

April 8, 2020

New Jersey COVID-19 Resource Guide for Employers

Please note the following guidance was formulated as of April 8, 2020. Due to the rapidly evolving nature of the COVID-19 pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts of the Coronavirus, and [sign up here](#) to receive daily updates on its legal and workplace health challenges.

In response to the COVID-19 pandemic, New Jersey Governor Phil Murphy has issued nine Executive Orders (EOs), some completely closing or substantially limiting the operations of many businesses. New Jersey has expanded protections and benefits for affected workers through swift-moving legislation. In addition, the United States has enacted two sweeping laws in response to COVID-19 and more are planned.

This Special Report discusses the New Jersey EOs, recommends response protocols for actual or suspected COVID-19 infections in the workplace, discusses the benefits and protections afforded to employees under state and federal law, and discusses possible assistance for struggling businesses and the coming challenges.

Status of Operations

On March 9, 2020, Governor Murphy declared a state of emergency and, thereafter, issued a series of EOs restricting business operations, requiring extensive workplace accommodations, and, in some instances, closing entire businesses. The following incorporates the current status of business operations under the effective New Jersey EOs.

Closures and Restrictions

The EOs limit and, in some cases, order the closure of certain businesses until so lifted by the Governor:

Business Closures

- Casinos
- Childcare centers, except for certified centers as explained below (effective April 1, 2020)
- Concert venues
- Gyms, fitness centers, and related classes
- Indoor common areas of malls

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- Movie theaters
- Nightclubs
- Non-essential retail brick-and-mortar locations
- Performing arts centers
- Personal care services (e.g., salons, barbers, and spas)
- Public amusement
- Public, parochial, and private schools
- Racetracks
- Recreation and entertainment
- Social clubs

Restricted Operations

- Dental, medical, surgical
 - Suspension of all elective or invasive surgical procedures (except for family planning/abortions)
 - Provide inventory list to the state of ventilators, respirators, anesthesia machines and personal protective equipment¹ not required for provision of critical health care services
- Emergency childcare centers
 - Obtain certification to operate by March 27, 2020
 - Follow emergency childcare standards published by the New Jersey Division on Children and Families (DCF)
 - Provide childcare services only to *essential persons* defined as
 1. Health care workers, including staff working in healthcare facilities and in community-based services, including home health and behavioral health
 2. Law enforcement personnel, firefighters, emergency services personnel, and staff at correctional facilities
 3. Individuals employed at the emergency childcare centers
 4. Staff working for entities that provide essential social services, including but not limited to, group home and shelter staff
 5. Essential government employees who are unable to work from home
 6. Certain critical workers, as defined by the Commissioner of DCF, at essential retail businesses (discussed below)
- Higher education
 - Elimination of all in-person instruction
 - Potential waivers on a case-by-case basis as may be granted by the Office of Higher Education
- Restaurants, bars, and dining establishments
 - May operate during normal business hours
 - Limited to take-out, delivery, and curbside pickup²
 - Alcoholic beverages may be sold in original containers
- Bicycle shops
 - Limited to repairs and service

Other Businesses Operations

The EOs expressly exempt specific businesses from the closure and limited operation directives. Moreover, several industries (e.g., construction, manufacturing, and professional services) are not specifically referenced anywhere in the EOs. Those businesses, while not currently subject to closure directives, must abide by specific operational standards and obligations established in the EOs.

¹ The inventory obligation applies to all business operations.

² Although curbside pickup is neither mentioned nor expressly set forth in EO 107, several establishments adopted the practice to implement the greatest extent of social distancing as practicable.

