Limiting Employee Hours To Avoid ACA Could Violate ERISA, Court Rules

Insights
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In a first-of-its-kind decision, a federal court recently upheld the right of employees to sue their employer for allegedly cutting employee hours to less than 30 hours per week to avoid offering health insurance under the Affordable Care Act (ACA). Specifically, the District Court for the Southern District of New York denied a defense Motion to Dismiss in a case where a group of workers allege that Dave & Buster's (a national restaurant and entertainment chain) "right-sized" its workforce for the purpose of avoiding healthcare costs.

Although this case is in the very early stages of litigation and is far from being decided on the merits, you should monitor this novel legal approach for developments to determine whether you need to take action to deter potential copycat lawsuits.

Reducing Workforce Hours In Response To ACA

As background, the ACA requires employers who employ 50 or more "full-time equivalents" to offer affordable minimum-value coverage to full-time employees and their dependents or pay a penalty if any of their full-time employees receive federal premium assistance to purchase individual coverage in the Health Insurance Marketplace (also known as the "Employer Mandate").

One of the initial concerns by ACA critics is that many employers would respond to the Employer Mandate by reducing full-time employee hours to avoid the coverage obligation and associated penalties, increasing the number of part-time workers in the national economy. This is because the ACA does not require an employer to offer affordable, minimum-value coverage to employees generally working less than 30 hours per week.

Although the initial economic data analyzing the national workforce suggests that the predictions of wide-scale reduction in employee hours have not materialized, some employers have increased their reliance on part-time employees as an ACA strategy to manage the costs of the Employer Mandate.

Could That Reduction Violate ERISA?

Although an employer who reduces employee hours would not violate any specific provision of the ACA, there is an open question as to whether such an action would violate another federal law. As alleged by employees of Dave & Buster's, such a reduction creates a cause of action under the Employee Retirement Income Security Act of 1974 (ERISA). A group of employees filed a class action lawsuit against the restaurant chain last year making such an argument.

Section 510 of ERISA prohibits discrimination and retaliation against plan participants and beneficiaries with respect to their rights to benefits. More specifically, ERISA Section 510 prohibits employers from interfering "with the attainment of any right to which such participant may become entitled under the plan." Because many employment decisions affect the right to present or future benefits, courts generally require that plaintiffs show specific employer intent to interfere with benefits if they want to successfully assert a cause of action under ERISA Section 510.

Victory In Round One Goes To Employees

Dave & Buster's moved to dismiss the class action lawsuit, arguing that the complaint failed to demonstrate that it reduced work hours with the specific intent to deny employees the right to group health insurance. However, the district court disagreed and recently denied the employer's motion, clearing the case for further litigation.

The court found that the class of plaintiffs set forth sufficient evidence in support of their claim that their participation in the health insurance plan was discontinued because the employer acted with "unlawful purpose" in realigning its workforce to avoid ACA-related costs. In this regard, the employees claimed that the company held meetings during which managers explained that the ACA would cost millions of dollars, and that employee hours were being reduced to avoid that cost.

What Should Employers Do Now?

The lawsuit against Dave & Buster's is the first case to address whether a transition to a substantially part-time workforce in response to the Employer Mandate constitutes a violation of ERISA Section 510. The case is far from over and we do not know when it will be resolved.

However, if you are considering reducing your employee hours, you should carefully consider how such reductions are communicated to your workforce. Employers often have varied reasons for reducing employee hours, and many of those reasons have legitimate business purposes. It is vital that any communications made to your employees about such reductions describe the underlying rationale with clarity.

More cases like the Dave & Buster's class action litigation are likely to surface if the plaintiffs are successful. Therefore, especially during this period of uncertainty, employers who want to reduce worker hours to avoid the ACA Employer Mandate should seek the advice of counsel before doing so.

For more information, contact the author at LMaring@fisherphillips.com or 404.240.4225.

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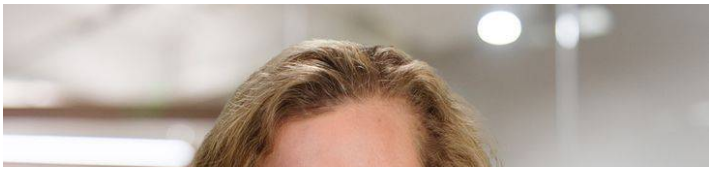

Lorie Maring
Partner
404.240.4225
Email

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