

Employment Law Update

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EEOC FINALIZES RULE ON RETIREE HEALTH AND MEDICARE

On April 22, 2004, the Equal Employment Opportunity Commission (“EEOC”) finalized its proposed rule to grant an exemption from the Age Discrimination and Employment Act of 1967 (“ADEA”) for retiree health plans which are integrated with Medicare or comparable State health benefits programs.

The rule is intended to override the decision in the case of *Erie County Retirees Association v. Erie County*, 220 F.3d 193 (3rd Cir. 2000). In that case, the Third Circuit Court of Appeals held that integration of Medicare with retiree benefit health plans violates the “equal benefit or equal cost” standard under which an employer either must provide equal benefits to older and younger workers, or must incur the same costs on behalf of older and younger workers. In other words, an employer violates ADEA if it reduces or eliminates retiree health benefits when retirees become eligible for Medicare.

This decision was widely criticized as being inconsistent with the legislative history of ADEA and the Older Workers Benefit Protection Act. Many commentators also predicted that employers would respond to this decision by reducing benefits for pre-Medicare retirees rather than increasing benefits for Medicare-eligible retirees (which is exactly what happened to the Erie County retirees).

Although the EEOC initially supported the decision in *Erie County*, it soon announced in 2001 that it was reconsidering that position and issued the proposed rule last year. The EEOC rule specifically provides an exemption from ADEA allowing the integration of retiree

health benefits with Medicare or comparable State health benefit programs without requiring such plans to meet the “equal benefit or equal cost standard.” As stated by the EEOC, this rule will “ensure that the application of ADEA does not discourage employers from providing health benefits to their retirees.” Under the rule, employers may provide retiree health coverage only to retirees who are not yet eligible for Medicare. They also may supplement a retiree’s Medicare coverage without having to demonstrate that the coverage is identical to that of non-Medicare eligible retirees.

The final rule also permits employers to take advantage of the tax-free subsidy for certain employer-provided retiree health benefits created by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, without having to compare whether the prescription drug benefits they provide to their Medicare-eligible retirees are identical to those offered to early retirees.

The EEOC rule reconfirms what everyone thought was the law before the *Erie County* decision and supports the basic design of most retiree health plans currently in place. Although the EEOC’s announcement of its decision to adopt the final rule has been the subject of some criticism, it has broad support from both employers and unions and is not likely to be overturned in Congress.

If you have any questions about these matters, please call Paul F. Russell (312/609-7740) or any other Vedder Price attorney with whom you have worked.

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