

# eLABORate

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## New EEOC Rule Allows Employers to Change Health Benefits When Retirees Become Eligible for Medicare

The Equal Employment Opportunity Commission (EEOC) issued a new final rule on December 26th that allows employers to reduce or eliminate health benefits to a retiree when he or she becomes eligible for Medicare, without violating federal age discrimination laws.

Under the EEOC's previous policy, employers who chose to provide health benefits had to prove either (1) that the benefits available to Medicare-eligible retirees were the same as those provided to retirees who were not yet eligible, or (2) that they spent the same amount on benefits for both groups. Failure to do so was a violation of the Age Discrimination in Employment Act (ADEA), which could result in extensive liability.

The new rule allows an employer to reduce or eliminate health coverage for a retiree who is eligible for benefits under Medicare or a comparable state program. The rule applies whether or not the retiree is actually enrolled in such a program. The reduction of benefits does not have to correspond to the level of Medicare benefits for which the retiree is eligible; the employer has discretion to reduce benefits by any amount, or not at all.

The rule enjoys broad support from employers, labor unions, and benefits experts. For its part, EEOC recognized that its prior policy caused many employers simply to eliminate retiree health benefits altogether, rather than risk discrimination lawsuits under the ADEA. The new policy removes much of this risk. It allows employers to create a "bridge" to Medicare coverage for retirees, without undertaking complex calculations required to show that payments to Medicare-eligible and non-eligible retirees were equivalent, and without lowering benefits for non-eligible retirees to even out expenditures.

However, some potential pitfalls remain. First, the EEOC clearly stated that the rule does not exempt all aspects of retiree health plans from ADEA coverage. Coordination with Medicare is the *only* activity exempted; other discrepancies in benefits still may violate federal age discrimination laws. Further, only

health benefits are covered; reducing other types of retiree benefits still may result in liability.

The Phelps Dunbar employment practice has much experience handling employee benefits issues. Please do not hesitate to contact us with any questions or concerns.

## eLABORate

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