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Reduction in Hours Subject to Lawsuit in New York

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The first complaint was filed challenging the permissibility of reducing hours below 30 per week in order to avoid the Employer Penalty.

The complaint was filed in a New York district federal court on behalf of 10,000 workers at Dave and Buster's. The plaintiffs allege that their hours were cut so that Dave and Buster's could avoid health care costs associated with expanding eligibility in order to avoid the Employer Penalty. Under the Employer Penalty, large employers can be penalized if they do not offer affordable, minimum value coverage to all full-time employees ("FTEs"). FTEs are defined as employees working on average 30 hours per week.

Many other employers have implemented the same strategy.

The plaintiffs are suing under ERISA Section 510 which makes it unlawful for any person to discriminate against a plan participant or beneficiary for the purpose of interfering with any right the he or she may become entitled to under ERISA or under an employee benefit plan.

We will continue to monitor this case.