

THE ERISA INDUSTRY COMMITTEE

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Advocating the Employee Benefit and Compensation Interests of America's Major Employers

November 4, 2004

Leslie Norwalk
Deputy Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, S.W.
Room 310-G
Washington, D.C. 20201

Dear Leslie:

Thank you for the meeting on Monday regarding the EEOC's proposal to remedy the negative consequences of the Third Circuit's *Erie County* decision. We very much appreciate the time and attention you and your staff are devoting to this issue particularly at a time when you are concentrating on Medicare prescription drug issues.

As you know, the AARP representatives at the meeting argued that employers should be required to provide benefits to Medicare-eligible retirees that are at least equal (after taking into account Medicare) to the benefits they provide to pre-Medicare-eligible retirees. The AARP representatives contend that, if faced with such a mandate, employers that provide only Medicare "bridge" benefits to their pre-Medicare-eligible retirees will respond by increasing the benefits they provide to their Medicare-eligible retirees.

The AARP representatives' claims are unrealistic: their predications about employer behavior are way off the mark. If employers were required to comply with the AARP's proposed mandate, employers would have little choice but to reduce benefits for pre-Medicare-eligible retirees, not increase the benefits they provide to Medicare-eligible retirees. The AARP's proposed mandate would significantly accelerate the retreat of the already diminishing number of employers offering retiree health benefits at a time when we should be finding ways to encourage employers to offer those benefits. The AARP position is not merely bad law, it is bad policy.

The facts make this clear. For years, rapidly escalating health costs have endangered retiree health plans and have discouraged employers from offering these plans nationwide. Since the 1980s, there has been a substantial decline in the percentage of employees covered by employer sponsored retiree health plans. With the aging of the baby boom generation, the number and proportion of Americans potentially affected by a decline in employer sponsored health plans is increasing.

In view of the fragile condition and increasing cost of retiree health benefits, there can be no doubt that employers would respond to the mandate proposed by the AARP by cutting back on retiree health benefits or by ceasing to provide retiree health benefits altogether. Clearly, in view of the cost pressures on employers, employers would curtail or eliminate retiree benefits, not increase them. For example, when *Erie County* was settled, Erie County's health plan for pre-Medicare retirees was downgraded.

The last thing the Nation's health system needs is an additional incentive for employers to reduce or to cease providing retiree health benefits. An employer mandate would drive employers out of the retiree health system, harm retirees, weaken public health, and subvert the public interest. For these reasons, and those

expressed in our submissions to the EEOC, we urge that CMS recommend that the EEOC regulation be approved.

For your convenience, I am enclosing a copy of the comments that ERIC filed with the EEOC regarding the proposed amendments to its regulations. If you have any questions about our submission, or if you would like to discuss this issue further, please feel free to call me at any time.

Sincerely,
Mark J. Ugoretz

Enclosures

ERIC Submission to EEOC; Sept 12, 2003

ERIC Letter to EEOC; April 21, 2004

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