



# Mini-WARN Acts: New Jersey

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A Q&A guide to state versions of the federal Worker Adjustment and Retraining Notification (WARN) Act for private employers in New Jersey. This Q&A addresses notice requirements in cases of plant closings and mass layoffs. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Mini-WARN Acts: State Q&A Tool*).

## OVERVIEW OF STATE MINI-WARN LAW

1. Is there a mini-WARN Act or other notice requirement for group layoffs in your jurisdiction?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) requires covered employers to provide written notice 60 days before terminating 50 or more full-time employees within a 30-day period. If the termination is the result of a mass layoff, the law only applies if the affected employees represent at least

one third of the workforce. (See *N.J. Stat. Ann. §§ 34:21-1 to 34:21-7 (2011)* and *Department of Labor and Workforce Development: New Jersey Business Closing/Mass Layoff Notification Law*.)

## ADMINISTRATION OF MINI-WARN ACT

2. What governmental body administers law(s) identified in response to *Question 1*?

The *New Jersey Department of Labor and Workforce Development* administers the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) (*N.J. Stat. Ann. § 34:21-1 (2011)* and *N.J. Stat. Ann. § 34:21-2(a) (2011)*).

## COVERED EMPLOYERS

3. Which employers are covered by the law(s) identified in response to *Question 1*?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) applies to businesses that employ 100 or more full-time employees in a single establishment (*N.J. Stat. Ann. § 34:21-2(a) (2011)*).

An establishment is a place of employment operated by an employer in New Jersey for more than three years, not including temporary construction sites. It may include a single location or a 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. Stat. Ann. § 34:21-1 (2011)*.)

Full-time employees have been employed for at least 20 hours per week or are employed for more than six of the 12 months before the date notice is required under the statute (*N.J. Stat. Ann. § 34:21-1 (2011)*).

4. Under any law(s) identified in response to *Question 1*, if a business is sold, at what point in the transaction does the buyer become the employer?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not address this issue.

5. Are subsidiaries considered separate employers from their parent company under the law(s) identified in response to *Question 1*?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not address subsidiaries. However, the Appellate Division of the New Jersey Superior Court recently held in *DeRosa v. Accredited Home Lenders, Inc.*, that the New Jersey mini-WARN Act applies to parents and affiliated companies as well as direct employers, consistent with the federal WARN Act. To determine whether a parent or affiliated company and subsidiary qualify as a single employer under the New Jersey mini-WARN Act, the courts should look at:

- Common ownership.
- Common directors or officers.
- Exercise of control (for example, by the parent over the subsidiary).
- Shared personnel policies.
- Dependency of operations.

These five factors are taken directly from the federal WARN Act regulations (*20 C.F.R. § 639.3(a)(2) (2011)*). Courts may also look at “additional factors . . . where relevant” (*2001 WL 2314304 (N.J. Super. Ct. App. Div. June 14, 2011)*).

## TRIGGERING EVENTS

6. How are the notice requirements of the law(s) identified in response to *Question 1* triggered?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) is triggered by a:

- **Mass layoff.** A reduction in force resulting in the termination of employment, during any 30-day period, of:
  - 500 or more full-time employees; or
  - 50 or more full-time employees, if those employees represent at least one-third of the full-time employees at the establishment.

- **Termination of operations.** The permanent or temporary shutdown of a single establishment (or facilities or operating units within a single establishment) which results in the termination of 50 or more full-time employees during a period of not more than 30 days.
- **Transfer of operations.** The permanent or temporary transfer of a single establishment (or facilities or operating units within a single establishment) to another location, which results in the termination of 50 or more full-time employees during a period of not more than 30 days.

(*N.J. Stat. Ann. § 34:21-1 (2011)* and *N.J. Stat. Ann. § 34:21-2 (2011)*.)

7. Are there any exceptions to the notice requirements identified in response to *Question 1*?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not cover a termination of operations if it is:

- Necessary because of a:
  - fire;
  - flood;
  - natural disaster;
  - national emergency;
  - act of war;
  - civil disorder; or
  - industrial sabotage.
- Due to decertification from participation in the Medicare and Medicaid programs or license revocation under New Jersey health care laws.

(*N.J. Stat. Ann. § 34:21-1 (2011)*.) These exceptions do not apply to mass layoffs or transfers of operations.

The New Jersey mini-WARN Act does not have a counterpart to the unforeseeable circumstances exception or faltering company exception in the federal Worker Adjustment and Retraining Notification Act (WARN Act). For more information on exceptions to the federal WARN Act, see *Practice Note, Worker Adjustment and Retraining Notification (WARN) Act: Overview: Exceptions* (<http://us.practicallaw.com/4-501-6503>).

## NOTICE

8. Who is required to receive notice under the law(s) identified in response to *Question 1*?

Notice under the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) must be provided to:

- The New Jersey Commissioner of Labor and Workforce Development.
- The chief elected official in the municipality where the establishment is located.
- Each employee who is to be terminated.
- Any collective bargaining units of employees at the establishment.

