

## **Employers Win the Battle of *Erie*: EEOC Issues Final Regulations Permitting Different Retiree Health Benefits for Medicare-Eligible Retirees Under the ADEA**

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Employers can design retiree medical plans for post-65 retirees that take into account eligibility for Medicare without violating the Age Discrimination in Employment Act (ADEA), according to final regulations published by the Equal Employment Opportunity Commission (EEOC) on December 26, 2007. The final EEOC regulations, which have been in the works for several years and are effective December 26, 2007, provide guidance to employers on the scope of this narrow exemption. The exemption applies to existing and newly created retiree health care plans.

### **ADEA Exemption for Retiree Health Benefits**

The EEOC exemption in the final regulations ends a controversy that began seven years ago with a U.S. Court of Appeals decision in *Erie County Retirees Ass'n v. County of Erie* (3<sup>rd</sup> Cir. 2000).<sup>1</sup> The EEOC final regulations create an exemption to the ADEA that permits employers to adopt retiree health plan designs for pre-65 retirees that are different than plan designs for post-65 retirees who are eligible for Medicare or similar state government-sponsored retiree health benefits based on age. Under the exemption:

- Employer-sponsored retiree medical benefits may be “altered, reduced or eliminated when the participant is eligible for Medicare health benefits or for health benefits under a comparable State health benefit plan.”
- Employers need not determine whether retirees are actually covered by Medicare or a comparable State program—only that they are eligible for it.
- Existing and new retiree medical plans are subject to the exemption.
- The exemption also applies to employer-sponsored health benefits that are provided to a retired worker’s spouse or dependents. However, the dependent and spousal benefits do not need to be identical to those provided to the retirees. Thus, the dependent and/or spousal benefits may be altered, reduced, or eliminated regardless of whether the health benefits provided to the retired participants are similarly altered, reduced, or eliminated.

The EEOC cautions that the ADEA exemption in the final regulations may not be used as the basis for other discrimination against retirees who reach Medicare eligibility age or against active employees. The exemption applies only to retiree health benefits and only with respect to the

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<sup>1</sup> For more background on the *Erie*-related litigation and proposed EEOC rules, see this previous Consulting Alert bulletin: [http://www.hewittassociates.com/ MetaBasicCMAssetCache /Assets/Legislative%20Updates/AARP\\_v\\_EEOC\\_9-07.pdf](http://www.hewittassociates.com/ MetaBasicCMAssetCache /Assets/Legislative%20Updates/AARP_v_EEOC_9-07.pdf)

application of the ADEA. The exemption does not affect other aspects of the application of the ADEA or benefits other than retiree health benefits. Thus, for example, the exemption does not apply to non-health retiree benefits or any other employer act, practice or benefit of employment.

### **Implications**

The battle over *Erie* has been waged on a number of fronts over several years, but finally seems to have run its course to what employers consider a sensible and appropriate conclusion. Employers now have the flexibility to design different retiree health benefits for early retirees and age-based Medicare-eligible retirees without concern that such a design might violate the ADEA.

### **More Information**

For more information on the EEOC final regulations and their impact on employer-sponsored retiree health benefits, please contact your local Hewitt consultant.