Essential Retail and Other Referenced Businesses

- Grocery stores
- Pharmacies and medical marijuana dispensaries
- Medical supply stores
- Gas stations
- Convenience stores
- Ancillary stores within healthcare facilities
- Hardware and home improvement stores
- Banks and other financial institutions
- Laundromats and dry-cleaning services
- Stores that principally sell supplies for children under five years old
- Pet stores
- Liquor stores
- Car dealerships, but only for auto maintenance and repair, and auto mechanics
- Printing and office supply shops
- Mail and delivery stores
- Newspapers, television, radio, and other media services
- Food banks and other essential services for low-income residents
- Mobile phone retail and repair shops
- Livestock feed stores
- Nurseries and garden centers
- Farming equipment stores
- Hospitals

Standards and Obligations for All Other Ongoing Operations

Whether essential retail, referenced in the EOs or otherwise not mentioned, all ongoing business operations must abide by specific standards and obligations, including:

- Employees may leave home to commute to/from work
- *Employers must accommodate, wherever practicable, telework or work-from-home arrangements*
- *Companies must make “best efforts” to reduce on-site staff to the minimal number necessary to ensure essential operations continue*
- Companies must practice social distancing, to the extent practicable, among employees and customers
- Essential retail businesses must frequently use sanitizing products on common surfaces
- Employees who must be physically present at the worksite to perform duties may continue to work (while abiding by social distancing and other obligations) including, among others, the following:
 - Cashiers and store clerks at essential retail businesses
 - Construction workers
 - Utility workers
 - Repair workers
 - Lab workers
 - Information technology maintenance workers
 - Janitorial and custodial staff
 - Certain administrative staff

([EO 107](#), [EO 109](#), [EO 110](#))

Penalties for Violation of EOs

Any business or individual that violates a provision of the EOs may be found guilty of a disorderly persons offense punishable by up to six months in prison, a fine up to \$1,000,

or both. The state established a website to field and investigate businesses suspected of violating the Governor's directives to facilitate enforcement. ([New Jersey Hotline to Report Employers Violating COVID-19 Executive Order Overwhelmed.](#))

The Workplace Today

COVID-19's impact on the workplace continues to evolve, requiring response protocols, prevention measures, and implicating a number of state and federal laws providing employment protections and benefits. Aside from New Jersey's robust employee protections and benefits, the federal Families First Coronavirus Response Act (FFCRA) requires, as of April 1, 2020, companies with fewer than 500 employees to provide emergency paid sick leave and paid emergency family and medical leave. Businesses must be sure to stay abreast of all developments to ensure compliance during the pandemic.

CDC Guidance

The Centers for Disease Control and Prevention (CDC) released, and subsequently updated, precautionary practices and response protocols for businesses to following during the pandemic. The following is a summary of those recommendations.

Precautionary Practices

- Follow CDC and local health department guidance and recommendations
- Encourage employees practice of proper hygiene:
 - Do not come to work if experiencing flu-like symptoms (e.g., fever and cough) or acute respiratory issues
 - Do not come to work if you have been around people with flu-like symptoms or who have been diagnosed with or tested for COVID-19
 - Practice cough etiquette (maintain distance, cover coughs and sneezes with disposable tissues or clothing and wash hands)
 - Wash hands frequently with soap and hot water for 20 seconds and use alcohol-based (at least 60% alcohol) hand sanitizers, especially after exposure to individuals who may be ill
 - Do not touch your face with unwashed hands, particularly your eyes, mouth, and nose
 - Follow social distancing guidelines by keeping at least six feet from others
 - Avoid touching items on other employee's desks, such as phones and work tools (disinfect the items before and after using them)
- To the extent the company has not already done so, cancel all upcoming in-person group meetings that are not business critical, larger than 10 people, and require travel (air or ground), both within and outside of the United States
- Any employees who have recently traveled to a destination with known COVID-19 cases should remain home for 14 days and self-monitor for common COVID-19 symptoms
- Consider implementing flexible sick leave policy (compliant with applicable law) and educate employees regarding those policies
- Routinely clean and disinfect commonly touched surfaces
- Provide soap, water, hand sanitizer, or disposable disinfecting wipes