(See *N.J. Stat. Ann. § 34:21-2(a) (2011)* and *Department of Labor and Workforce Development: New Jersey Business Closing/Mass Layoff Notification Law*.)

9. Please describe the content that has to be included in the notice to be given to each group entitled to receive notice.

The written notice must contain:

- The number of employees whose employment will be terminated and the dates on which the triggering event (see *Question 6*) and each termination will occur.
- The reasons for the layoffs, terminations or transfer of operations.
- Any employment available to employees at any of the employer's establishments, including the:
  - location;
  - benefits;
  - pay; and
  - other terms and conditions of that employment.
- Any employee rights with respect to:
  - wages;
  - severance pay;
  - benefits;
  - pension;
  - any rights under a collective bargaining agreement or other employer policy; or
  - other terms of employment as they relate to the termination.
- The amount of any severance compensation payable under the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act).

- The employees' right to receive information, referral and counseling from the state Rapid Response Team regarding:
  - public programs that could delay or prevent the job action; and
  - public programs and benefits to assist the employees and employee legal rights.

(*N.J. Stat. Ann. § 34:21-3 (2011)*.)

The New Jersey Department of Labor and Workforce Development's website makes the official notification form available in two varieties:

- An *online form* to notify the Commissioner of Labor and Workforce Development.
- A *hard copy form* to notify everyone else under the law.

(See *Department of Labor and Workforce Development: Layoffs & Closings*.) Using the official notice form meets all requirements of the New Jersey mini-WARN Act.

10. Please describe any alternatives to notice that the law(s) identified in response to *Question 1* allows for each group entitled to receive notice.

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not provide for any alternatives to notice.

11. Please describe the required timing of notice.

All parties required to receive notice under the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) (see *Question 8*) must receive written notice 60 days before the first termination of employment occurs (*N.J. Stat. Ann. § 34:21-2(a) (2011)*).

12. Please describe any circumstances not already stated under which reduced or modified notice may be permitted.

There are no additional circumstances permitting reduced or modified notice.

13. Please describe how notice must be sent.

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not specify how the notice must be sent (*N.J. Stat. Ann. §§ 34:21-1 to 34:21-7 (2011)*). New Jersey's Department of Labor and Workforce Development requires employers to use an *online form* to notify the Commissioner of Labor and Workforce Development, but provides a *hard copy*

form to send to others receiving notice under the law, without specifying how that notice should be sent (see *Question 9*).

14. Are there any standard notice forms available from the administering government entities?

The official *notification form* is available online from New Jersey's Department of Labor and Workforce Development website (see *Question 9*).

## RECORDKEEPING

15. What recordkeeping obligations does the law(s) identified in response to *Question 1* impose on employers?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not impose any recordkeeping obligations on employers.

## PENALTIES FOR VIOLATION

16. What penalties may be imposed on employers that violate the law(s) identified in response to *Question 1*?

An employer who fails to provide the required 60 days of notice must pay severance equal to one week of pay for each full year of employment to each full-time terminated employee in addition to any other severance paid for any reason. However, back pay provided by the employer to comply with the federal Worker Adjustment and Retraining Notification Act (WARN Act) will be credited towards meeting the severance requirements in the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act). (*N.J. Stat. Ann. § 34:21-2(b) (2011)*.)

## PRIVATE RIGHT OF ACTION

17. Do the law(s) identified in response to *Question 1* provide for a private right of action?

An aggrieved employee may bring an action in state court to recover compensatory damages, including:

- Lost wages.
- Benefits and other remuneration.
- Reasonable attorneys' fees.
- The costs of the action.

Any award for lost wages is limited to the amount of severance pay required under the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act). If an aggrieved employee brings action on behalf of other affected employees, he must notify the Department of Labor and Workforce Development, which notifies all affected current and former employees. (*N.J. Stat. Ann. § 34:21-6 (2011)*.)

18. What is the statute of limitations for bringing a private action under the law(s) identified in response to *Question 1*?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) contains no statute of limitations.

19. Are waivers of rights under the mini-WARN Act or other law(s) identified in response to *Question 1* valid and, if so, in what circumstances?

Neither the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) nor case law address the possibility of an employee waiving his rights under the law.

## SEVERANCE

20. Does the mini-WARN Act or other law(s) identified in response to *Question 1* require payment of severance?

The Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) does not require payment of severance unless the employer has failed to comply with the notice requirements of the Act (see *Question 10*).

## UNEMPLOYMENT BENEFITS

21. Does your jurisdiction require employers to supplement unemployment benefits when the law(s) identified in response to *Question 1* are triggered?

New Jersey does not require employers to supplement unemployment benefits when the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act) is triggered.



## OTHER SIGNIFICANT DIFFERENCES FROM FEDERAL WARN ACT

22. Please describe any other significant differences from the federal WARN Act that practitioners should be aware of with regard to a mini-WARN Act or other law(s) identified in response to *Question 1*.

There are no other significant differences between the federal Worker Adjustment and Retraining Notification Act (WARN Act) and the Millville Dallas Airmotive Plant Job Loss Notification Act (New Jersey mini-WARN Act).

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