


N.J. Stat. § 34:21-1

Current through New Jersey 220th Second Annual Session, L. 2023, c. 28 and J.R. 2

LexisNexis® New Jersey Annotated Statutes > Title 34. Labor and Workers' Compensation (Chs. 1 — 21) > Chapter 21. Plant Closings, Transfers, Mass Layoffs (§§ 34:21-1 — 34:21-15)

Notice

 This section has more than one version with varying effective dates.

§ 34:21-1. Definitions relative to prenotification of certain plant closings, transfers, and mass layoffs [Effective on the 90th day following the effective date of P.L.2022, c.142]

As used in P.L.2007, c.212 (C.34:21-1 et seq.):

“Commissioner” means the Commissioner of Labor and Workforce Development.

“Department” means the Department of Labor and Workforce Development.

“Employer” means an individual or private business entity which employs the workforce at an establishment.

“Establishment” means a place of employment which has been operated by an employer for a period longer than three years, but shall not include a temporary construction site. “Establishment” may be a single location or a group of locations, including any facilities located in this State.

“Facility” means a building.

“Mass layoff” means a reduction in force which is not the result of a transfer or termination of operations and which results in the termination of employment at an establishment during any 30-day period for 50 or more of the employees at or reporting to the establishment, except 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, decertification from participation in the Medicare and Medicaid programs as provided under Titles XVIII and XIX of the federal “Social Security Act,” Pub.L. 74-271 (42 U.S.C. § 1395 et seq.) or license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et al.).

“Operating unit” means an organizationally distinct product, operation, or specific work function within or across facilities at a single establishment.

“Response team” means the plant closing response team established pursuant to section 5 of P.L.2007, c.212 (C.34:21-5).

“Termination of employment” means the layoff of an employee without a commitment to reinstate the employee to his previous employment within six months of the layoff, except that “termination of employment” shall not mean a voluntary departure or retirement or a discharge or suspension for misconduct of the employee connected with the employment or any layoff of a seasonal employee or refer to any situation in which an employer offers to an employee, at a location inside the State and not more

than 50 miles from the previous place of employment, the same employment or a position with equivalent status, benefits, pay and other terms and conditions of employment, and, except that a layoff of more than six months which, at its outset, was announced to be a layoff of six months or less, shall not be treated as a termination of employment under P.L.2007, c.212 (C.34:21-1 et seq.) if the extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and notice is given at the time it becomes reasonably foreseeable that the extension beyond six months will be required.

“Termination of operations” means the permanent or temporary shutdown of a single establishment, or of one or more facilities or operating units within a single establishment, except that “termination of operations” shall not include a termination of operations made necessary because of a fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial sabotage, decertification from participation in the Medicare and Medicaid programs as provided under Titles XVIII and XIX of the federal “Social Security Act,” Pub.L. 74-271 (42 U.S.C. § 1395 et seq.) or license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et al.).

“Transfer of operations” means the permanent or temporary transfer of a single establishment, or one or more facilities or operating units within a single establishment, to another location, inside or outside of this State.

History


L. 2007, c. 212, § 1, eff. Dec. 20, 2007; amended by 2019, c. 423, § 1, effective April 10, 2023; amended, 2020, c. 22, § 1, eff. Apr. 14, 2020, retroactive to Mar. 9, 2020.

N.J. Stat. § 34:21-2

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Notice

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§ 34:21-2. Requirements for establishments subject to transfer, termination of operations, mass layoffs [Effective on the 90th day following the effective date of P.L.2022, c.142]

If an establishment is subject to a transfer of operations or a termination of operations which results, during any continuous period of not more than 30 days, in the termination of employment of 50 or more employees, or if an employer conducts a mass layoff, the employer who operates the establishment or conducts the mass layoff shall:

- a. Provide, in the case of an employer who employs 100 or more employees, not less than 90 days, or the period of time required pursuant to the federal “Worker Adjustment and Retraining Notification Act,” 29 U.S.C. § 2101 et seq., or any amendments thereto, whichever is longer, before the first termination of employment occurs in connection with the termination or transfer of operations, or mass layoff, notification of the termination or transfer of operations or mass layoff to the Commissioner of Labor and Workforce Development, the chief elected official of the municipality where the establishment is located, each employee whose employment is to be terminated and any collective bargaining units of employees at the establishment;
- b. Provide to each employee whose employment is terminated severance pay equal to one week of pay for each full year of employment. If the employer provides any employee with less than the number of days of notification required pursuant to subsection a. of this section, the employer shall provide that employee with an additional four weeks of pay. The rate of severance pay provided by the employer pursuant to this subsection b. shall be the average regular rate of compensation received during the employee’s last three years of employment with the employer or the final regular rate of compensation paid to the employee, whichever rate is higher. Severance under this subsection shall be regarded as compensation due to an employee for back pay and losses associated with the termination of the employment relationship, and earned in full upon the termination of the employment relationship, notwithstanding the calculation of the amount of the payment with reference to the employee’s length of service. An employer shall provide an employee the severance pay required pursuant to this subsection b. or any severance pay provided by the employer pursuant to a collective bargaining agreement or for any other reason, whichever is greater. Any back pay provided by the employer to the employee pursuant to section 5 of the “Worker Adjustment and Retraining Notification Act,” Pub.L.100-379 (29 U.S.C. § 2104), because of a violation of section 3 of that act (29 U.S.C. § 2102) shall be credited toward meeting the severance pay requirements of this subsection b.; and

