



# SPECIAL Alert

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## In This Issue

*In this Special Alert, we will update you on a recent federal court ruling that is applicable to retiree benefits. A federal court struck down an attempt by the EEOC to officially permit employers to reduce post-retirement health care benefits when a participant becomes eligible for Medicare. The court ruled the EEOC overstepped their authority in issuing a ruling to permit benefit differentials based on Medicare eligibility.*

*This Alert will address this ruling and its potential impact on your retiree health care plan.*

*We welcome your comments and suggestions regarding this issue of our Special Alert. For more information, please contact your Account Manager or visit the McGraw Wentworth web site at [www.mcgrawwentworth.com](http://www.mcgrawwentworth.com).*

## “EEOC Ruling On Retiree Healthcare Defeated”

The AARP (American Association of Retired Persons) filed suit in a United States District Court in Pennsylvania to block the EEOC (Equal Employment Opportunity Commission) from making a policy change that would allow employers to provide lesser benefits to retirees over age 65. The lawsuit charged that the EEOC had overstepped their authority in proposing the policy change.

An EEOC ruling last spring addressed how retiree health benefits are impacted by ADEA (Age Discrimination in Employment Act).

The ruling confirmed that employers could reduce post-retirement health care benefits for Medicare-eligible retirees. Many employers do just that... they reduce or eliminate retiree benefits at the point a retiree becomes covered by Medicare. The ruling was issued in draft format and needed the approval of various government agencies.

The EEOC ruling countered a landmark case in retiree medical benefits, Erie County Retiree Association v. County of Erie. In the Erie County case, the court determined Medicare eligibility

was age-related. The federal court ruled that varying benefits based on Medicare eligibility is a violation of the ADEA unless the plan could meet the “equal benefit, equal cost” safe harbor rules outlined in the ADEA

(for more information on the EEOC ruling and the Erie County decision, please see Volume 7, Issue 6 of the McGraw Wentworth *Benefit Advisor*. The *Advisor* can be found on our website at [http://www.mcwent.com/Benefit\\_Advisor/2004/BA\\_Issue6.pdf](http://www.mcwent.com/Benefit_Advisor/2004/BA_Issue6.pdf)).

A federal judge has now struck down the EEOC’s proposed rule because it conflicts with the Erie County decision. The court

declares the EEOC is permitted to issue rulings only when the ruling fills a gap in the law or clarifies an ambiguous area of the law. The judge contends the Erie County decision was clear and unambiguous. The intent of the Erie County decision is directly opposite of the EEOC’s proposed rule.

The new court ruling is disappointing for employers. Many employers have relied on the EEOC’s guidance supporting benefit reductions for Medicare-eligible retirees. Indeed,



many employers have stated that if forced to maintain comparable benefits for Medicare-eligible retirees, they would be inclined to terminate their post-retirement health care plans altogether.

Initial reaction to the latest federal court decision is very strong, and the EEOC has begun the appeal process. The EEOC proposed ruling had received approval from the Department of Labor, the Department of Health and Human Services, and the Office of Management and Budget. Employers and professional benefit organizations support this measure as a practical approach to manage the exceptional expense of providing retiree benefits.

Employers should not rush to amend their retiree benefit plans at this point. However, this may become necessary if the EEOC loses the appeal in federal court. McGraw Wentworth will keep you apprised of the further court rulings regarding retiree benefits and ADEA. **MW**

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