

Federal Update 2004-12

April 23, 2004

TO: NCTR Membership

FROM: Cindie Moore

RE: EEOC Okays Proposal to Exempt Retiree Health Care Plans from ADEA

The federal Equal Employment Opportunity Commission approved allowing employers to reduce or eliminate retiree health care benefits when beneficiaries reach Medicare age without violating the Age Discrimination in Employment Act (ADEA). The Commissioners voted 3-1 in favor during a public meeting on April 22. NCTR's immediate past president, Dave Mills, sent comments on behalf of the group in support of EEOC's position on September 12, 2003. The comments can be accessed at [http://www.nctr.org/pdf/eeoc\\_comments\\_%20rhc\\_final.pdf](http://www.nctr.org/pdf/eeoc_comments_%20rhc_final.pdf)

In justifying its decision, the Commission pointed out that an estimated 10 million retired individuals aged 55 and over depend on employer-sponsored health plans as either their primary source of health coverage or as a supplement to Medicare. "Such benefits are provided on a voluntary basis at the discretion of each employer and the Commission is acting to preserve these valuable benefits for retirees," according to an EEOC statement.

The decision resolves questions prompted by a 2000 federal court opinion in Erie County Retirees Assn. v. Erie County. The court ruled that providing higher benefits to pre-Medicare retirees violated the ADEA. Employers pointed out that Eire would not cause them to raise benefits for Medicare-eligible retirees, but would induce them to reduce retiree health benefits across the board.

In his comments, Dave points out that EEOC recognizes the realities and importance of employer-sponsored retiree health benefits. If employers did not offer them, retirees would face higher costs, less coverage, and limited availability.

EEOC has been widely praised for its decision. The American Benefits Council said that it "will help stabilize the retiree health benefit system and ensure that benefits remain available for future retirees in years to come." The National Education Association expressed its opinion as "we won," noting that school districts would have been increasingly unwilling to continue these benefits for pre-Medicare eligible retirees without corrective action. The only major group who opposed the rule is AARP.

The rule will be circulated among other federal agencies for review. Once the review is complete, the rule will be final.