Response Protocol: COVID-19 Positive

- Encourage or ask all employees (without singling out employees) to self-report their diagnosis to their manager or human resources (excluding circumstances where the employee has been working remotely and had no contact with any coworkers for more than 14 days and is not returning to work)

- If an employee comes to work and reports the illness, immediately separate them from other workers and ask the employee to go home
- Try to determine, in conjunction with the Local Health Department and CDC, the source of the infected employee's exposure to COVID-19, including whether it is believed to have been the result of community spread
- Absent consent of the employee who tested positive, companies generally may not reveal the employee's identity, but they may tell certain individuals that they have come into close contact with an individual who has tested positive for COVID-19
- Do not require a doctor's note for validation of the employee's illness
- If possible, ask the employee which individuals they have worked closely with (*i.e.*, within six feet) in the past 14 days; conduct similar analysis with appropriate supervisory personnel with a need to know
- Inform all employees who worked closely with the employee of their possible exposure to the COVID-19 virus while withholding the sick employee's identity (absent either consent from the employee who tested positive or compelling circumstances where the need to do so may be necessary to warn coworkers of potential risk of harm, consult with counsel about confidentiality of identity)
- Send home employees who have had close personal contact (within six feet) with an employee who has tested positive for a 14-day period and advise the employee to self-monitor themselves for symptoms (fever, cough, shortness of breath)
- Third-party vendors and customers should also be informed that they may have had contact with an individual who has the COVID-19 virus
- If your company shares an office space or other work site, inform the building manager or other appropriate representative
- Companies have no obligation to report to the CDC or local health authorities. That report will be made by the healthcare provider that receives the test results
- Enhanced cleaning and disinfection of the office, including workspaces, bathrooms, and common areas, should be undertaken. Prior to this, areas used by the sick employee should be closed off and windows should be opened to allow for greater air circulation
- Employees ***with COVID-19 who have stayed home (home-isolated)*** can stop home isolation under the following conditions:
 - ***If the employee will not have a test*** to determine if the employee is still contagious, the employee can leave home after these three things have happened:
 - The employee had no fever for at least 72 hours (that is, three full days of no fever without the use of medicine that reduces fevers)
AND
 - other symptoms have improved (for example, when the employee's cough or shortness of breath have improved)
AND
 - at least seven days have passed since the employee's symptoms first appeared
 - ***If the employee will be tested*** to determine if the employee is still contagious, the employee can leave home after these three things have happened:
 - The employee no longer has a fever (without the use of medicine that reduces fevers)
AND

- other symptoms have improved (for example, when the employee's cough or shortness of breath have improved)
AND
- the employee received two negative tests in a row, 24 hours apart.

Response Protocol: Suspected COVID-19

- Follow the same guidelines as when an employee has a confirmed case of COVID-19
- If an employee is exhibiting flu-like symptoms (fever, cough, shortness of breath), separate the employee from other coworkers and customers and ask the employee to go home
- Under the current circumstances, it is permissible to take the employee's temperature if you suspect they have COVID-19. However, an employee can be infected without showing fever-like symptom
- Employers may ask questions about an employee's symptoms to determine if they have a regular cold or flu or COVID-19. For example, employers may ask about an employee's fever, cough, runny nose, sneezing, aches and pains, sore throat, and so on
- Employers are not allowed to make determinations on an employee's health based on that employee's race or national origin

Employee Benefits and Employer Obligations

Businesses following the CDC guidance and EOs in response to the COVID-19 pandemic may obviously anticipate increased absences and leaves. Over the course of a single week, federal and state legislative actions increased available benefits and protections for workers impacted by COVID-19. Additionally, informal opinions and guidance from state agencies suggest broader availability for certain benefits even absent legislative action or formal rulemaking.

