



## Attempting to Avoid the Affordable Care Act's Mandate by Reducing Hours Provokes ERISA Class Action Challenge

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Employers nationwide are closely watching a class action lawsuit out of federal court in New York in which current and former employees have brought ERISA claims against restaurant chain Dave & Buster's (D&B). In *Marin v. Dave & Buster's, Inc.*, S.D.N.Y., No. 1:15-cv-036081, the plaintiffs allege D&B reduced their hourly work schedules as part of a company-wide effort to avoid the costs of complying with the so-called "employer mandate" of the Affordable Care Act (ACA). Under the employer mandate, all employers with at least 50 full-time employees must offer qualifying health insurance to employees who work 30 or more hours per week.

D&B moved to dismiss the complaint, arguing that ERISA did not prohibit the company from changing its employment model to avoid the mandate. But in a recent ruling, the court allowed the lawsuit to move forward, holding that the plaintiffs had sufficiently alleged facts showing that D&B violated Section 510 of ERISA, which prohibits employers from intentionally interfering with employees' eligibility for benefits under the company's health plan.

The named plaintiff, whose reduction in hours caused a loss of full-time status and eligibility for medical and vision benefits, alleged that her managers held at least two meetings with the staff in which they explained that D&B was reducing work schedule hours because "the ACA would cost the company two million dollars." The complaint also referenced a public statement made by a senior executive that D&B was reducing its workforce to "adapt" to upcoming changes associated with the ACA, as well as disclosures in the company's securities filings in which it stated that complying with the ACA would impact its bottom line.

Ultimately, the court's decision to allow the case to proceed does not necessarily mean that the plaintiffs will prevail. But the *Marin* case still has significant implications for employers subject to the ACA's employer mandate. Most importantly, it highlights the legal risk associated with cutting employees' work schedules solely to bring them below the employer mandate's hours threshold. As AGG's employee benefits team has explained in client seminars for years, even if not prohibited by the ACA, any move to eliminate workers' ability to take advantage of the ACA mandate could run headlong into Section 510 of ERISA.

To view a copy of the order, please click [here](#).<sup>1</sup>

<sup>1</sup> <http://www.agg.com/files/uploads/Marin%20v.%20Dave%20%20Busters.pdf>.

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