

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
ATTORNEYS AT LAW

March 2008

Older Retirees and Health Care Costs

Many employers these days face the need to reduce costs, whether that means eliminating jobs or cutting compensation or benefits. Whenever the need to tighten the belt arises, so do questions about setting retirement ages and structuring retirement incentives.

As we discussed over a year ago (“Mandating Retirement—Is It Time for the Gold Watch?” December 2006”), employers may not *require* employees to retire at a certain age, except in a very few situations. The EEOC and the courts have steadfastly held that mandatory retirement for employees at any age violates the Age Discrimination in Employment Act (“ADEA”). Cutting jobs by requiring those 65 or older to retire is not an option.

Recently, however, the EEOC and the U.S. Supreme Court have agreed that employers who provide health insurance benefits for their retirees may reduce those benefits once a retiree reaches age 65. Why is this age-related treatment legal? Retirees at age 65 are eligible for Medicare, and as long as an employer is reducing benefits because its retirees automatically have this coverage—not because they reached a certain age—then the reduction does not violate the ADEA.

Changing existing benefits for employees and retirees is complicated. Sometimes those rights are vested and may not be changed for those who have already earned them. But, the Supreme Court’s ruling means that *new* benefits programs may be structured so that health care coverage drops or disappears at age 65.

This decision means that employers who are reducing their workforces can offer continued health coverage as part of early retirement incentives, without having to maintain that coverage indefinitely. This flexibility should help employers develop incentive packages that lead employees to leave work voluntarily, so that fewer workers will be forced out as employers look to save on personnel costs.

TIP

Employers may take Medicare benefits into consideration when structuring healthcare benefit packages for employees 65 or older without running afoul of the ADEA.



TIP Author - Jerry Oliver
Smith Moore LLP
Labor and Employment Team
Raleigh Office

Labor and Employment Team Members

Allen Buckley	(404) 962.1042	Travis Martin	(336) 378.5277
Laura Deddish Burton	(336) 378.5566	Alex Maultsby	(336) 378.5331
Will Burton	(336) 378.5421	Jerry Oliver	(919) 755.8710
Denise Smith Cline	(919) 755.8734	Patti Ramseur	(336) 378.5304
Martin Erwin	(336) 378.5327	Barbara Ruby	(336) 378.5294
Afi Johnson-Parris	(336) 378.5243	Beth Brooks Scherer	(919) 755.8790
Mike Kelly	(336) 378.5336	Julie Theall	(336) 378.5256
Caroline Lock	(336) 378.5341	Jeri Whitfield	(336) 378.5270

To send individual email: firstname.lastname@smithmoorelaw.com

For additional information on this or any other labor and employment topic, please contact any member of the Labor and Employment Team.

The firm restricts its practice in the labor and employment area to the representation of management.

ATLANTA

One Atlantic Center
Suite 3700
1201 West Peachtree Street
Atlanta GA 30309
404.962.1000
404.962.1200 (FAX)

CHARLOTTE

Charlotte Plaza
525 North Tryon Street
Suite 1400
Charlotte NC 28202
704.384.2600
704.384.2800 (FAX)

GREENSBORO

300 N. Greene Street
Suite 1400
Greensboro NC 27401
336.378.5200
336.378.5400 (FAX)

RALEIGH

2800 Two Hannover
Square
Raleigh NC 27601
919.755.8700
919.755.8800 (FAX)

WILMINGTON

300 N. 3rd Street
Suite 301
Wilmington NC 28401
910.815.7100
910.815.7200 (FAX)