c. Provide the response team with the amount of on-site work-time access to the employees of the establishment that the response team determines is necessary for the response team to carry out its responsibilities pursuant to section 5 of P.L.2007, c.212 (C.34:21-5).

In determining whether a termination or transfer of operations or a mass layoff is subject to the notification requirements of this section, any terminations of employment for two or more groups at a single establishment occurring within any 90-day period, when each group has less than the number of terminations which would trigger the notification requirements of this section but the aggregate for all of the groups exceeds that number, shall be regarded as subject to the notification requirements unless the employer demonstrates that the cause of the terminations for each group is separate and distinct from the causes of the terminations for the other group or groups.

d. For purposes of this section, “employer” includes any individual, partnership, association, corporation, or any person 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 owns a corporate subsidiary that, 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.

e. No waiver of the right to severance provided pursuant to this section shall be effective without approval of the waiver by the commissioner or a court of competent jurisdiction.

History

L. 2007, c. 212, § 2, eff. Dec. 20, 2007; amended by 2019, c. 423, § 2, effective April 10, 2023.

N.J. Stat. § 34:21-3

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§ 34:21-3. Contents of required notification

The notification provided pursuant to subsection a. of section 2 [C.34:21-2] of this act shall include:

- a. A statement of the number of employees whose employment will be terminated in connection with the mass layoff or transfer or termination of operations of the establishment, the date or dates on which the mass layoff or transfer or termination of operations and each termination of employment will occur;
- b. A statement of the reasons for the mass layoff or transfer or termination of operations;
- c. A statement of any employment available to employees at any other establishment operated by the employer, and information regarding the benefits, pay and other terms and conditions of that employment and the location of the other establishment;
- d. A statement of any employee rights with respect to wages, severance pay, benefits, pension or other terms of employment as they relate to the termination, including, but not limited to, any rights based on a collective bargaining agreement or other existing employer policy;
- e. A disclosure of the amount of the severance pay which is payable pursuant to the provisions of subsection b. of section 2 [C.34:21-2] of this act; and
- f. A statement of the employees' right to receive from the response team, pursuant to subsection c. of section 2 [C.34:21-2] and subsection a. of section 5 [C.34:21-5] of this act, information, referral and counseling regarding: public programs which may make it possible to delay or prevent the transfer or termination of operations or mass layoff; public programs and benefits to assist the employees; and employee rights based on law.

The notification shall be in writing and, after the commissioner has made a form for the notification available to employers, provided on that form. The commissioner shall make the form available to employers not more than 90 days following the effective date of this act.

History

L. 2007, c. 212, § 3, eff. Dec. 20, 2007.

Annotations

Notes

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

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N.J. Stat. § 34:21-4

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§ 34:21-4. Construction of act relative to collective bargaining agreements

This act [C.34:21-1 et seq.] shall not be construed as limiting or modifying any provision of a collective bargaining agreement which requires notification, severance payment or other benefits on terms which are more favorable to employees than those required by this act.

History

L. 2007, c. 212, § 4, eff. Dec. 20, 2007.

Annotations

Notes

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N.J. Stat. § 34:21-5

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§ 34:21-5. Establishment of response team

- a. There is established, in the Department of Labor and Workforce Development, a response team. The purpose of the response team is to provide appropriate information, referral and counseling, as rapidly as possible, to workers who are, or may be, subject to plant closings or mass layoffs, and the management of establishments where those workers are or were employed.
- b. In the case of each transfer or termination of the operations in an establishment which results in the termination of 50 or more employees, the response team shall:
 - (1) Offer to meet with the representatives of the management of the establishment to discuss available public programs which may make it possible to delay or prevent the transfer or termination of operations, including economic development incentive and workforce development programs, shared work unemployment compensation benefit programs, and coordinated utilization of any of those programs which are applicable;
 - (2) Meet on site with workers and provide information, referral and counseling regarding:
 - (a) Available public programs which may make it possible to delay or prevent the transfer or termination of operations, including economic development incentive and workforce development programs, shared work unemployment compensation benefit programs, and coordinated utilization of any of those programs which are applicable;
 - (b) Public programs or benefits which may be available to assist the employees, including, but not limited to, unemployment compensation benefits, job training or retraining programs, and job search assistance; and
 - (c) Employee rights based on this act [C.34:21-1 et seq.] or any other law which applies to the employees with respect to wages, severance pay, benefits, pensions or other terms of employment as they relate to the termination of employment; and
 - (3) Seek to facilitate cooperation between representatives of the management and employees at the establishment to most effectively utilize available public programs which may make it possible to delay or prevent the transfer or termination of operations or to assist employees if it is not possible to prevent the termination.

