

ASAPs

Benefits

US Supreme Court Allows EEOC Medicare Coordination Ruling to Stand

March 2008

By:
Steven J. Friedman

In a closely watched case, the United States Supreme Court has refused the AARP's request for review of the Third Circuit Court of Appeals' decision in *AARP v. EEOC*, thereby affirming the EEOC's ability to exempt from the age discrimination statutes the coordination of retiree health benefits with Medicare. This ruling clears the way for employers to design retiree health benefit plans that feature coordination of these benefits.

Background

In December 2007, the EEOC promulgated a final rule that provided an exemption from the Age Discrimination in Employment Act (ADEA) for employers who offer retiree health care benefits that coordinate with Medicare (or with health benefits under a comparable state health benefit plan) and confirmed the ability of employers to continue offering retirees eligible for Medicare benefits that differ from those offered to retirees who are under the age of 65. This final rule was drafted in response to a string of decisions by the Third Circuit that required a certain parity in benefits provided to retirees under and over age 65. The EEOC's ADEA-exemption rule applies only to the coordination of retiree benefits with Medicare (or a comparable state health benefit plan). It does not apply to group health benefit plans covering active employees who are at or over the age of Medicare eligibility. Other aspects of the ADEA are not affected by the exemption.

The final rule also gives explicit permission for retiree health benefit plans to be altered, reduced, or eliminated when a participant is eligible for Medicare (or for the health benefits under a comparable state health benefit plan), without regard to whether the participant actually enrolls in Medicare.

The AARP sued to prevent the EEOC from implementing the final rule. The Third Circuit, however, reviewed the issue and ruled that the EEOC properly exempted from the ADEA the practice of coordination of retiree health benefits with Medicare. The AARP then requested review of the case by the United States Supreme Court.

Impact of Court Decision

While many employers had modified their plans to coordinate Medicare and retiree health benefit policies in response to the EEOC's final rule, the Court's affirmation of the final rule lends judicial legitimacy to the practice. In practical terms, the Court's affirmation changes nothing for those retiree health benefit plans designed to comply with the final rule. However, those employers who chose to wait for the Court's final word on the subject may now confidently design a retiree health benefit plan that permits coordination of those benefits with Medicare.

For a more detailed explanation of the Final EEOC Rule, please refer to Littler's January 2008 Benefits ASAP, *Coordination of Retiree Health Benefits with Medicare and State Health Benefits*.

Steven J. Friedman is Chair of Littler Mendelson's Benefits Practice Group and a Shareholder in the New York office. Andrea Jackson, Senior Consultant, Employee Benefits and Legal Compliance, in Littler Mendelson's Dallas office, co-authored this article. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Friedman at sfriedman@littler.com, or Ms. Jackson at ajackson@littler.com.