



Cutting Worker Hours to Avoid ACA Penalties May Violate ERISA

News

4.01.16

The article, “Cutting Worker Hours to Avoid ACA Penalties May Violate ERISA,” featured in *EBN*, discussed how the District Court for the Southern District of New York recently turned down a motion to dismiss from the national restaurant chain Dave & Buster’s in a case where a group of employees sued the company for allegedly cutting employee hours to less than 30 hours/week to avoid offering health insurance under the Affordable Care Act.

Lorie Maring provided her take on the case.

“Under Section 510 of ERISA, an employer cannot intentionally interfere with an employee’s right to benefits,” said Lorie. “What the plaintiffs are claiming is that by reducing their hours, the company was intentionally interfering with their right to receive health insurance.”

Lorie agreed that basing a lawsuit for reduced hours on Section 510 is a novel approach. However, she says if the employees are successful, they will be entitled to equitable relief under Section 502 which could mean payment of the value of healthcare benefits they would have received as full-time employees plus other monetary relief.

“Lawyers and advisers have been telling companies that it’s one thing to make hiring decisions to bring in part-time employees, but to do wide-scale transitions of your workforce from full- to part-time is potentially problematic,” Lorie said.

“One of the key issues is that Dave & Buster’s employees were already covered under a health insurance policy so when their hours were reduced they also lost their medical coverage,” she noted. “If they weren’t already covered under a health plan they might not have a section 510 claim under ERISA because they would be arguing a right to some future benefit they are not already entitled to.”

Lorie said that few of her clients, if any, have been reducing employee hours to get around the employer mandate. “It may make sense in the hospitality or restaurant industry where there is considerable turnover, but otherwise as a business model for most organizations it’s just not worth trying to manage that many part-time employees,” she said.

Nevertheless, she acknowledges that everybody is watching the Dave & Buster’s case with a great deal of trepidation. “I’d be surprised if this case isn’t settled at some stage, but if it is litigated on the

merits, with various appeals, it could be several years until we see a final decision,” she said.

Lorie, meanwhile, tells her employer-clients to be very careful how they communicate with employees and how they present any changes in hours or position.

To read the full article, please visit [EBN](#).

Please reach out to our [Media team](#) for any news inquiries.

Related People



Lorie Maring
Partner
404.240.4225
[Email](#)