Engage PEO Client Alert:
New Jersey Updates

The following Client Alert reviews three employment law updates for clients with employees in New Jersey:

- **New Jersey WARN Act – Automatic Severance and Additional Notice;**
- **Amendments to New Jersey Family Leave Act (NJFLA); and**
- **New Jersey Arbitration Act (NJAA)**

New Jersey WARN Act – Automatic Severance and Additional Notice

Effective July 19, 2020, New Jersey employers with at least 100 employees over a three (3) year period, will have new and expanded obligations to provide their employees with advance notice and severance pay under revisions to the State's Millville Dallas Airmotive Plant Job Loss Notification Act (NJ WARN).

NJ WARN will increase the notice period employers must provide impacted employees, **from 60 days to 90 days**. The new law, when triggered, imposes a **severance obligation** on employers in the amount of **one week's pay, per year, for each year of service worked by a terminated employee**. If the **employer fails to provide 90 days' notice**, the law obligates the employer to pay an **additional four weeks of severance to each employee**.

The new NJ WARN law may be **triggered by any termination of 50 or more employees**, aggregating terminations across multiple locations that report to the same jobsite, regardless of where in the state the terminations occur. This change eliminates the focus on the number of employees impacted by a layoff at a single place of employment, like most Federal and state WARN legislation. **An employee transferred out-of-state, or to a location more than 50 miles from its original employment site, will also be deemed a "termination of employment" under the new law**. The new law eliminates the practice of excluding "part-time" employees from an employer's 50-person headcount, i.e., those with less than 6 months of service or who work less than 20 hours per week. It also removes the requirement that 33% of the workforce must be affected for the term "mass layoff" to be applicable.

Any employer contemplating a future RIF should budget for NJ WARN's new severance pay obligation, and plan for the new 90-day notice period to avoid the law's additional four (4) week severance pay penalty.

Amendments to New Jersey Family Leave Act (NJFLA)

Recently, New Jersey amended its state Family Leave Act ("NJFLA") to require employers with **30 or more employees** to grant job protected leave to qualifying employees that are providing care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease. The law is

retroactive to March 25, 2020.

Before it was amended, the NJFLA allowed qualifying employees to take up to 12 weeks of job protected family leave in a 24-month period – provided that: (i) the employer has at least 30 employees or is a government entity, regardless of size, (ii) the employee has worked for that employer for at least one year, and (iii) the employee has worked at least 1,000 hours for the employer during the last 12 months. Employees qualified for NJFLA leave in order to provide care made necessary by reason of:

1. the birth of a child of the employee, including a child born pursuant to a valid written agreement between the employee and a gestational carrier;
2. the placement of a child into foster care with the employee or in connection with adoption of such child by the employee; [or]
3. the serious health condition of a family member of the employee

The amended NJFLA adds the following as qualifying events for job protected leave:

4. in the event of a **state of emergency** declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a **communicable disease**, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease, which:
5. requires **in-home care or treatment of a child due to the closure of the school or place of care** of the child of the employee, by order of a public official due to the epidemic or other public health emergency; or
6. prompts the issuance by a public health authority of a determination, including by **mandatory quarantine**, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or
7. **results in the recommendation of a health care provider or public health authority**, that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

The amended NJFLA still provides a process for leave to be taken intermittently if: (i) the employee provides the employer with prior notice of the leave as soon as practicable; and (ii) the employee makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, provide the employer, prior to the commencement of the intermittent leave, with a regular schedule of the day or days of the week on which the intermittent leave will be taken.

New Jersey Arbitration Act (NJAA)

In two recent NJ Supreme Court decisions, (Colon v. Strategic Delivery Solutions, LLC and Arafa v. Health Express Corporation), the court held that that **arbitration agreements can be enforceable under the New Jersey Arbitration Act (NJAA)**, **even if** those agreements would be otherwise **exempt from arbitration under Section 1 of the Federal Arbitration Act (FAA). Engage previously sent out a Client Alert on this issue (linked here).**

This decision is a helpful reminder for NJ employers with national or regional workforces to consider state law nuances (of which there are many) when drafting arbitration agreements. Employers should incorporate applicable state arbitration statutes into agreements and include language reflecting the workers' clear and unambiguous waiver of a jury trial on covered claims and waiver of the ability to proceed on a class or collective basis.

Please contact your Engage HR Consultant if you have questions regarding these New Jersey updates.