



New Jersey Legislative Updates

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New Jersey Update Summary

■ New Jersey Issues Final Earned Sick Leave Law Regulations.

On January 6, 2020, the New Jersey Department of Labor & Workforce Development issued regulations regarding the enforcement of New Jersey's Earned Sick Leave Law (which took effect in October 2018). The regulations include many comments and responses that provide insight into the law's interpretation.

■ New Jersey Clarifies 2019 Individual Mandate Reporting.

The State of New Jersey has again updated the information related to employer reporting beginning in 2020 under New Jersey's individual health insurance mandate that went into effect January 1, 2019. Employers (including out-of-state employers) who provided health coverage to New Jersey residents enrolled in self-funded group health plans must

issue participant statements by March 2, 2020 and remit to the state by March 31, 2020 the same Forms 1095-C provided to the IRS for calendar year 2019. Employers with fully insured plans may generally rely on the insurance carrier to issue statements and file required information with the state. New Jersey has established the statement issuance date and filing deadline to coincide with recent IRS guidance for ACA reporting compliance.

■ New Jersey Amends the NJ WARN Act.

On January 21, 2020, New Jersey Governor Murphy signed legislation that greatly expands the reach and enhances the benefits under the Milville-Dallas Airmotive Plant Job Loss Notification Act (the NJ WARN Act). The law becomes effective July 19, 2020. Employers with employees in New Jersey should consult with employment counsel to ensure compliance with the Act when considering layoffs, closing a facility or transferring employees to a new location.

New Jersey Issues Final Earned Sick Leave Law Regulations

Late in October 2018, New Jersey's Earned Sick Leave Law (ESLL) took effect. Under the ESLL, employees can accrue one (1) hour of earned sick leave for every 30 hours worked, up to 40 hours a year. In November 2018, the State held a public hearing at which it discussed some proposed rules to help employers and employees better understand the provisions set forth in the ESLL.

Finally, on January 6, 2020, the New Jersey Department of Labor & Workforce Development (the "Department") issued regulations regarding the enforcement of the ESLL, including 118 separate comments and responses. Although the final regulations contain minimal changes, the Department's responses to the public's concerns provide insight into how the Department interprets the law.

Please review our Compliance Update "New Jersey Enacts Paid Sick Leave" issued May 8, 2018 for a summary of the ESLL:

https://emersonreid.dmplocal.com/dsc/collateral/050818_P_MBA_New_Jersey_Enacts_Paid_Sick_Leave_Law.pdf

The following will discuss the final regulations issued this year.

■ Substantive Change: Benefit Year

In the final regulations, the Department clarified that an employer can establish multiple "benefit years" for employees rather than require each employer to establish a single benefit year for all employees. A benefit year is now defined as "the period of 12 consecutive months established by an employer in which an employee shall accrue and use earned sick leave." In the comments, the Department explains that an employer may utilize an employee's anniversary year as the benefit year for purposes of the ESLL.

■ Issues Addressed in Comments

In the Department's 118 comments and responses, a few clarifications were made on certain provisions of the ESLL. Below is a high-level overview of a few of these comments and is not intended to be an exhaustive analysis.

Collective Bargaining Agreements (Comments 1, 7, 73, 80, 94, 99)

The Department clarifies that employees represented by a union may accept earned sick leave benefits greater than or less than those provided in the ESLL or waive those rights as part of the collective bargaining process. The Department also interprets the ESLL as applying to the parties of an expired collective bargaining agreement immediately if not replaced by a new collective bargaining agreement.

Paid Time Off Policies (Comments 8, 9, 12, 65, 68, 72, 92)

When an employer is using a PTO policy to satisfy the ESLL's requirements, the Department explains that to comply with the law, an employer's PTO policy must: (a) permit an employee to use all of the PTO for reasons covered by the ESLL; (b) provide for accrual or advancement in accordance with the ESLL's requirements; (c) allow employees to use the time off in accordance with the ESLL; (d) provide for payment of sick time in accordance with ESLL; and (e) provide for payout or carryover in compliance with the ESLL. Employers using the PTO policy to satisfy the ESLL must also comply with all ESLL Requirements for all PTO hours including documentation, notice provisions, and prohibitions against retaliation.

