

## **WHY THE EEOC'S NEW FINAL RULES FOR THE ADEA MAY NOT PROVIDE RELIEF FOR EMPLOYERS IN THE THIRD CIRCUIT**

Recently, the Equal Employment Opportunity Commission (EEOC) voted to approve a proposed final rule that would permit employers, under the Age Discrimination in Employment Act (ADEA), to lawfully coordinate retiree health benefit plans with eligibility for Medicare and state healthcare benefits. The legality of cutting off medical benefits for retirees at Medicare eligibility age was called into question in 2000, when the U.S. Court of Appeals for the Third Circuit in *Erie County Retirees Association v. County of Erie* held that the ADEA requires employers to offer pre- and post- Medicare eligible retirees health benefits of equal type and value. The EEOC's new rule is intended to allow employers to reduce or eliminate retiree health benefits for anyone over the age of 65 without the fear of an Erie-type lawsuit.

Collective bargaining agreements involving public school teachers sometimes include provisions which provide an "early retirement incentive." The early retirement incentive often includes school district paid health care benefits for the retiree. Prior to the Erie decision, the most common early retirement incentive provided health care benefits for the retiree and/or his dependents until the retiree reached Medicare eligibility (age 65). Based on the Third Circuit's decision in Erie, school districts were forced to review their early retirement incentive plans to determine if they would be considered age discriminatory under Erie. Most districts determined that their early retirement incentives were arguably illegal under the ADEA if they contained an age related cutoff.

School districts involved in contract negotiations with teacher associations were forced to bargain over modifications to existing early retirement incentives, which cut off health care benefits for the retiree at age 65. The view of most school districts was that the cost of continuing health care benefits for retirees past age 65 was too costly. Therefore, instead of an age related cut off, school districts and teacher associations bargained changes that included: complete elimination of the early retirement incentive plan, health care benefits for a specified number of years without an age specific cut off, or a lump sum of money to be used for health care benefits until the set sum was exhausted. The overall effect of these changes was that retirees often received less health care benefits.

At first glance, the EEOC's new regulations would appear to give Pennsylvania school districts the option of once again offering health care benefits for retirees until Medicare eligibility. Unfortunately, here in the Third Circuit, arguably Erie still would be the law. Accordingly, if a school district offered health care benefits to retirees only until Medicare eligibility, a retiree still could file a claim with the EEOC for age discrimination. While the EEOC under its own rules would be inclined to dismiss the complaint, the retiree then would have the option to file an action in federal District Court. Since Erie is the applicable law in the Pennsylvania federal District Courts, the retiree may be successful in arguing that the retirement benefits are illegal under the ADEA.

Due to the fact that the EEOC's new rules may not affect the law in the Third Circuit jurisdiction, school districts and other employers in the Third Circuit may have the unique distinction of being the only employers in the nation who cannot provide medical benefits to

retirees that terminate at Medicare eligibility. Accordingly, we recommend a continued cautious approach towards age based retirement incentives.

Clients who have questions regarding issues discussed in this article, should feel free to call us at 215-345-9111.