LEGAL Q&A

Q **Does the 65%-35% premium subsidy (and other provisions) with respect to the continuation of health benefits under the federal COBRA law as provided under the American Recovery and Reinvestment Act of 2009 ("ARRA")(a/k/a the Stimulus Plan of 2009), apply to small employers in New Jersey?**

A YES, to a certain extent. The federal COBRA law only applies to employers with 20 or more employees. New Jersey employers with less than 20 employees that offer health insurance benefits, are considered "small employers" and while not subject to the federal COBRA law, are subject to the New Jersey state continuation law.

The ARRA contains language which indicates that if the federal COBRA law does not apply, but a comparable state continuation law does apply, then the subsidy provided under the ARRA is available. Thus, all employers, large or small in New Jersey, need to be aware of the subsidy obligations under the Stimulus Plan of 2009.

There are however vital differences as to the rights and obligations afforded under the ARRA with respect to the state law versus the federal law. One important distinction is the entity that actually pays the 65% subsidy. If covered under the federal COBRA law, the 65% subsidy is paid by the employer, who then seeks reimbursement through a payroll tax credit. However, small employers subject to the New Jersey continuation law are not required to pay the subsidy. Rather, the health insurance carrier for that small employer is the entity that pays the 65% subsidy. Otherwise, this type of added expense would be a significant financial burden on many small employers. There are other important distinctions with respect to the continuation rights and obligations afforded under the state and federal laws and as applied by the ARRA, such as the notices to be provided to the former employee, the type of continuation coverage provided, who other than the former employee is eligible for the coverage (i.e. dependents), and how long the coverage shall last.

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Jay S. Becker, Esq. is a shareholder at Giordano, Halleran & Ciesla, P.C. and chair of the firm's Labor & Employment Practice Area. He can be reached at jbecker@ ghclaw.com or 732-741-3900.