

Benefits Insights

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TPG Insurance Services

Coordinating Retiree Health Benefits with Medicare Eligibility

The U.S. Equal Employment Opportunity Commission's (EEOC) final regulations under the Age Discrimination in Employment Act (ADEA) provide guidance on how employers may coordinate retiree health benefits with Medicare eligibility. The final regulations, which have been in effect since Dec. 26, 2007, allow employers to alter, reduce or eliminate retiree health benefits as retirees become eligible for Medicare or a state-sponsored retiree health benefits program without violating the ADEA.

What is the ADEA?

The ADEA was enacted by Congress in 1967 and was amended by the Older Workers Benefit Protection Act of 1990. The ADEA prohibits covered employers from discriminating on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment, including the receipt of employee benefits, against any applicant or employee who is at least 40 years of age. The ADEA applies to employers with 20 or more employees.

The ADEA is enforced by the EEOC. The EEOC takes the position that the ADEA applies to former employees, such as retirees, based upon the former employment relationship.

Why did the EEOC issue the final regulations?

The EEOC issued the final regulations to encourage employers to provide retiree health coverage by allowing them to coordinate the retiree benefits with Medicare eligibility without violating the ADEA. Although the practice of coordinating retiree health benefits with Medicare eligibility was common, the EEOC's regulations were controversial and

faced a lengthy legal challenge before they were released in final form.

Which employers are subject to the EEOC's exemption regarding coordinating retiree health benefits with Medicare eligibility?

The EEOC's exemption applies to an employer that:

- Is subject to the ADEA (that is, an employer with at least 20 employees); and
- Provides health benefits to its retirees.

Does the EEOC exemption apply to health benefits provided to current employees who are at or over the age of Medicare eligibility (or the age of eligibility for a comparable state retiree health benefit plan)?

The exemption only applies to retiree health benefits, not to health benefits that are provided to current employees. In general, an employer must continue to offer current employees who are at or over the age of Medicare eligibility the same health benefits, under the same conditions, that it offers to any current employee under the age of Medicare eligibility.



May employers continue to offer “Medicare carve-out plans”?

Yes, employers may continue to offer “Medicare carve-out plans.” To determine the health benefits for Medicare-eligible retirees, Medicare carve-out plans deduct the health benefits that Medicare provides while continuing to provide the health benefits that Medicare does not provide. Medicare can be the primary payer of health benefits for these Medicare-eligible retirees, just as a comparable state health benefit plan can be the primary payer of health benefits for the state-eligible retirees.

Are employers legally obligated to provide retiree health benefits?

In general, employers are not legally obligated to provide retiree health benefits. Further, employers who choose to provide retiree health benefits are not required to provide these benefits indefinitely, absent some contractual agreement to the contrary. However, an employer may be required to provide retiree health benefits if it has made a specific promise to do so, even if this promise was made inadvertently.

Employers should carefully check plan documents, including collective bargaining agreements and insurance contracts, to determine if a promise has been made, and should use caution when amending plan documents for this same reason. In the plan documents, employers should specifically reserve the right to change or terminate retiree health benefits at any time.

Employers should also be careful in formal and informal communications with employees and former employees not to create a promise with respect to retiree health benefits. If an employer does not take these steps and an employee sues for retiree health benefits after the employer has reduced or eliminated them, a court may require the employer to maintain retiree health benefits at the prior level based on promises the employer made regarding retiree benefits.

Please contact your TPG Insurance Services’s representative if you would like to discuss changing retiree health coverage or adding coverage for retirees to your health plan.