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A Professional Corporation

# Employment Alert

Spring 2008

## IN THIS ISSUE:

New Jersey Passes Its Own Warn Act

OSHA Issues New Regulations on Personal Protective Equipment

NJ Expands the LAD to Require Employers to Reasonably Accommodate Religious Beliefs

Employers Must Be Sensitive to Informal Requests for Family and Medical Leave

FMLA Expansion

Written Agreements Now Required for NY Commissioned Salspersons

## New Jersey Passes Its Own WARN Act

On December 20, 2007, Governor Corzine signed into law the "Millville Dallas Airmotive Plant Job Loss Notification Act ("NJ WARN")," New Jersey's equivalent to the federal Worker Adjustment Restraining Notification Act ("WARN"). NJ WARN differs from WARN in many key respects. While both NJ WARN and WARN apply to employers with 100 or more full-time employees and both require 60 days written notice prior to a "mass layoff," the similarities seem to end there.

First, unlike WARN, NJ WARN does not contain any "natural disaster," "business circumstances," or "sale of business" exceptions. In addition, NJ WARN's notification requirements are more stringent than those in WARN, with more information required to be in each notice and the notices to be sent to greater groups of recipients. Finally, the penalties imposed by NJ WARN are far more severe than those contained in WARN. Whereas WARN imposes penalties of back wages and benefits for up to 60 days for every employee who is not given notice (with credit to be given for any payment made), NJ WARN provides wages of one week of back pay for every year of service.

Considering this new and potentially confusing law and the lack of regulations or case law in this area, as well as the many other laws implicated in downsizings, employers who are undergoing any kind of reduction in force are advised to consult counsel who is well-versed in this area.

Should you have any questions regarding the WARN Act, contact Randi Kochman at (201)525.6309, or [rkochman@coleschotz.com](mailto:rkochman@coleschotz.com).

## OSHA Issues New Regulations on Personal Protective Equipment

On November 15, 2007, the Occupational Safety and Health Administration ("OSHA") published new rules regarding payment for personal protective equipment ("PPE"), such as respirators, hard hats, safety shoes, etc. The rules were originally proposed in 1999 and create a clear and concise policy requiring employers to pay for PPE whenever required by OSHA's standards. The new rules, however, do not create any new requirements as to the type of PPE employers must provide to employees. Rather, the new rules require that employers pay for replacement of PPE whenever necessary to comply with OSHA standards except when the employee

has lost or intentionally damaged his/her PPE. The rules also allow employees to use their own PPE. If employees decide to use their own PPE, employers are not required to reimburse their employees for use of such PPE. Employers also are not required to pay for everyday clothing to protect employees from the weather, such as winter coats, gloves, rubber boots or raincoats. The rule became effective on February 13, 2008 and must be fully implemented by employers by May 15, 2008.

Should you have any questions on OSHA, contact Gerard Giordano at (201)525.6306, or [ggiordano@coleschotz.com](mailto:ggiordano@coleschotz.com).

## New Jersey Expands the LAD to Require Employers to Reasonably Accommodate Religious Beliefs

On January 13, 2008, the New Jersey General Assembly and Senate expanded New Jersey's Law Against Discrimination ("LAD") to prohibit an employer from imposing any condition of employment upon an employee that would require him/her to "violate or forego a sincerely held religious practice or religious observance." In compliance with the statute, an employer may not prohibit an employee from taking leave from work to observe the Sabbath or any other holy day on a particular day or any portion thereof unless the employer can show that it is unable to reasonably accommodate the employee's religious observance without "undue hardship" to the employer's business.

Notably, the statute expressly provides specific limitations to this expansion of religious protection. For example, "an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which those premium wages or premium benefits would ordinarily be applicable, if the employee is working during those hours only as an accommodation to his religious requirements." Additionally, the employee must either make up the equivalent amount of time and work at a mutually convenient time or designate the time as leave with pay, other than sick leave. The employer may treat any improper absence as leave taken without pay.

Should you have any questions concerning LAD and religious beliefs, contact Jaclyn Platten at (646) 563-8922, or [jplatten@coleschotz.com](mailto:jplatten@coleschotz.com).

## Employers Must Be Sensitive to Informal Requests for Family and Medical Leave

In *Sarnowski v. Air Brooke Limousine, Inc.*, decided on December 12, 2007, the Third Circuit Court of Appeals clarified, and somewhat expanded upon, an employer's obligations under the federal Family and Medical Leave Act of 1993 ("FMLA"). The Court held that an employee is not required to give his/her employer written notice of a need for FMLA leave, but rather may provide verbal notification. In addition, the Court held that the employee need not use any "magic words" or even provide the exact dates of the leave or the duration of the leave.

In *Sarnowski*, the Court held that the employee had provided sufficient FMLA notice when he verbally informed his supervisor that he would need medical monitoring and possibly an additional surgery after he had missed six weeks of work for a quintuple coronary artery bypass surgery. The Court deemed that under these circumstances the employer was put on notice of potential leave and that it would be due to a medical condition. The *Sarnowski* decision is significant in that it requires employers to interpret information provided by employees. If that information provides the employer with enough facts to indicate that the employee may need FMLA leave, the employee has satisfied the notice requirements of the FMLA regardless of the specific words the employee may have used.

