



New Jersey Bedevils Employers With Five New Pro-Employee Laws

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New Jersey Governor Phil Murphy signed five pro-employee bills into law on Jan. 21, 2020. These new laws highlight a trend in which pro-employee state governments are not merely relying on federal law, but are enacting their own legislation to protect employees – often at a stiff cost to employers.

The first of New Jersey's new employment laws, SB 3170, revises the state's mini version of the federal WARN Act. New Jersey law previously required employers to provide covered employees with 60 days' notice of a plant shutdown or mass layoff, consistent with federal law. Under the new law, affected employers must instead provide 90 days' notice. Affected employers were already required to provide severance pay equal to one week of wages for each full year of employment to covered employees. Now, under the amendment, employers must pay covered employees an additional four weeks of severance if they fail to provide the full 90 days' notice.

The second new law, AB 5838, gives the state's commissioner of Labor and Workforce Development the authority to issue a stop-work order against an employer, requiring cessation of all business operations at the specific place of business where any wage, benefit, or employment tax law violation was found. If the employer fails to comply, the commissioner may assess a civil penalty of up to \$5,000 per day. While employers can appeal the finding, that process may take up to two weeks, resulting in potentially large losses for affected employers.

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The final three laws, AB 5839, AB 5840 and AB 5843, address misclassification of workers as independent contractors. Pursuant to the new laws, any employer or staffing agency that misclassifies workers may be liable for an administrative penalty of up to \$250 per employee for the first violation and up to \$1,000 per employee for subsequent violations. Moreover, owners, directors, officers, and managers may be held individually liable for their role in misclassifying workers.

Finally, employers will be required to conspicuously post a notice describing misclassification, the benefits and protections to which employees are entitled, and how to report misclassification. Employers are prohibited from retaliating against a worker because the worker made an inquiry or complaint about potential misclassification. A violation may result in a fine of \$100 to \$1,000, and any worker terminated in retaliation for protected conduct will be entitled to reinstatement plus back pay and legal fees.

This trend of states passing their own employee-protection legislation is difficult for multi-state employers, which more than ever must understand the specific laws of each state in which they operate. Employers with operations in multiple states may want to consider policies and practices tailored to each state rather than attempting to enact uniform nationwide policies and practices.