History

L. 2007, c. 212, § 5, eff. Dec. 20, 2007; amended 2011, c. 154, § 10, eff. Aug. 1, 2012.

Annotations

Notes

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

Editor's Notes

Shared work unemployment compensation benefit programs, see 43:21-20.3 et seq.

Effective Dates:

Section 12 of L. 2011, c. 154 provides: "This act shall take effect on the first day of the seventh month following the date of enactment." Chapter 154, L. 2011, was approved on Jan. 5, 2012.

Amendment Note:

2011 amendment, by Chapter 154, in the second sentence of a., inserted "or may be" and added "and the management of establishments where those workers are or were employed"; and added "shared work unemployment compensation benefit programs, and coordinated utilization of any of those programs which are applicable" to b.(1) and b.(2)(a).

Research References & Practice Aids

Cross References:

Definitions relative to prenotification of certain plant closings, transfers and mass layoffs, see 34:21-1.

Requirements for establishment subject to transfer, termination of operations, mass layoffs, see 34:21-2.

Contents of required notification, see 34:21-3.

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N.J. Stat. § 34:21-6

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§ 34:21-6. Initiation of suit by aggrieved employee, former employee

An aggrieved employee or former employee or his authorized representative may initiate suit in Superior Court under this act [C.34:21-1 et seq.] either individually or on behalf of employees or former employees affected by a violation of the provisions of this act. If an action is undertaken on behalf of affected employees or former employees, the party initiating the action shall inform the department, which shall notify each affected employee or former employee. If the court finds the employer has violated the provisions of this act, it shall award to the aggrieved present or former employees: costs of the action, including reasonable attorneys' fees; and compensatory damages, including lost wages, benefits and other remuneration. Any award of compensatory damages for lost wages shall be limited to the amount of severance pay required pursuant to subsection b. of section 2 [C.34:21-2] of this act.

History

L. 2007, c. 212, § 6, eff. Dec. 20, 2007.

Annotations

Notes

Publisher's Note:

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CASE NOTES

Labor & Employment Law: Worker Adjustment & Retraining Notification Act: Civil Actions

Labor & Employment Law: Worker Adjustment & Retraining Notification Act: Coverage & Definitions: Employers

Labor & Employment Law: Worker Adjustment & Retraining Notification Act: Civil Actions

Trial court erred in a putative class action alleging violations of the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey WARN Act), N.J. Stat. Ann. §§ 34:21-1 to 34:21-7, by granting a home lending corporation and its affiliates summary judgment because the New Jersey WARN Act was held to apply to parent

and affiliated companies. *DeRosa v. Accredited Home Lenders, Inc.*, 420 N.J. Super. 438, 22 A.3d 27, 2011 N.J. Super. LEXIS 109 (App.Div. 2011).

Millville Dallas Airmotive Plant Job Loss Notification Act (the New Jersey WARN Act), N.J. Stat. Ann. §§ 34:21-1 to 34:21-7, must be read consistently with the federal Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C.S. §§ 2101 to -2109, and, as such, the New Jersey WARN Act does apply to parent and affiliated Companies, and a trial court should apply the five factor test enunciated in 20 C.F.R. § 639.3(a)(2) in making that determination. *DeRosa v. Accredited Home Lenders, Inc.*, 420 N.J. Super. 438, 22 A.3d 27, 2011 N.J. Super. LEXIS 109 (App.Div. 2011).

Labor & Employment Law: Worker Adjustment & Retraining Notification Act: Coverage & Definitions: Employers

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Millville Dallas Airmotive Plant Job Loss Notification Act (the New Jersey WARN Act), N.J. Stat. Ann. §§ 34:21-1 to 34:21-7, must be read consistently with the federal Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C.S. §§ 2101 to -2109, and, as such, the New Jersey WARN Act does apply to parent and affiliated Companies, and a trial court should apply the five factor test enunciated in 20 C.F.R. § 639.3(a)(2) in making that determination. *DeRosa v. Accredited Home Lenders, Inc.*, 420 N.J. Super. 438, 22 A.3d 27, 2011 N.J. Super. LEXIS 109 (App.Div. 2011).

N.J. Stat. § 34:21-7

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§ 34:21-7. Short title

This act shall be known and may be cited as the “Millville Dallas Airmotive Plant Job Loss Notification Act.”

History

L. 2007, c. 212, § 7, eff. Dec. 20, 2007.

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