

April 2016

ACA Litigation May Affect Employers

A New York district court will hear the first case on whether employers may reduce their employees' work hours in order to avoid providing health benefits required under the Affordable Care Act (ACA).

The case is *Marin v. Dave & Busters*—a class action lawsuit claiming that the restaurant chain, Dave & Busters, violated federal law by intentionally interfering with its employees' eligibility for health benefits.

The ACA requires applicable large employers (ALEs) to offer affordable, minimum value health insurance coverage to their full-time employees, or to pay a penalty. For this purpose, a

“full-time employee” is defined as an employee that works, on average, at least 30 hours of service per week. In addition, Section 510 of the Employee Retirement Income Security Act (ERISA) prohibits employers and plan sponsors from interfering with an employee's rights to health benefits under the plan.

According to the group of about 10,000 employees who filed suit, their hours were significantly reduced for the purpose of keeping them below the ACA's “full-time employee” threshold.

On Feb. 9, 2016, the court rejected Dave & Busters' motion to dismiss the case. This is the first case of its kind, and will set a precedent for other employers who are considering or have implemented similar strategies regarding their employees' work hours as a result of the ACA.

DID YOU KNOW?

The growing utilization of private exchanges could prove to be a game changer for health care. According to a recent Kaiser Family Foundation report, about 2.5 million people were enrolled through private exchanges in 2014, including about 1.7 million group plan enrollees, 700,000 individual Medicare enrollees and 100,000 individual enrollees.

The employers that are shifting employees to private exchanges tend to be in lower-wage industries. Still, many of the exchange platforms surveyed anticipated significant growth in the future across industry lines. This trend could be related to continued employer cost control.

ACA Rule Changes for 2017

On Feb. 29, 2016, the Department of Health and Human Services (HHS) released its [final Notice of Benefit and Payment Parameters for 2017](#).

For 2017, the rule increases the ACA's out-of-pocket maximum to \$7,150 for self-only coverage and \$14,300 for family coverage.

The rule sets individual coverage open enrollment periods for these benefit years:

- **2017:** Nov. 1, 2016 to Jan. 31, 2017
- **2018:** Nov. 1, 2017 to Jan. 31, 2018
- **2019 and beyond:** Nov. 1 to Dec. 15 of the prior year

The rule also creates a new Exchange model for state-based Exchanges using the federal platform and establishes six standard plan options in the individual federal Exchanges.