

# Benefit Brief



SUBJECT: Retiree Health Benefits - Update

DATE: February 1, 2008

The Equal Employment Opportunity Commission (EEOC) has issued final regulations allowing employers to coordinate retiree health benefits with Medicare without violating the federal Age Discrimination in Employment Act (ADEA).

## DISCUSSION

The regulations permit employee benefit plans to provide health benefits for retired participants that are altered, reduced, or even eliminated when the retired participant is over age 65 and eligible for Medicare health benefits or for health benefits under a comparable state health program (whether or not the retiree actually enrolls in Medicare or the state health program). Employers may also alter, reduce, or eliminate health benefits for spouses or other dependents of retirees when the dependents are eligible for health benefits under Medicare or a comparable state program.

The law is intended to help employers create, adopt, and maintain a wide range of retiree health plans, such as Medicare supplemental and wrap-around plans. Employers may now supplement a retiree's Medicare coverage without having to demonstrate under the ADEA that the coverage is identical to the health coverage of non-Medicare eligible retirees or that the cost of the coverage is the same.

The EEOC says the law is aimed at protecting retiree health benefits. Employers aren't legally obligated to provide retiree benefits. Over the past several years, the number of employers who offer such benefits has declined. The regulations may help employers to better manage retiree health benefit costs, making them less likely to drop or reduce retiree benefits. Employers can continue to provide retirees with health care coverage, even when they provide a different benefit to those employees who have reached age 65.

## BACKGROUND

These final regulations are identical to those issued in April 2004, which had not received final approval due to a suit filed by the American Association of Retired Persons (AARP). The regulations are in response to the 2000 decision of the Third Circuit U.S. Court of Appeals in Erie County Retirees Assoc. v. County of Erie (220 F.3d 193), which held that employer-sponsored health care plans that provide different benefits for Medicare-eligible retirees than for retirees younger than age 65 violate the ADEA.

The ADEA prohibits covered employers from age discrimination against employees or job applicants who are at least 40 years of age. The EEOC believes that the ADEA also prohibits age discrimination against retirees.

If you have questions about these regulations or how they apply to your retiree health plans, please contact Danielle Omans at The Benecon Group at [domans@benecon.com](mailto:domans@benecon.com), or the number below.