** Employers must give at least 90 days' notice (up from 60 days) of the termination or transfer of operations or mass layoff before terminating the first employee.
- **Mandatory severance.** Employees — including part-time workers — laid off under the new law will be entitled to severance pay of one week for each full year of employment. Employers who provide employees with fewer than 90 days' notice will have to pay an additional four weeks of pay. The

severance calculation will be based on the “average regular rate of compensation” paid to the employee over the last three years of their employment, or the employee’s final regular rate of compensation — whichever amount is higher. Currently, severance is paid only if employees aren’t notified within the required notice period.

- Expanded definition of the employer. Employers are defined as “including the direct employer and others who act directly or indirectly in the interest of the employer in relation to an employee.”
- Expanded definition of “establishment.” The definition of “establishment” includes all of an employer’s locations in New Jersey, meaning that employers will have to aggregate terminations across all locations within the state to determine if the law applies. The current law limits an establishment to a single location or to a group of contiguous locations.
- Waiver of right to severance. Employees will be allowed to waive their right to severance only with the approval of the Commissioner of Labor and Workforce Development or a court.

Related resources

- [2019 Ch. 423](#) (New Jersey Legislature, Jan. 21, 2020)
- [Governor Murphy takes action on legislation](#) (Official site of the state of New Jersey, Jan. 21, 2020)
- [Milville Dallas Airmotive Plant Job Loss Notification ACT \(NJ WARN\)](#) (Department of Labor and Workforce Development, Dec. 20, 2007)
- [Plant Closings and Layoffs](#) (Department of Labor)

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