Should you have any questions concerning Family and Medical Leave, contact Michael Morea at (201) 525-6274, or [mmorea@coleschotz.com](mailto:mmorea@coleschotz.com), or Damon Kamvosoulis at (201) 525-6308, or [dkamvosoulis@coleschotz.com](mailto:dkamvosoulis@coleschotz.com).

## FMLA EXPANSION

Pursuant to the National Defense Authorization Act ("NDAA"), which was signed into law on January 28, 2008 as an amendment to the Family and Medical Leave Act ("FMLA"), employers must provide 26 weeks of FMLA leave during a 12-month period for members of the Armed Forces, National Guard or Reserves. Specifically, the NDAA provides that leave must be given to permit a "spouse, son, daughter, parent or next of kin" to care for a "Member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list, for a serious injury or illness."

Should you have any questions concerning FMLA expansion, contact Randi Kochman at (201) 525-6309, or [rkochman@coleschotz.com](mailto:rkochman@coleschotz.com).

## Written Agreements Now Required for NY Commissioned Salespersons

Effective October 17, 2007, the New York Legislature amended Labor Law §191(c) to require employers to have written employment agreements with their commissioned employees who solicit orders in New York State. These agreements must be signed by the employer and employee, and must include a description of how wages, salary, drawing account, if any, commissions and all of the monies earned are calculated and how they will be paid if the employment relationship is terminated. Employers must keep the agreements on file for three years. Employers who fail to comply with this amendment risk adverse findings by the New York State Department of Labor when employees bring wage complaints.

Should you have any questions concerning employment agreements, contact Steven Adler at (201) 525-6273, or [sadler@coleschotz.com](mailto:sadler@coleschotz.com), or Jessica Juste at (201) 525-6334, or [jjuste@coleschotz.com](mailto:jjuste@coleschotz.com).

## Paid Family Leave 2008

In March 2008, the New Jersey Senate passed the Paid Family Leave Bill, S-786, by a vote of 22-16. If the legislation becomes law, state Temporary Disability Insurance coverage will be expanded to provide for up to 6 weeks of paid leave per year for workers caring for sick family members, newborn and newly adopted children. A provision contained in the legislation would allow this leave to be taken intermittently, rather than over 6 consecutive weeks. If passed, New Jersey would be the third state in the nation to have such leave.

Business and industry leaders view the legislation as onerous, with the potential to disrupt the work place and perpetuate the already hostile business environment in New Jersey. The proposal is a priority issue for Governor Corzine. The Assembly version of this legislation is set to be heard in the Assembly Appropriations Committee on March 10, 2008.

## Floods, Power Outages and Other North Jersey Disasters: Is Your Business Ready? 2008 Disaster Planning For Medium-Sized Businesses

Natural and man-made disasters can have a devastating impact on businesses. Even a relatively short business interruption can be fatal. Although medium-sized businesses are often the most at risk, a large proportion of them have not focused on implementing a comprehensive preparedness plan that would save their business if a disaster struck.

This seminar is intended to provide businesses with the tools necessary to begin implementing a comprehensive disaster preparedness plan. Peter Oppenheim, a renowned expert with almost 25 years experience in this field, will be joined by other experts at this breakfast seminar co-sponsored by the Meadowlands Regional Chamber of Commerce and Cole Schotz.

Employment attorneys Randi Kochman and Robert Dowd will address related employment issues.

For more information on this seminar, contact Alan Levine at [alevine@coleschotz.com](mailto:alevine@coleschotz.com).

## IN THE TRENCHES

In November 2007, on behalf of Programs for Parents, Inc., **Randi Kochman** (Member) successfully obtained the dismissal of a childcare service provider's lawsuit filed in the Superior Court of New Jersey, alleging retaliation under the New Jersey Conscientious Employee Protection Act, wage and hour violations, breach of contract and violations of the New Jersey Constitution. The dismissal at such an early stage in the litigation not only did away with any potential liability but also saved the company substantial attorneys' fees and costs.

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If so, please send your e-mail address to [alevine@coleschotz.com](mailto:alevine@coleschotz.com)

## FOR THE RECORD

On November 28, 2007, Department **Steven Adler** (Chair) and **Randi Kochman** (Member) presented a breakfast seminar for firm clients and friends regarding Hot Topics in Employment Law.

On January 16, 2008, **Steven Adler** and **Randi W. Kochman** presented a program for the Financial Managers Forum sponsored by the accounting firm of Sax Macy Fromm & Co. entitled "Taking Your Company's Temperature: Do Your Personnel Practices Comply with Recent Developments in New Jersey and New York Employment Law?"

Co-Editors: **Randi W. Kochman** and **Michael N. Morea**

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- FMLA Expansion
- Written Agreements Now Required for NY Commissioned Salespersons
- Paid Family Leave 2008