

Employer Facing Potential Liability For Allegedly Reducing Worker Hours To Avoid Affordable Care Act Penalties

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The Affordable Care Act's (ACA) employer shared responsibility mandate requires large employers to offer certain minimum health coverage to substantially all of their full-time employees, or potentially pay significant penalties as a consequence of not doing so. The ACA defines a full-time employee as an employee who regularly works on average at least thirty hours per week. ACA penalties are not assessed for not offering health insurance to part-time employees. Consequently, some large employers have reduced the hours of employees from full-time to part-time status to avoid penalties under the ACA. However, on February 9, 2016, in the **first case of its kind**, a class of former and current employees of Dave & Buster's survived a motion to dismiss because a federal district court judge in New York determined that sufficient facts were alleged that Dave & Buster's interfered with the employees' rights to benefits when it allegedly reduced the hours of such employees to avoid ACA penalties. The case was filed after Dave & Buster's implemented a nationwide reduction of its full-time staff beginning in June 2013. Plaintiffs relied on Section 510 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), which prohibits employers from interfering with an employee's right to benefits under an ERISA-governed plan, including health insurance benefits. Dave & Buster's argued in its motion that under ERISA an employee has no entitlement to future benefits, and, therefore, it could not violate Section 510 by making workers ineligible for future benefits. In denying the motion to dismiss, the judge held that there was enough

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evidence at this early stage in the case to support the claims that Dave & Buster's acted with an "unlawful purpose" when it made hundreds of employees ineligible for current, as well as future, health insurance benefits by reducing their hours. This case may encourage more plaintiffs' attorneys to seek damages against employers who allegedly have taken steps to reduce their full-time workforce in order to avoid ACA penalties. In the meantime, employers should contact experienced counsel before making any changes if they are considering a reduction in hours of current full-time employees that may result in a loss of health insurance benefits.