

The EEOC Puts Humpty Dumpty Back Together: Employer-Sponsored Retiree Healthcare Coverage Can Again Be Coordinated with Medicare

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The Equal Employment Opportunity Commission (EEOC) has accomplished what the kings' men could not—it has affirmed that employer-sponsored retiree healthcare benefits can be coordinated with Medicare or comparable state health benefit programs. The EEOC's final rule is an affirmative act to encourage employers to offer retiree health benefits, while it acknowledges that employers have no obligation to do so.

In sum, after the resolution of various court challenges and appeals—and notwithstanding that the AARP still has an outstanding writ of certiorari before the U.S. Supreme Court—the EEOC, on December 26, 2007, finalized and made immediately effective a narrow exemption to the Age Discrimination Employment Act of 1967 (ADEA) that permits employer-sponsored health plans to alter, reduce, or eliminate a retiree's benefits when that individual becomes eligible for Medicare or a comparable state health benefit plan (regardless of whether the individual actually enrolls in Medicare or the comparable state plan). Through this exemption, the EEOC has formalized the understanding that employers and unions operated under before the Third Circuit issued its 2000 decision in *Erie County Retirees Ass'n v. County of Erie*, which essentially held that an employer violated the ADEA if it effectively reduced or eliminated retiree health benefits when retirees became eligible for Medicare.

Under this exemption, which applies both to existing and newly created plans, employers and unions again can offer retirees a wide range of health plan designs that account for and/or incorporate Medicare and comparable state health benefit plans. For example, retiree health plans may reduce or eliminate health coverage to retirees who become eligible for Medicare or comparable state health benefits, or may supplement Medicare Part D prescription drug coverage for Medicare-eligible retirees, while providing full prescription drug coverage for retirees who are not yet eligible. This exemption also applies to dependent/spousal retiree health benefits, with the recognition that the dependent/spousal benefits do not need to be identical to those provided to the retiree. As such, the dependent/spousal benefits may be altered, reduced, or eliminated pursuant to this exemption even if the retiree's benefits are not similarly changed.

Significantly, in issuing its final rule, the EEOC emphasized that it is to be narrowly construed and apply only to retiree health benefits. This means that the health benefits of current employees who are eligible for Medicare or comparable state health benefit plans are not covered by this exemption. Those current employees must be offered the same health benefits as employees who are under the age of

Medicare or comparable state health benefit plan eligibility. Moreover, no other aspect of the ADEA or any other benefits or employment law is impacted or excepted by this exemption.

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