

April 28, 2004

## EEOC Approves Retiree Health Coordination With Medicare

On April 23, 2004, the EEOC announced that it had approved an exemption from the age discrimination prohibitions of the ADEA that will allow employers providing retiree health benefits to coordinate those retiree health benefits with Medicare or a similar state program. Coordination includes changing, reducing or eliminating coverage.

This is welcome news for employers who have worried that the *Erie County Retirees Association v. Erie County* decision of the Third Circuit would give employers three choices: increase benefits for post-65 participants, decrease benefits to retirees under age 65 to meet the equal cost/equal benefit test of the EEOC's age discrimination regulations, or eliminate retiree health benefits all together.

Under the exemption, employers may provide full retiree health coverage until age 65, and then provide post-65 retirees with Medicare supplements or another plan design based on Medicare eligibility or eligibility under a state-sponsored retiree health benefits program that is comparable to Medicare. Plans that only provide retiree health coverage before Medicare eligibility should also be exempt. Coordination of dependent or spousal health benefits is also exempted from the ADEA and does not need to be identical to the coordination of benefits that apply to the retiree.

Contrary to the claims of critics that employers are now free to eliminate all retiree benefits, the EEOC exemption is limited to coordinating retiree health benefits with Medicare or a comparable state retiree health benefit. Retiree life benefits are not affected. Elimination and/or reduction of benefits must be tied to Medicare or comparable state program eligibility.

This guidance has added importance now given the Medicare reform measures set to begin in 2006. Employers may now consider coordination of prescription drug coverage in light of the new Medicare Part D prescription drug coverage.

The exemption will be published in the *Code of Federal Regulations* at 29 CFR § 1625.32.

If you have questions about retiree health plan coverage or design, please contact the Seyfarth Shaw Employee Benefits Group attorney with whom you work or any Employee Benefits attorney listed on the website at [www.seyfarth.com](http://www.seyfarth.com).