FMLA (Comment 10)

The Department explains that the terms of the federal Family and Medical Leave Act (FMLA) do not conflict with ESLL. The ESLL prohibits an employer from requiring an employee to use available earned sick leave.

Non-Discretionary Bonuses (Comment 5, 67)

The Department states that non-discretionary bonuses must be included in the calculation of ESLL compensation. The Department did not explain how employers can include these bonuses in calculating the rate of pay for the ESLL.

Temporary Staffing Firms (Comments 54, 83)

The final regulations clarify that in the case of a temporary staffing agency placing an employee with client firms, earned sick leave shall accrue based on the total time worked on assignment with the temporary agency, not separately for each client firm to which the employee is assigned.

120-Day Waiting Period (Comment 2)

The final regulations confirm that an employee, shall not be eligible to use earned sick leave until the 120th calendar day after the employment commences.

40 Hour Maximum (Comment 7)

The Department clarified that an employer shall not be required to permit an employee to use more than 40 hours of earned sick leave in any benefit year, regardless of how many hours have been carried over.

■ Employer Action

The final regulations and guidance do cover many other specific topics; therefore, it is advisable to review the comments and responses in their entirety. Employers should evaluate their ESLL and PTO policies with labor counsel to ensure compliance.



New Jersey Clarifies 2019 Individual Mandate Reporting

The State of New Jersey has again updated the information related to employer reporting beginning in 2020 under New Jersey's individual health insurance mandate that went into effect January 1, 2019. Employers (including out-of-state employers) who provided health coverage to New Jersey residents enrolled in self-funded group health plans must issue participant statements by March 2, 2020 and remit to the state by March 31, 2020 the same Forms 1095-C provided to the Internal Revenue Service (IRS) for calendar year 2019. Employers with fully insured plans may generally rely on the insurance carrier to issue statements and file required information with the state. New Jersey has established the statement issuance date and filing deadline to coincide with recent IRS guidance for Affordable Care Act ("ACA") reporting compliance.

■ Background

The New Jersey Health Insurance Market Preservation Act (the "NJ Act") requires most New Jersey residents to maintain health insurance, starting January 1, 2019. Failure to do so, absent an exemption, will result in an individual penalty imposed by the state when a person files his or her 2019 New Jersey Income Tax return. This New Jersey individual insurance mandate essentially replaces the individual mandate imposed under ACA, which was effectively eliminated beginning January 1, 2019 under the Tax Cuts and Jobs Act.

As with the ACA, the NJ Act requires certain employers and insurance carriers to report to covered individuals and to the state affirming such individuals' maintained health coverage during the calendar year.

■ Who Must Issue and File Required Forms

Forms are required to be issued to all primary enrollees no later than March 2, 2020 and filed with the state no later than March 31, 2020 on behalf of all part-year and full-year New Jersey residents for 2019. A part-year resident is an individual who lives in the state for at least 15 days in any month in 2019.

Certain employers and other providers of minimum essential health insurance coverage such as insurance carriers, multiemployer plans, government entities, etc. must file the forms with the New Jersey Division of Taxation no later than March 31, 2020. Currently, there is no plan to offer an extension. Filers or their representative must register and use MFT Secure Transport Services, the same system used to file Forms W-2, as the state will not accept mailed paper forms. Employers should only send Forms 1095-C to the state for individuals subject to NJ's individual mandate. While the state will accept 1095 data files containing records for individuals who are not New Jersey residents, employers should be cognizant that privacy and other laws may limit or prohibit sending sensitive information.

