

Big-Time Fun Restaurant Is Having a Decidedly Unfunny Time After Cutting Health Care Benefits

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Dave & Buster's, the establishment known for serving up "big-time fun" by combining food, drinks and arcade games, is in the news for being the first business accused in a lawsuit of cutting its workers' hours to avoid providing health care under the Affordable Care Act ("ACA") in violation of the **Employee Retirement Income Security Act ("ERISA")** (see *Marin v. Dave & Buster's Inc.*, CV3608, filed May 8, 2015 in the United States District Court for the Southern District of New York).

The concern of restaurants about the financial impact of complying with the new ACA requirements was well publicized in 2013. Starting this year, January 1, 2015, the ACA required all employers with over 50 full-time employees (those working on average 30 hours or more a week) to offer health insurance that meets the requirements of the ACA or pay a tax. (Note there is a special transition rule for 2015 for employers with between 50 and 100 full-time employees that may exempt such employers from paying the tax). Dave & Buster's health plan was offered to full-time employees, and the lawsuit alleges that Dave & Buster's underwent a nationwide effort to "right-size" its employee workforce so that a number of full-time employees' hours were cut to less than 30 hours a week at many of its restaurants in order to switch employee status from full-time to part-time. The lawsuit claims that **Dave & Buster's "right-sizing" was done solely to avoid its obligations under the ACA**. As a result of lowering employee hours which resulted in some employees no longer being eligible to participate in the employer health plan, the plaintiffs' seek relief under ERISA Section 510. This section prohibits employers from interfering with employees' receipt of ERISA-governed benefits like health insurance. The lawsuit claims relief in the form of payment of lost wages and reinstatement in the employer health plan.

While ERISA does not control all aspects of how a company does business, changes to the status of employees who are currently receiving benefits under benefits plans must be made carefully with an eye toward ERISA compliance. While the instant suit appears to be the first of its kind, it was expected that such a case might occur with employers seeking to reduce employee hours to avoid health care costs. While we don't know for sure what the outcome of this class action will be, by not ensuring ERISA compliance, Dave & Buster's cost-cutting measures may impact their ability to serve up its fun fare.

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