

Publications

Third Circuit Court Upholds Equal Employment Opportunity Commission (EEOC) Regulation on Retiree Medical Plans & Medicare

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Last week, a panel of the United States Court of Appeals for the Third Circuit unanimously upheld an Equal Employment Opportunity Commission (EEOC) regulation that would exempt Medicare carve-outs for retiree health benefits from the prohibition in the Age Discrimination in Employment Act (“ADEA”). See *AARP v. EEOC*, — F.3d —, 2007 WL 1584385 (3rd Cir, June 04, 2007). In doing so, the Third Circuit affirmed the EEOC’s authority, granted in ADEA, to make exceptions that are both “reasonable” and “necessary and proper in the public interest.”

The ruling allows the EEOC to publish a regulation which permits plan sponsors to provide one package of health benefits to pre-Medicare retirees, but another package to Medicare-eligible retirees. As a result, if the Third Circuit’s ruling stands, affected plan sponsors may continue to offer post-employment benefits that take into account the benefits that some retirees receive through Medicare, including reduced or no benefits for Medicare-eligible retirees. Previously, the EEOC had indicated that employers needed to comply with an equal cost or equal benefit standard regardless of Medicare eligibility. If the EEOC had maintained this position, the trend of reducing retiree medical benefits would have accelerated even further. Please see the attached memo for further discussion.

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