Paid Sick Leave Entitlements

New Jersey Earned Sick Leave
All Employers

New Jersey's Earned Sick Leave Law (ESLL), as amended, provides for leave under specific circumstances including, as those absences may relate to COVID-19, the following:

- Time needed by the employee for diagnosis, care, or treatment of, or recovery from COVID-19;
- Time needed for the employee to aid or care for a family member during diagnosis, care, or treatment of, or recovery from, the family member's COVID-19 illness;
- Time during which the employee cannot work because of:
 - A closure of the workplace, or the school or place of care of a child of the employee by order of a public official or because of a state of emergency declared by the Governor, due to an epidemic or other health emergency;
 - The declaration of a state of emergency by the Governor, or the issuance by a health care provider or the Commissioner of Health or other public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others;
 - During a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family

member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others. (See, [New Jersey Eliminates 7-Day Wait Period for Temporary Disability Benefits, Expands Leave Rights.](#))

Based on guidance from the New Jersey Department of Labor, this entitlement covers the following scenarios:

- Time where the employee was exposed to COVID-19, subject to quarantine or isolation, and the business remains open;
- Time during which the employee misses work due to fear of COVID-19 to maintain social-distancing.³

FFCRA: Emergency Paid Sick Leave⁴
Effective April 1, 2020
Fewer than 500 Employees

- Businesses with fewer than 500 employees must provide up to 80 hours of paid sick time to employees who cannot work or telework due to the need for leave because the employee is:
 - Subject to a federal, state or local quarantine or isolation order related to COVID-19;
 - Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - Caring for an individual who is subject to a quarantine or isolation order related to COVID-19
 - Caring for a son or daughter if the school or place of care has been closed, or the childcare provider is unavailable due to COVID-19 precautions
 - Experiencing any substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor
- Healthcare providers and emergency response employers may elect to exclude employees from this benefit;
- Emergency paid sick leave is available for immediate use regardless of a worker's length of employment;
- The employer may *not* require the employee to use other available paid leave prior to use of the entitlement;
- The employee receives their regular rate of pay up to a maximum of \$511 per day (and a total aggregate of \$5,110) for emergency sick leave used for the employee's own COVID-19 related illness, quarantine or isolation;
- The employee receives two-thirds of their regular rate of pay up to a maximum of \$200 per day (and a total aggregate of \$2,000) for emergency paid sick leave used for the care of others for COVID-19 related reasons;
- Furloughed (*i.e.*, temporarily reduced to zero hours) and laid-off employees may not use emergency paid sick leave benefits;
- The employer must post the United States Department of Labor's notice: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf;

³ See the New Jersey Department of Labor and Workforce Development's "COVID-19 Scenarios & Benefits Available" chart at <https://www.nj.gov/labor/assets/PDFs/COVID-19%20SCENARIOS.pdf>

⁴ FFCRA provides for a dollar-for-dollar tax credit for all emergency sick leave and emergency family leave benefits paid. Additional funding for wages, rent, and other operational expenses may be available to eligible employers under the Coronavirus Aid, Relief and Economic Security (CARES) Act.

- The entitlements expire on December 31, 2020

Family or Medical Leave Entitlements

New Jersey Paid Family Leave 30 or More Employees

- Businesses with 30 or more employees for each working day during each of 20 or more calendar workweeks during the current or immediately preceding calendar year must provide up to 12 weeks of leave for the serious health condition of an employee's family member;
- Employee must be employed for at least 12 months and worked at least 1,000 base hours during the immediately preceding 12-month period to qualify for leave benefits;
- The employee receives state-funded paid family leave insurance for the first six weeks of any such leave, while the subsequent six weeks are unpaid;
- A *serious health condition* includes, for purposes of COVID-19, during a state of emergency declared by the Governor or as indicated by the Commissioner of Health: (1) an illness caused by an epidemic of a communicable disease; (2) a known or suspected exposure to a communicable disease; or (3) efforts to prevent spread of a communicable disease, which requires in-home care or treatment of a family member of the employee due to:
 - The issuance by a healthcare provider or the commissioner or other public health authority of a determination that the presence in the community of a family member may jeopardize the health of others; and
 - The recommendations, direction or order of the provider of authority that the family member be isolated or quarantined because of suspected exposure to the communicable disease.
- The employer **cannot** deny family leave when requested for the above-reasons or where the place of care of a family member has been closed due to a state of emergency or other order related to COVID-19;
- The employee possesses reinstatement rights following the protected family leave.

