FEBRUARY 12, 2016

Liability under ERISA for Reducing Work Schedules?

Earlier this week, the Southern District of New York denied a motion to dismiss a case against Dave & Buster's, Inc. – a development that is sure to concern many employers around the country. This case, *Marin v. Dave & Busters*, raises the question of whether an employer, by reducing its employees' full-time hours to avoid providing health insurance or paying a penalty under the Affordable Care Act, is discriminating in violation of ERISA Section 510. In a nutshell, ERISA Section 510 makes it unlawful for an employer to discriminate against a participant for exercising a right to which he or she is entitled under an employee benefit plan or for interfering with the attainment of a right to which he or she may become entitled under the plan.

Here, employees had been working full-time hours and had been eligible for medical plan coverage before their hours were reduced below 30 hours per week. Further, employees allege that the employer stated that they were reducing the number of full-time employees due to the cost of complying with the Affordable Care Act. The court states that the crucial element is the employer's intent, and that the "complaint states a plausible and legally sufficient claim for relief, including… lost wages and salary incidental to the reinstatement of benefits."

For a copy of the case, click here.