

Cutting Employee Hours to Avoid Offering Healthcare? Your Risk of a Lawsuit Just Increased!

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The Affordable Care Act requires an applicable large employer to offer healthcare coverage to its full-time employees or risk paying a penalty. An employee is considered full-time for this purpose if they work at least 30 hours per week, on average. To avoid the cost of having to offer coverage to employees who previously were not eligible, many employers decided to cut employees' hours to prevent them from reaching the 30-hour per week threshold. This strategy recently became a little more risky when, on February 9, 2016, the United States District Court for the Southern District of New York denied an employer's motion to dismiss a class action lawsuit filed by a class of employees whose hours were cut to allegedly avoid having to offer them healthcare. The case is *Marin v. Dave & Buster's, Inc.* S.D.N.Y., No. 1:15-cv-03608.

In this case, the lead plaintiff, Maria De Lourdes Parra Marin, worked full-time, 30 to 45 hours per week, at the Dave & Buster's Times Square location from 2006 to 2013. During that time, she received health insurance under the Dave & Buster's health insurance plan. The complaint alleges that in June 2013, store managers told employees that it would cost Dave & Buster's as much as \$2 million to comply with the Affordable Care Act's employer mandate to offer healthcare coverage to all full-time employees. To avoid these costs, in accordance with a nation-wide effort by the company, the location planned to reduce its full-time staff from more than 100 to approximately 40. After this announcement, the lead plaintiff's hours were cut to an average of 17.43 hours per week and in March 2014, because of her part-time status, her full-time health insurance coverage was terminated. Dave & Buster's executives also made public statements regarding the reductions, indicating that they were a response to the ACA's employer mandate.

In support of its motion to dismiss the plaintiff's complaint, Dave & Buster's argued that an employee has no entitlement to benefits that are not yet accrued. However, the Court found that the defendant's alleged actions affected the plaintiff's current benefits and not just her ability to attain future benefits and that the actions were specifically intended to interfere with the plaintiff's benefits. Therefore, the court denied the defendant's motion to dismiss the case and is allowing the claim to go forward.

While there is a long road ahead for this case, employers who have implemented a similar strategy should keep a close eye on it. If it's successful, then it's likely other plaintiff's attorneys will file similar suits.

If you have any questions regarding this case or the Affordable Care Act in general, please contact Jo-Anne Mineweaver.