FFCRA: Emergency Family and Medical Leave Effective April 1, 2020 Fewer than 500 Employees

- 12 weeks of leave to employees who have been employed for at least 30 calendar days;
- FMLA was expanded to include an employee who is unable to work (or telework) due to a need to care for a son or daughter under 18 if the school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency;
- First two weeks are unpaid, however, the employee may use the FFCRA's emergency paid sick leave benefits during that time period;
- Employee receives two-thirds their regular rate up to a maximum of \$200 per day (\$10,000 in the aggregate) for the remaining 10 weeks (only applies if employee is taking leave because they are unable to work (or telework) due to a need to care for a son or daughter under 18 if the school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency);
- Employer must post the United States Department of Labor's FFCRA notice discussed above;

- Employee possesses reinstatement rights except under limited circumstances for employers with 25 or fewer employees;
- The entitlements expire December 31, 2020.
- The USDOL has published [FAQs](#) with additional clarification on issues like calculating the regular rate, intermittent leave and the availability of the benefit in connection with a furlough.

Family and Medical Leave Act (FMLA)
50 or More Employees

- Employers with 50 or more employees during 20 or more workweeks during the current or preceding calendar year must provide 12 weeks of unpaid leave to employees for qualifying reasons;
- Eligible employees must have been employed for at least 12 months and worked at least 1,250 hours during the 12-month period preceding the leave
- The employee may take up to 12 weeks of unpaid leave for their own serious or the serious health condition of a spouse, daughter, son or parent;
- The employee possesses reinstatement rights.

Temporary Disability and Family Leave Benefits

New Jersey Temporary Disability
Employee Entitlement

- Employees who have worked 20 or more workweeks, earning at least \$200 per week or a combined total of \$10,000 during the preceding four quarters may be eligible to collect state benefits for their own disability not otherwise covered by workers' compensation;
- The law defines a *serious health condition* to include, for purposes of COVID-19, during a state of emergency declared by the Governor or as indicated by the Commissioner of Health: (1) an illness caused by an epidemic of a communicable disease; (2) a known or suspected exposure to a communicable disease; or (3) efforts to prevent spread of a communicable disease, which requires in-home care or treatment of a family member of the employee due to:
 - The issuance by a healthcare provider or the commissioner or other public health authority of a determination that the presence in the community of a family member may jeopardize the health of others; and
 - The recommendations, direction or order of the provider of authority that the family member be isolated or quarantined because of suspected exposure to the communicable disease;
- The law does *not* provide separate leave rights for the employee's own condition, only income replacement caused by a disability;
- Eligible employees may receive two-thirds of their weekly earnings up to a maximum of \$667 per week subject to a 26-week maximum;
- Effective July 1, 2020, employees will be eligible to receive 85% of the average weekly earnings up to a maximum of \$881 per week subject to a 26-week maximum.

New Jersey Family Leave Insurance Benefits
Employee Entitlement

- Employees who have worked 20 or more workweeks, earning at least \$200 per week or a combined total of \$10,000 during the preceding four quarters may be eligible to collect state benefits;

- The law defines a *serious health condition* to include, for purposes of COVID-19, during a state of emergency declared by the Governor or as indicated by the Commissioner of Health: (1) an illness caused by an epidemic of a communicable disease; (2) a known or suspected exposure to a communicable disease; or (3) efforts to prevent spread of a communicable disease, which requires in-home care or treatment of a family member of the employee due to:
 - The issuance by a healthcare provider or the commissioner or other public health authority of a determination that the presence in the community of a family member may jeopardize the health of others; and
 - The recommendations, direction or order of the provider of authority that the family member be isolated or quarantined because of suspected exposure to the communicable disease;
- The law only provides partial wage replacement benefits, not job protected leave;
- Eligible employees may receive two-thirds of their weekly earnings up to a maximum of \$667 per week subject to a six-week maximum;
- Effective July 1, 2020, employees will be eligible to receive 85% of the average weekly earnings up to a maximum of \$881 per week subject to a 12-week maximum.

