Mandatory Severance on the Horizon Under Proposed Amendments to NJ Warn Act

A bill to amend the New Jersey Millville Dallas Airmotive Plant Loss Job Notification Act, also commonly referred to as the New Jersey WARN Act (“NJ WARN Act”), which the New Jersey Senate passed on December 16, 2019, if enacted, will create significant financial liability for covered New Jersey employers that undergo a mass layoff, or a transfer or termination of operations, by requiring the employer pay severance to both full-time and part-time employees.

The NJ WARN Act, enacted in 2007, requires New Jersey private employers with 100 or more full-time workers to provide 60-day notice to affected full-time employees in the event of a mass layoff or a transfer or termination of operations and applies to establishments with a single location or in a group of contiguous locations (e.g., group of buildings in an office park). It mandates payment of severance only when a covered employer fails to provide the employees with the required amount of notice of termination or lay-off.

Under the proposed legislation, New Jersey employers would be required to pay affected employees one week severance for every full year of employment,
irrespective of whether the employer provided the required amount of WARN Act notice to employees. The severance amount would be enhanced by an additional four weeks’ per affected employee, where the employer failed to give the required amount of notice.

The bill, drafted in response to recent corporate bankruptcies, most notably that of Toys R Us, which resulted in job loss for thousands of New Jersey employees, does not limit the liability for paying the severance to the employer entity alone. Significantly, the bill imposes the obligation to pay severance to the decision makers directly or indirectly responsible for the lay-off or termination decision by defining the term “employer,” for the purposes of severance, to include:

any individual, partnership, association, corporation, or any persons or 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 makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification.

In addition, the bill among other things:

- Removes the distinction between part-time and full-time employees. Thus, part-time employees would be:
  - Counted in determining whether an employer meets the 100 employee threshold for being a covered employer;
  - Counted in determining whether a termination, transfer or layoff meets the threshold for required notice, e.g., 50 or more employees representing at least 1/3 of the employer’s total workforce; and
  - Entitled to notice and to severance.

- Broadens the definition of “Establishment” to include all of an employer’s New Jersey locations (not just those that are contiguous); and

- Counts employees who “report to an establishment” in determining whether a mass layoff meets the threshold for required notice.

If enacted, the legislations would become effective 180 days after signing.

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