

# United States Senate

WASHINGTON, DC 20510

February 18, 2004

The Honorable Cari Dominguez  
Chairwoman  
Equal Employment Opportunity Commission  
1801 L Street, NW  
Washington, DC 20507

Dear Chairwoman Dominguez:

We are writing to support the Equal Employment Opportunity Commission's proposed regulation regarding the Age Discrimination and Employment Act (ADEA) and employer-sponsored retiree health benefits (29 CFR Parts 1625 and 1627), and to urge the Commission to continue on its current course and make this regulation final. This regulation confirms that the practice of coordinating retiree health coverage with Medicare eligibility is not age discriminatory under the ADEA.

As Chairmen of the Committees of jurisdiction over employer-sponsored health benefits and Medicare conferees, we are painfully aware of the erosion of employer-sponsored retiree health benefits over the past decade. Whereas about 70 percent of active employees have employer-sponsored health benefits, fewer than 40 percent are offered retiree health benefits, and this percentage has been decreasing steadily for more than a decade. Thus, our goal is to improve access to retiree health benefits and ensure that public policy does not cause further loss of coverage.

We believe the Commission's regulation is essential towards achieving this goal. We recently attempted to clarify this issue through legislation – most recently in the Medicare Prescription Drug legislation. As you may know, the clarification was not included in final bill the President signed into law. However, we assure you that the exclusion of the clarification does not signal Congressional disfavor of the regulation or support for the interpretation set forth in the Erie County case. Indeed, we call to your attention the Medicare Conference Report, signed by a bipartisan majority of conferees, which includes the following language: “the conferees reviewed the ADEA and its legislative history and believe the legislative history clearly articulates the intent of Congress that employers should not be prevented from providing voluntary benefits to retirees only until they become eligible to participate in the Medicare program.”

The Commission's proposed rule clarifies that ADEA does not apply to retiree health benefits and that offering so-called “bridge” benefits in retiree health plans is not only permissible, but encouraged. When retirees become eligible for Medicare, this “bridge”

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coverage is generally modified to take Medicare into account. This practice of providing pre-Medicare supplemental assistance is common practice among employers and critically important to early retirees. Moreover, we agree with the Commission that any application of the ADEA to retiree health benefits, even a more rational application than that applied in the Erie County case, would have the same results; loss of coverage for early retirees. As you know, both business and labor groups have expressed support for this clarification.

In the current environment of unchecked health care inflation and eroding coverage, the application of the ADEA to retiree health benefits, however well-intended, will most assuredly backfire in our voluntary health system. Indeed, this is exactly what happened with Erie County. The employer in that case reduced coverage for pre-65 retirees rather than increasing coverage for post-65 retirees as was desired.

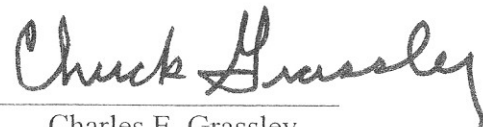
Finally, we wish to emphasize that clarification of the ADEA's application to retiree health benefits is more critical than ever. Employer response to the addition of a drug benefit was one of the central challenges in the Medicare debate. According to the Congressional Budget Office, the expanded benefits provided under the new Medicare law will exacerbate the erosion in employer-sponsored retiree health benefits. Without the clarification, we are gravely concerned that employers will not only reduce coverage for post-65 retirees, but will also be forced to cut back benefits for early retirees to a greater degree because Medicare share of coverage will grow. While the Medicare conference report provides significant subsidies to lessen the effect of employer reductions in coverage, many observers believe that some erosion is still inevitable. Therefore, the combined effect of the Medicare law and the application of the ADEA to retiree health benefits could result in an even greater loss in coverage for both early and Medicare-eligible retirees.

We appreciate your support on this issue; as do the vast number of retirees – present and future – whose employer-provided health coverage will be preserved by promptly promulgating final rules on this issue.

If we can provide you with any additional information, please call us directly or John O'Neill of Finance Committee staff at (202) 224-2550, or Kim Monk with HELP Committee staff (202) 224-6744.

Sincerely,

  
Judd Gregg  
U.S. Senator

  
Charles E. Grassley  
U.S. Senator