

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1625 and 1627

RIN 3046-AA72

Age Discrimination in Employment Act; Retiree Health Benefits

AGENCY: U.S. Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Equal Employment Opportunity Commission (Commission or EEOC) proposes to amend its regulations governing age discrimination in employment to exempt from the prohibitions of the Age Discrimination in Employment Act of 1967 the practice of altering, reducing or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or a State-sponsored retiree health benefits program. This exemption will ensure that the application of the ADEA does not discourage employers from providing health benefits to their retirees.

DATES: Comments must be received by September 12, 2003. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments received after the closing date will be considered to the extent practicable.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Office of the Executive Secretariat, U.S. Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114 (This is not a toll free number). Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of fax transmittals will not be

acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4078 (voice) or (202) 663-4077 (TTY). (These are not toll free numbers). Copies of comments submitted by the public will be available for review on weekdays, except federal holidays, at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Lynn A. Clements, Special Assistant to the Legal Counsel, Office of Legal Counsel, at (202) 663-4624 (voice) or (202) 663-7026 (TTY) (These are not toll free numbers). This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1-800-669-3362.

SUPPLEMENTARY INFORMATION: Section 9 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* (ADEA or Act), provides that EEOC "may establish such reasonable exemptions to and from any or all provisions of [the Act] as it may find necessary and proper in the public interest." Implicit in this authority is the recognition that the application of the ADEA could, in certain circumstances, foster unintended consequences that are not consistent with the purposes of the law and are not in the public interest. Such circumstances are rare. Accordingly, EEOC's exercise of this authority has been limited and tempered with great discretion.

After an in-depth study, the Commission believes that the practice of altering, reducing or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or a State-sponsored retiree health benefits program presents a circumstance that warrants Commission exercise of its ADEA exemption authority. For the reasons that follow, and pursuant to its authority under Section 9 of the Act, the EEOC proposes in this notice of proposed rulemaking (NPRM) to add a new section 32 to part 1625 of Title 29 of the Code of Federal Regulations exempting such coordination of employer-sponsored retiree health benefits with Medicare or a State-sponsored retiree health benefits

program from all prohibitions of the ADEA.

Basis for Exemption

In August 2001, the Commission announced that it would study the relationship between the ADEA and employer-sponsored retiree health benefit plans that alter, reduce or eliminate benefits upon eligibility for Medicare or a comparable State-sponsored retiree health benefits program. To begin the process, EEOC developed an internal Retiree Health Benefits Task Force headed by its Legal Counsel. The Task Force met with a wide range of Commission stakeholders, including employers, employee groups, labor unions, human resource consultants, benefit consultants, actuaries and state and local government representatives. The Task Force also reviewed available survey data regarding employer-sponsored retiree health benefits; analyzed the May 2001 United States General Accounting Office's Report to the Chairman of the United States's Senate Committee on Health, Education, Labor and Pensions entitled "Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion;" and reviewed numerous professional articles discussing the continued erosion of retiree health benefits.

As a result of its study, the Commission has concluded, as discussed in greater detail below, that the number of employers providing retiree health benefits has declined considerably over the last ten years, even though many retired individuals rely on such employer-sponsored plans for affordable health coverage. Various factors have contributed to this erosion, including the increased cost of health care coverage, an increased demand for such coverage as large numbers of workers near retirement age, and changes in the way accounting rules treat the long-term costs of providing retiree health benefits. The Commission believes that concern about the potential application of the ADEA to employer-sponsored retiree health benefits is adversely affecting the continued provision of this important retirement benefit.

Employers Are Not Obligated To Provide Retiree Health Care

Employers are not legally obligated to provide retiree health benefits and many