■ What Forms are Required by Whom

- **Employers with Fully Insured Coverage:** The insurance carrier will be required to file form 1095-B with the state for each covered member of the plan. Employers are not required to file with the state. The carrier should furnish Form 1095-B to NJ residents.
- **Employers with Self-Insured Coverage:** Employers should furnish Form 1095-C to covered members who are New Jersey residents. This likely overlaps with the federal requirement to furnish these Forms. Employers will file with the state Form 1095-C and must complete

Parts I and III. The employer may file a Form 1095-B for any plan member who was not an employee during all of 2019. Small employers (less than 50 employees) will report coverage using form 1095-B.

- Employers Participating in a Multiemployer Arrangement: The plan sponsor will file Form 1095-B (or 1095-C) for each covered employee.

■ Employer Action

- Employers with fully insured plans should confirm that the insurer will issue Forms 1095-B to New Jersey primary enrollees by March 2, 2020. It's important to note that the IRS issued guidance relaxing the ACA reporting rules for insurance carriers who are no longer required to automatically issue Forms 1095-B to plan participants, although carriers must still file Forms 1095-B with the IRS.
- Employers with fully insured plans should confirm that the insurer will file the Forms 1095-B with the state no later than March 31, 2020.
- Employers with self-insured plans should discuss with their payroll vendor or forms provider to determine if they will file the forms with the state on the employer's behalf.
- As New Jersey will not require that separate forms be prepared for adult children who were covered under their parents' group health plan, the state suggests that employees provide a copy of Form 1095-B or 1095-C to their adult children who reside in New Jersey. It is unclear at this time whether these adult children will need to submit proof of coverage when filing their New Jersey state tax returns in order to prove minimum essential coverage.



New Jersey Amends the NJ WARN Act

On January 21, 2020, New Jersey Governor Murphy signed legislation that greatly expands the reach and enhances the benefits under the Milville-Dallas Airmotive Plant Job Loss Notification Act (the “NJ WARN Act” or “Act”). The law becomes effective July 19, 2020. Employers with employees in New Jersey should consult with employment counsel to ensure compliance with the Act when considering layoffs, closing a facility or transferring employees to a new location.

■ Background

The NJ WARN Act requires private NJ employers generally in business for three or more years with 100 or more full-time employees (including out-of-state employees) to provide a notice at least 60 days in advance of a mass layoff, temporary or permanent facility closing (except in certain circumstances), or transfer of employees to another location.

Under the existing law, full-time employees are entitled to severance pay equal to one week of pay for each full year of employment when an employer fails to provide the requisite NJ WARN Act notice in a timely fashion.

■ Changes to the NJ Warn Act

The following are key changes to the NJ WARN Act effective July 19, 2020:

- The Act no longer distinguishes between full-time and part-time employees when determining the size of an employer subject to the Act and to whom a notice and severance benefits must be provided.
- Severance benefits of one week of pay for each full year of employment must be paid to each affected employee even when an employer issues the NJ WARN Act notice within the required timeframe.

- Notice must be issued to each affected employee at least 90 days in advance of a mass layoff, facility closing or transfer of employees to another location. Employers will be required to pay an additional four weeks of pay if they fail to provide employees with the full 90-day notice.
- The definition of a “mass layoff” changes and will consist of 50 or more qualifying terminations. All the employer’s facilities/locations are considered when determining the number of employees who may be affected.
- Employees covered by a Collective Bargaining Agreement (“CBA”) will receive the greater of any CBA severance benefit, or the benefit as required under the NJ WARN Act.
- The law provides certain protections for NJ workers upon a change of ownership or filing for bankruptcy protection.
- The definition of employer now includes a person who is involved in the decision-making process responsible for the employment action that gives rise to a mass layoff subject to notification, which could subject certain individuals to personal liability for NJ WARN Act failures.

■ Employer Action

New Jersey employers should review their internal policies and severance practices with counsel to understand the changes and ensure compliance with the NJ WARN Act.