

EEOC Final Regulations Issued

The decline in the employer-sponsored retiree health coverage over the past decade has been well documented in several studies, including a report issued on May 2007 by the United States Government Accountability Office (GAO) on Retiree Health Benefits. The GAO's report shows that of those surveyed, the percentage of employers with 500 or more employees who offered retiree health benefits to Medicare-eligible employees declined from 44 percent in 1993 to 29 percent in 2006.¹ Facing the loss of retiree benefits, retirees are concerned about their ability to pay for medical expenses during retirement. In a joint survey, the American Association of Retired Persons (AARP) and the American Council of Life Insurers (ACLI) documented the financial concerns of retirees age 65 to 75 who have household assets of \$50,000 or more. Health care costs top the list for retirees, with 38 percent of those surveyed indicating strong concern for health care expenditures.² But as the survey results above indicate, employers are faced with eliminating retiree health benefits in light of rising health care costs. The EEOC recently took steps to make retiree health care coverage more affordable for employers.

In late December of last year, the EEOC issued final regulations that permit employers to sponsor a retiree health plan that takes into account coverage under Medicare. Under the final regulations, plans that offset retiree health coverage with Medicare will not violate the Age Discrimination in Employment Act of 1967 (ADEA). The court decision that paved the way for the issuance of these final regulations was reviewed in a previous edition of the Employer Spotlight. (The article is available here www.ccclients.com/nl/mla-hr/r/2007-06-27.html) The final regulations create a narrow exemption from the prohibitions of the ADEA for the practice of coordinating employer-sponsored retiree health benefits with eligibility for Medicare or a comparable state health benefits program. Individuals who are eligible for and/or receive Medicare or comparable state health benefits, but who are not retired, are not affected by this rule. Plan sponsors had asserted that without this narrow exemption from the ADEA, employers might be forced to eliminate retiree health coverage entirely by essentially making it cost prohibitive to provide retirees with health coverage. The regulations were issued on December 26, 2007 and are effective on that date. The full text of the regulations is available on the EEOC's website here www.eeoc.gov/policy/regs/index.html. Questions and Answers regarding the final regulations prepared by the EEOC are available here www.eeoc.gov/policy/docs/ganda_retireehealthrule.html This may not be the end of the story though. AARP has asked the U.S. Supreme Court to review the decision that permitted the final regulations to be issued. The high Court has not decided whether it will do so yet.

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¹ Retiree Health Benefits, Appendix I, Government Accountability Office. (May 2007)

² What now? How Retirees Manage Money to Make it Last Through Retirement, AARP/ACLI, December 2007