

EEOC MOVES TO PROTECT RETIREE HEALTH BENEFITS

Implementation of Final Rule Ensures Age Bias Law is No Barrier to Employer Insurance

WASHINGTON – The U.S. Equal Employment Opportunity Commission (EEOC) today announced the publication of a final rule allowing employers that provide retiree health benefits to continue the longstanding practice of coordinating those benefits with Medicare (or comparable state health benefits) without violating the Age Discrimination in Employment Act (ADEA). The regulation, which safeguards retiree health benefits, was published in today's *Federal Register* and is available on the EEOC's web site at www.eeoc.gov.

"Implementation of this rule is welcome news for America's retirees, whether young or old," said Commission Chair Naomi C. Earp. "By this action, the EEOC seeks to preserve and protect employer-provided retiree health benefits which are increasingly less available and less generous. Millions of retirees rely on their former employer to provide health benefits, and this rule will help employers continue to voluntarily provide and maintain these critically important benefits in accordance with the law."

The EEOC proposed the rule in response to a controversial decision in 2000 by the U.S. Court of Appeals for the Third Circuit in *Erie County Retirees Association v. County of Erie*. The court held that the ADEA requires that the health insurance benefits received by Medicare-eligible retirees be the same, or cost the employer the same, as the health insurance benefits received by younger retirees. After the *Erie County* decision, labor unions and employers alike informed the EEOC that complying with the decision would force companies to reduce or eliminate the retiree health benefits they currently provided – leaving millions of retirees aged 55 and over with less health insurance, or no health insurance at all.

EEOC Vice Chair Leslie E. Silverman said, "The *Erie County* decision would have made most existing retiree health plans unlawful. EEOC's new rule will ensure that employers can continue to offer their retirees much needed health benefits." Silverman had testified on the rule before the U.S. Senate Special Committee on Aging in 2004 and before a subcommittee of the House Committee on Education and the Workforce in 2005.

The Commission's rule has the support of key members of Congress, as well as the employer and labor communities, including such major organizations as the Society for Human Resource Management, the AFL-CIO, the American Federation of Teachers, the National Education Association, the American Benefits Council, and other influential groups.

Employers who provide retiree health benefits generally "coordinate" those benefits with Medicare by supplementing the government healthcare or by offering retirees a "bridge" benefit to cover health expenses after employees retire until they become Medicare-eligible. Until the 2000 interpretation, employers believed that the ADEA permitted them to coordinate any retiree health benefits they provided with Medicare without having to ensure that the benefits received by Medicare-eligible retirees were the same as those received by younger retirees.

To correct the problem, the new regulation provides an exemption for ADEA coverage for this common and longstanding employer practice. The Commission voted to approve this regulation on April 22, 2004, but the AARP sued the EEOC in early 2005 to prevent its publication. After

several years of litigation, the EEOC emerged victorious as the Third Circuit Court of Appeals found that the rule was "a reasonable, necessary and proper exercise of [EEOC's] authority."

EEOC Legal Counsel Reed Russell said, "Our rule makes clear that it is lawful for employers to continue to provide retirees with the health benefits they currently receive. Contrary to what some interest groups have erroneously asserted, the rule will not require any cuts to retiree benefits."

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the Commission is available on its web sit at www.eeoc.gov.