

New Jersey Amends Family Leave Act and NJ WARN Act - Client Alert

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On April 14, 2020, Governor Murphy signed two employment-related bills into law: S2374, which expanded New Jersey's Family Leave Act (FLA), and S2353, which modified the state's WARN law.

Amendment to FLA

S2374 expanded the FLA to provide job-protected leave when the Governor has declared a state of emergency and the employee needs to care for a family member due to:

- An epidemic of a communicable disease,
- A known or suspected exposure to a communicable disease, or
- Efforts to prevent the spread of a communicable disease, such as COVID-19.

When leave is taken for one of the reasons stated above, the employee may take the leave intermittently if:

- He/she provides the employer with prior notice of the leave as soon as practicable; and
- He/she makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer.

This amendment to the FLA allows employees forced to care for family members as a result of the COVID-19 pandemic to take up to 12 weeks of job-protected leave. The FLA does not require employers to provide paid leave but employees may be eligible for paid leave under other laws such as the New Jersey Paid Family Leave Act and the federal Families First Coronavirus Response Act (FFCRA). The amendment to the FLA became effective immediately and is retroactive to March 25, 2020.

S2374 broadens the qualifying reasons for taking family leave under the FLA. Under the new law, an employee may be entitled to leave even if a family member does not have a serious health condition. The law now has several new qualifying reasons related to communicable diseases. In addition, the amendment requires employers to provide intermittent family leave if the need for leave falls into one of the categories listed above. Previously, the FLA did not require employers to provide intermittent leave (i.e., an employee had to obtain approval from his/her employer to take intermittent family leave). It should be noted that employers are still not required to provide intermittent leave when the employee is taking family leave for a reason that is not related to a communicable disease (e.g., when the employee is taking family leave to care for a newborn child).

It is also important to note that in one respect, the scope of the amendment to the FLA is broader than the federal Emergency Family and Medical Leave Expansion Act (EFMLEA). Under EFMLEA, employees are entitled to up to 12 weeks of job-protected leave when the usual arrangements for care of a “son or daughter” (school, daycare, etc.) are disrupted by a public health emergency. The amendment to the FLA, more broadly, provides protected leave for care of a “family member” impacted in one of the enumerated ways described in the statute.

Amendment to NJ WARN Act

In 2007, New Jersey enacted a state counterpart to the federal WARN Act (the NJ WARN Act). In 2019, the New Jersey Legislature passed an amendment (the “2019 Amendment”) to the NJ WARN Act that will require covered employers to pay severance to employees who are terminated in connection with a covered event. The 2019 Amendment was scheduled to take effect on July 19, 2020.

S2353 modified the effective date of the 2019 Amendment. It will now take effect on the 90th day following the termination of Executive Order 103 (EO 103), which declared a public health emergency and a state of emergency. EO 103 remains in effect and it appears that it will remain in effect for at least another month. So, it is unlikely that the 2019 Amendment will take effect before August 15, 2020.

S2353 also adds an important exception to the definition of a “mass layoff” in the NJ WARN Act. The law now provides that: “‘mass layoff’ shall not include a mass layoff made necessary because of a fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial sabotage . . .” As a result, layoffs that occur due to the COVID-19 pandemic will not be a “mass layoff” for the purposes of the NJ WARN Act. This means that employers will not have to provide advance notice (or severance when the 2019 Amendment takes effect) for COVID-19-related layoffs. S2353 became effective immediately and it is retroactive to March 9, 2020.

The new exception to the definition of mass layoff in S2353 brings the NJ WARN Act into line with the federal WARN Act which already had an exception for natural disasters. Prior to the passage of S2353, there was some confusion as to whether notice would be necessary under the NJ WARN Act for a mass layoff that occurred as a result of COVID-19. The new law makes it clear that employers do not have to provide notice in such a scenario.