Additional Statutory Protections & Obligations

The Americans with Disabilities Act *15 or More Employees*

- Employers must reasonably accommodate known disabilities of employees
- Accommodation may require the employer to provide leave to an employee to permit them to recuperate and return to work;
- Any leave is unpaid, however, paid-time-off, temporary disability, and other benefits may be used to supplement income.

New Jersey Law Against Discrimination *All Employers*

- See above *The Americans with Disabilities Act* section.

Title 34 Job Protection *All Employers*

- An employer may not:
 - “terminate or otherwise penalize an employee if the employee requests or takes time off from work based on the written or electronically transmitted recommendation of a medical professional ... because the employee has, or is likely to have, an infectious disease, ... which may infect others at the employee’s workplace”; or
 - “refuse to reinstate the employee to employment in the position held when the leave commenced with no reduction in seniority, status, employment benefits, pay or other terms and conditions of employment”;
- An employer found to be in violation of this law may be forced to reinstate the employee to their former position with no change in benefits, pay, or other terms and conditions of employment and may be fined \$2,500 for each violation.

* * *

Indeed, actual or suspected COVID-19 exposure in the workplace triggers potential employee entitlements and employer obligations under various federal and state laws. Businesses must be aware of these laws to ensure compliance while addressing COVID-19 workplace issues.

Modified Operations during COVID-19

COVID-19 may result in modified operations in the wake of decreased demand for products or services, diminished revenue, or unavailability of labor. Such modified operations may include, among other measures, compensation reductions, staggered and decreased hours of operation, furloughs, or layoffs. Before implementing such measures, businesses must understand the associated legal requirements.

Reduced Hours/Compensation

New Jersey and federal laws neither require predictive scheduling nor penalize employers for modifying compensation or work schedules. However, notice and minimum wage laws must be observed.

Modified Hours or Schedules

- No specific federal or New Jersey law regarding modified schedules or hours;
- If an employer requires a non-exempt employee to report to work but sends the employee home due to lack of work, that employee must receive at least one hour of pay;
- Employers generally *cannot* take partial- or full-day deductions from salaried exempt employees to implement cost-savings;
- To the extent any reduction in hours results in the employee receiving less than 80% of her or his normal weekly earnings, the employer must provide a [BC-10](#) to advise the employee of her or his right to apply for partial unemployment benefits.
- Employers also should be mindful of how a reduction in hours impacts employees' benefits eligibility. Many benefit plans, such as employee health insurance, require that an employee work a minimum number of hours to be eligible for benefits.

Modified Compensation

- Employers may reduce compensation (e.g., hourly rates or salary) upon providing advance notice to the employee prior to any such changes;
- The New Jersey Department of Labor recommends that employers provide employees with at least one pay period of notice before any such change.
- Companies must continue to pay non-exempt employees the New Jersey minimum wage of \$11 per hour or more;
- Companies must continue to pay salaried exempt employees a minimum of \$684 per week, not subject to reduction on the basis of quality or quantity of work;

Furloughs/Temporary Layoffs

Should a company implement furloughs or temporary layoffs, additional laws may be implicated. The following is a sample of some considerations.

