

Employers Association of New Jersey

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Firing Workers Raise Legal Issues Under Healthcare Law

As major restaurant chains such as Papa John's and Applebee's threaten to fire workers or reduce their hours rather than provide affordable coverage under the Affordable Care Act in 2014, it is unclear what remedies, if any, employees would have for wrongful termination or demotion.

Under the Act, it is unlawful to discriminate or retaliate against an employee who objects to any practice that he or she believes violates an order, rule, regulation or standard under the healthcare law. Specifically, this legal protection is clearly intended to apply to employer obligations under the Act and prevents discharging employees who receive subsidies or tax credits to purchase healthcare.

However, firing or reducing the hours of an employee would not interfere with their ability to receive subsidies or tax credits to purchase healthcare. Thus, the Act's protections arguably do not apply if employees are fired or demoted in advance.

Nor is it likely that an exception to the at-will rule could apply. The at-will employment rule allows employers to fire employees for any reason, or no reason any at all, with or without cause, without legal penalty. An exception may apply when a discharge is incompatible with an important public policy. Under the so-called public policy exception to the employment at-will rule, an employee is wrongfully discharged when the termination is against an explicit, well established public policy of the state or federal government. For example, in most states, an employer cannot terminate an employee for filing a workers' compensation claim after being injured on the job, or for refusing to break the law at the request of the employer. The majority view among States is that public policy may be found in State or Federal statutes, regulations or administrative rules.

The Act does not require employers to offer healthcare insurance to employees and individuals of a certain income will be eligible to receive subsidies or tax credits to purchase healthcare, regardless of their employment status. Therefore, it is not likely that a preemptory discharge or demotion would be incompatible with a policy derived from the Act.

While individual employees may lack a legal remedy for wrongful termination or demotion, the federal government might because employers with 50 or more employees who do not offer affordable coverage will be required to pay a penalty. Firing employees

to avoid paying the penalty may be actionable by the federal government to recoup the penalties that would have otherwise been paid.

Additionally, as noted, an employee who objects to such a practice will be afforded whistleblower protection. This whistleblower protection is also provided under state law – the N.J. Conscientious Employee Protection Act – and to the extent that one or more employees object, the National Labor Relations Act. Thus if Papa John's or Applebee's were to make good on their threat to fire or demote employees, depending on the timing and motivation of such action, there may be legal consequences, including the possibility of class action litigation.