

Benefits

A Littler Mendelson **Time Sensitive** Newsletter

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Recent District Court Decision May Hamper Employers' Ability to Reduce Retiree Health Care Programs for Medicare-Eligible Retirees

By: Steven Friedman and Lisa Chagala

In *AARP v. Equal Employment Opportunity Commission*, the U.S. District Court for the Eastern District of Pennsylvania blocked the EEOC from issuing a final rule that would permit employers to provide lesser retiree health benefits to retirees who are eligible for Medicare than to retirees who are not yet eligible for Medicare. As we first discussed in a July 2004 Littler Mendelson ASAP, this final rule would have provided employers the opportunity to maintain certain retiree health programs, such as Medicare bridge programs and Medicare carve-out programs, with reduced risk of violating the EEOC's policy on the Age Discrimination in Employment Act (ADEA).

Background: The Erie County Decision and the EEOC's Final Rule

In *Erie County Retirees Association v. County of Erie*, 220 F.3d 193 (3rd Cir. 2000) the Third Circuit Court of Appeals held that offering lesser benefits to Medicare eligible retirees than to non-Medicare eligible retirees was a violation of the ADEA. As a result, a plan sponsor was required to prove that benefits offered to non-Medicare eligible retirees and Medicare eligible retirees were either (1) equivalent in benefits or (2) equivalent in cost. Although the Third Circuit was the only US Circuit to issue such a holding (other courts had

expressly permitted the type of offset prohibited in *Erie County*), two months after *Erie County*, the EEOC adopted the "equal benefit/equal cost" safe-harbor into its enforcement guidelines.

Erie County and the EEOC's guidance was widely criticized for providing employers yet another reason to reduce or eliminate retiree health care programs. As a result of *Erie County*, and the EEOC's subsequent adoption of the holding of that case, employers which had been providing lesser benefits to Medicare-eligible retirees were left with two choices to meet the equal benefit/equal cost safe-harbor: (1) eliminate the disparities by increasing the benefits and/or employer cost of retiree health coverage for Medicare-eligible retirees; or (2) eliminate the disparities by providing Medicare-eligible employees with similar benefits as those provided to non Medicare-eligible retirees but then decreasing the amount of health benefits provided to all retirees. Not surprisingly, employers often chose to decrease, rather than increase, retiree health benefits. Concerned with the impact of *Erie County*, the EEOC, in April 2004, radically altered its position and approved a final rule at variance with the holding in *Erie County*, permitting employers to provide lesser benefits to retirees who are eligible for Medicare than to retirees who are not yet eligible for Medicare.

The AARP v. EEOC Decision

The American Association of Retired Persons (AARP) announced its opposition to the EEOC's final rule by filing suit against the EEOC. In *AARP v. Equal Employment Opportunity Commission*, 2005 U.S. Dist. LEXIS 5078 (E.D. Pa. Mar. 30, 2005), the AARP argued that the final rule violated the ADEA by allowing plan sponsors to provide lesser benefits to retirees under age 65 than to retirees age 65 and older. The Eastern District court followed the precedent of *Erie County*, held in favor of the AARP, and effectively prohibited the EEOC from publishing or implementing the final rule.

Further Developments Expected

The EEOC has announced its intention to appeal *AARP v. EEOC* to the Third Circuit Court of Appeals. Accordingly, employers are encouraged to be cautious in making any changes to retiree health programs premised on the EEOC's final rule or *AARP v. EEOC*. Stay tuned for further developments.