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## Balancing the Affordable Care Act and ERISA

Looming implementation of the Affordable Care Act's (ACA) so-called "play or pay" provision has large employers evaluating the alternatives it presents: "play," by offering health insurance coverage to full-time employees; or "pay," by absorbing the annual per employee penalty for not offering such coverage. Employers willing to "play" are looking carefully at cost management, plan coverage, and who will be covered. Employers opting to "pay" are taking a hard look at how they might reduce the penalties they may be facing because of the employer mandate. In weighing both of these options, some companies are also looking at ways to reduce the number of full-time employees to whom coverage must be provided.

Employers that reduce employee hours to reduce employer mandate penalties, however, risk violating the wrongful interference provision of ERISA. It prohibits employers from, among other things, discharging, suspending, disciplining, or discriminating against an employee for the purpose of interfering with the attainment of any right to which the employee may become entitled under an employee benefit plan.

To establish a wrongful interference claim, an employee need only show that the employer engaged in forbidden conduct with the specific, but not sole, intent to deprive him of coverage. Liability thus attaches if the disqualification from or loss of coverage was a catalyst, not merely a consequence, of the adverse employment action. The equitable relief to which a prevailing employee would be entitled may take several forms, including reinstatement of employment, or replacement of the coverage the employee would have obtained but for the unlawful interference.

To minimize the exposure to ERISA liability, employers contemplating reduction of employee hours will want to consider a holistic approach to reducing costs of doing business – including reducing labor cost in general. The point of this is to ensure that elimination of benefits is NOT the sole purpose or driving factor in your efforts to achieve cost reduction.

For assistance with these and other employment-related or benefits-related issues, please contact [David Whitlock](#), [Michael Coval](#), or any member of our [Labor & Employment Practice Group](#).

For an overview of Affordable Care Act legal requirements and further discussion of practical responses to the same, please join us for our complementary [firm seminar in Chattanooga on September 19](#).

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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