



# SPECIAL Alert

## In This Issue

*In this sixth McGraw Wentworth Special Alert for 2007, we will briefly discuss a court case that impacts retiree health plan coverage. Most employers are familiar with the Erie County case. The court ruled that Erie County could not offer different benefit levels to retirees based on pre-65 or post-65 status without violating the Age Discrimination in Employment Act.*

*This ruling troubled many employers because it is very common to cut benefits to a retiree that attained age 65 when Medicare started paying primary. The case was complicated and had far-reaching impact. A recent Appellate Court decision affirmed the EEOC's right to implement a rule allowing these disparate benefit arrangements.*

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

## “EEOC Retiree Health Care Rule”

A federal appellate court recently issued a decision on one of the most recognized court cases impacting retiree health care. The *Erie County Retiree Association v. County of Erie* case was decided in 2000 and found that employers offering different benefits based on a retiree's Medicare eligibility date violated the Age Discrimination in Employment Act (ADEA). However, many employers took no action when the Erie County case was decided. Most employers that offer retiree health care benefits offer different benefit levels to pre-65 and post-65 retirees. Once the retiree becomes eligible for Medicare, typically at age 65, Medicare becomes the primary payer for medical care. The retiree plan would pay secondary. This results in a lesser benefit once an individual becomes eligible for Medicare.



Employers were very distraught over the Erie County decision. They began pressuring the government and threatened to discontinue offering retiree health care altogether. In response to employers' concerns, the EEOC issued a proposed rule to allow employers to offer the disparate pre-65 and post-65 benefits and not violate the ADEA.

The U.S. District Court for the Eastern District of Pennsylvania, the same court that decided the Erie County case, challenged the EEOC's authority to cre-

ate the rule. The federal appellate court overruled the decision of Pennsylvania's district court. The appellate court confirmed the EEOC's ability to issue a proposed rule allowing disparate benefits once a retiree becomes eligible for Medicare.

This ruling is viewed as a win for employers that sponsor retiree medical plans. However, it will likely not have a material change on how they structure their retiree benefit plans. Most employers did not make any changes to their retiree plans in response to the Erie County decision. It was a decision that employers kept in their minds but with all the controversy surrounding the decision, most employers were waiting to see how the case appeals were decided.

If you need any more information regarding the Erie County decision, please read our *Benefit Advisor* at [http://www.mcgrawwentworth.com/Benefit\\_Advisor/2004/BA\\_Issue6.pdf](http://www.mcgrawwentworth.com/Benefit_Advisor/2004/BA_Issue6.pdf) and our *Special Alert* at [http://www.mcgrawwentworth.com/Special\\_Alert/2005/Special\\_Alert\\_Issue\\_1.pdf](http://www.mcgrawwentworth.com/Special_Alert/2005/Special_Alert_Issue_1.pdf).

If you have any questions about this *Special Alert*, please contact your McGraw Wentworth Account Director.

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McGraw Wentworth, Inc.  
 3331 West Big Beaver Road, Suite 200  
 Troy, MI 48084  
 Telephone: 248-822-8000 Fax: 248-822-4131  
[www.mcgrawwentworth.com](http://www.mcgrawwentworth.com)