



EEOC APPROVES PROPOSED RULE TO CORRECT THE THIRD CIRCUIT COURT'S *ERIE* DECISION

On April 22, 2004, the U.S. Equal Employment Opportunity Commission (EEOC) voted to approve a proposed final rule that would permit employers including public school districts in Pennsylvania, under the Age Discrimination in Employment Act (ADEA), to lawfully coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit. In 2000, the U.S. Third Circuit Court of Appeals held in ***Erie County Retirees Association v. County of Erie, 220 F.3d 193 (3rd Cir. 2000)***, that retirement plans that provided health care benefits for retirees were violative of the ADEA age requirements if the health care was discontinued for or unavailable to the retiree upon becoming eligible for Medicare.

An unexpected consequence of the ***Erie*** decision was that many employers ceased providing health benefits to retirees because of the increased cost of health insurance beyond Medicare eligibility. In fact, on July 14, 2003, the EEOC issued a Notice of Proposed Rulemaking proposing an exemption to the ***Erie*** decision which would permit the common-sense practice of coordinating employer-provided retiree health benefits with eligibility for other benefits to continue.

In its proposal, the EEOC cited several studies which tracked the relationship between the ADEA and employer-sponsored retiree health benefit plans that alter, reduce or eliminate benefits upon eligibility for Medicare or a comparable State-sponsored retiree health benefits program. The EEOC determined through these studies that due to various factors, such as increased costs of health care and the aging of the workforce, the number of employers that provided retiree health benefits had declined over the previous ten years. It also recognized that although employers are not obligated to provide retirees with health care, it is in the best interest of both employers and employees to develop a policy that enables employers to provide health benefits to the “greatest extent possible”.

To that end, the EEOC proposed and then approved the addition of the following section at 29 CFR §1625.32:

§ 1625.32 -- Coordination of retiree health benefits with Medicare and State health benefits.

(a) *Definitions.* (1) *Employee benefit plan* means an employee benefit plan as defined in [29 U.S.C. 1002\(3\)](#).

(2) *Medicare* means the health insurance program available pursuant to Title XVIII of the Social Security Act, [42 U.S.C. 1395 et seq.](#)

(3) *Comparable State health benefit plan* means a State-sponsored health benefit plan that, like Medicare, provides retired participants who have attained a minimum age with health benefits, whether or not the type, amount or value of those benefits are equivalent to the type, amount or value of the health benefits provided under Medicare.

(b) *Exemption.* Some employee benefit plans provide health benefits for retired participants that are altered, reduced or eliminated when the participant is eligible for Medicare health benefits or for health benefits under a comparable State health benefit plan. ***Pursuant to the authority contained in section 9 of the Act, and in accordance with the procedures provided therein and in § 1625.30(b) of this part, it is hereby found necessary and proper in the public interest to exempt from all prohibitions of the Act such coordination of retiree health benefits with Medicare or a comparable State health benefit plan.***

(c) *Scope of exemption.* ***This exemption shall be narrowly construed. It does not apply to the use of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section. Nor does it apply to the use of the age of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section.***

68 FR 41542(2003)(emphasis added).

The approved rule will now be submitted for review and comment by federal agencies including the Office of Management and Budget. The rule will become effective once the final review has been completed and it is published in the Federal Register. However, in the meantime, school districts can approach Early Retirement Incentive Plans and negotiation of similar provisions in collective bargaining agreements knowing that the impediment created by the **Erie** decision will no longer exist.

We will be tracking the progress of this rule. If you would like to receive updates on the status of this rule please contact us. To read the EEOC's proposed rule please click on the link below.

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-17738.htm>

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