Unemployment Insurance Benefits *All Employers*

- Employees must work 20 base weeks (with earnings of \$200 or more each week) or earned at least \$10,000 during the covered base year.
- Employees who are separated for any reasons (permanent or temporarily) must receive a BC-10 form which contains information including, but not limited to, the anticipated recall date for a temporary layoff or furlough;
- Eligible employees may receive 60% of their weekly earnings up to a maximum of \$713 per week;
- The Coronavirus Aid, Relief, and Economic Security Act (CARES) expands unemployment benefits by creating a Pandemic Unemployment Assistance program that runs through December 31, 2020;
- Eligible employees may receive an additional \$600 per week in unemployment insurance payments under CARES through July 31, 2020;
- CARES also extends unemployment benefits from 26 weeks to 39 weeks through December 31, 2020;
- CARES does *not* reduce the \$600 weekly benefit if the employee is also receiving partial or other unemployment benefits from the state fund.

Notification Requirements⁵

*The Federal Worker Adjustment Retraining and Notification Act (WARN)
New Jersey Millville-Dallas Airmotive Plant Job Loss Notification Act (NJWARN)⁶
Companies with 100 or More Employees*

- Mass Layoff – If the layoff or furlough impacts 500 or more employees or, 50 or more employees representing one-third or more of the employees at a particular establishment, notification obligations may apply;
- Plant Closing/Termination of Operations – means the temporary or permanent of a single establishment, or one or more facilities or operating units within the single establishment impacting 50 or more employees;
- If furlough or temporary layoff lasts six months or more, employee may be viewed as suffering an employment loss (WARN) or termination of employment (NJ) and be counted in determining whether notice is required;
- If a mass layoff or plant closing occurs, employer must provide 60 days' notice of the action to:
 - The employee and the bargaining representative;
 - The chief elected official of the municipality in which the impacted establishment is located;
 - The Commissioner of the New Jersey Department of Labor and Workforce Development;
- Failure to provide proper notice may result in penalties including, but not limited, to, severance payments and/or wages for the days of delinquent notice.'
- Unlike the federal WARN, the NJWARN does not provide an exception to the 60-day notice requirement for unforeseen business circumstances. Thus, if a furlough lasts longer than six months and 60 days' notice was not provided as required by the NJ WARN, there is a substantial risk that the NJWARN is violated.
- NOTE: Substantial amendments to the NJWARN will be effective July 19, 2020, which include but are not limited to requiring 90 days' advance notice and mandatory severance for all affected employees of one week for every year of service. See, [Requirements of New Jersey Expanded WARN Act](#).

⁵ To the extent a business intends to transfer operations, terminate operations, or close a plant, please contact a Jackson Lewis attorney to discuss the legal obligations associated with such action.

⁶ To the extent a business intends to implement such layoffs, terminate operations, transfer operations or close a plant on or after July 19, 2020, please contact a Jackson Lewis attorney to discuss the legal obligations associated with such action.

Continuing Benefits*Consolidated Omnibus Budget Reconciliation Act (COBRA)
The New Jersey Continuation Coverage Rules (NJCCR)
20 or More Employees for COBRA*

- Contact your benefits administrator or COBRA administrator to discuss any contemplated temporary layoffs or furloughs in advance;
- Determine extent to which impacted individual remains eligible for coverage during furlough or temporary layoff period;
- Determine extent to which (including amount) the company and impacted employee will pay the costs associated with any benefit continuation during the furlough or temporary layoff period;
- Provide appropriate COBRA or NJCCR notice to impacted employees regarding continuation of benefits.

* * *

Implementing cost-saving measures without consideration of the above legal requirements may further jeopardize the financial stability of your business both during and following the conclusion of the pandemic. Any such actions should only be undertaken with the assistance of counsel.

Conclusion

Jackson Lewis and our Berkeley Heights and Monmouth County COVID-19 Resource Team are committed to assisting your business through the crisis caused by the pandemic. The Resource Team hopes this Special Report provides your company with helpful information to guide you through these trying times.

What if I have more questions?

As issues and concerns around Coronavirus COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#).

Jackson Lewis attorneys available to answer your any questions.

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