

CUTTING FULL-TIME EMPLOYEE HOURS CAN GET YOU SUED



Summary: Companies need to be extremely careful when reducing the hours of their full-time staff to fewer than 30 hours, or that employee can sue for loss of ACA benefits.

Employers beware - reducing your employees' hours to avoid providing Affordable Care Act benefits can result in a lawsuit. The case before the U.S. District Court for the Southern District of New York against Dave & Buster's restaurant ruled that the employees have the right to sue if they can prove that the company reduced their full-time employees hours knowingly.

Fewer people will have employer health insurance

Per the ACA, companies must provide full-time employees that work 30 hours or more with benefits. More specifically, the employees were able to sue under ERISA Section 510. Generally, ERISA is applied to retirement plans, but Section 510 can be applied to other benefit plans such as healthcare coverage. The critical parts of the rule state, "It shall be lawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan...or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan."

Health Care Reform – What Employers Should Do

The court decided that the restaurant chain's health insurance plan is considered an employee welfare benefit plan under ERISA. There are also several factors against the restaurant that show there was a reason for reducing their employees' hours. The company general manager held meetings at several of the restaurants saying the ACA would cost the company upwards of \$2 million, so management would be reducing hours to avoid the cost. To go along with this fact, an employee posted the information on the company's Facebook page after attending the meeting and then the senior VP of HR told *The Dallas Morning News* that "D&B is in the process of adapting to upcoming changes associated with health care reform."

The employees must now only prove the allegations to have a strong case that will likely lead to a nice settlement.

Source: HRMorning