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## Get Green Light

### Employers May Have New Tool to Redesign Retiree Health Plans

by **Bob Christenson**, Fisher & Phillips LLP

**E**MPLOYERS AND retirees may have finally gotten the green light to design retiree health plans and early incentive programs to take advantage of the retirees' eligibility for Medicare benefits.



On June 4, 2007, the Third Circuit Court of Appeals issued its long-awaited ruling in **AARP v. EEOC**, holding that EEOC's 2003 proposed regulations allowing employers to design their retiree health plans to coordinate with Medicare were valid. The Third Circuit is the only Court of Appeals to rule on the issue, and if the decision stands, employers have a new tool allowing them to redesign retiree health plans to make them less costly.

#### **Background**

The Age Discrimination in Employment Act (ADEA) generally prohibits discrimination against those age 40 and above because of age. In 2000, the Third Circuit ruled in an earlier case that if an employer reduced retiree health benefits at age 65 to take into account coordination with Medicare, then the ADEA had been violated. While the Third Circuit's decision was consistent with the EEOC's position, employer reaction was swift. Since there was (and still is) no requirement that employers provide retiree health benefits, employers simply terminated retiree health coverages completely, or reduced them to lower levels for all retirees. In fact, so many retiree health coverages were (Continued on pg.2)

## Containing Costs

### Employers Encourage Healthier Lives



WITH HEALTH COSTS continuing their upward spiral at twice the rate of inflation, U.S. employers are encouraging their employees to become more responsible for their own health. In doing so, employers are focusing on plan design, health improvement, education, and communication to

drive employee engagement and increase employees' understanding of their healthcare benefits, according to Watson Wyatt's recent *Employee Perspectives on Health Care* study.

"Employers are realizing that a good healthcare strategy includes health benefits and programs that incentivize employees to manage their own health," says Larry Boress, CEO, Midwest Business Group on Health. This approach represents a shift in thinking about how to get employees to be more responsible for their healthcare. In giving workers more monetary incentives to pay closer attention to their health, many employers are playing a bigger role in managing and monitoring their workers' health.

However, the Wyatt study notes that in order to develop and implement effective solutions that control costs, employers must first understand employees' views, not only to help them change their healthcare behaviors but also to improve their overall health and satisfaction. (Continued on pg.2)

## Switching Control

### Employees Need More Healthcare Education



EMPLOYERS ARE responding to the double-digit healthcare cost increases by offering initiatives that emphasize health and productivity and directly engage employees in managing their health. According to Aon Consulting's *2007 Benefits and Talent Survey*, it is clear that

employers are focused on helping employees become more knowledgeable and engaged healthcare consumers, with a special emphasis on preventive care, promoting fitness, and disease management, says Tom Lerche, Aon Healthcare Practice Leader. "We continue to see a steady increase in the number of employers offering consumer-driven health (CDH) options along with increased enrollment," says Lerche.

However, consumer-driven health plans really aren't in the comfort zone of many employees. "The main culprit behind the learning inertia is the experience of many Americans over the past 20-plus years, during which they have become disengaged from their own healthcare decisions," says Jerry Ripperger, director, consumer (Continued on pg.2)

## Get Green Light

(Continued from pg.1)

eliminated that the EEOC realized its rule was causing retirees to lose coverage at an unprecedented rate. In order to stem the loss of benefits, the EEOC changed its position.

### Impact on Employers

Employers who want to provide some level of retiree benefits can now do so more economically by taking into account the realities of Medicare coverage. When a retiree becomes eligible for Medicare, coverages can now be reduced to whatever level the employer might desire. Generally, this can mean either coordination

with Medicare so that the retirees experience seamless coverage, or even reducing the retirees' coverage so that retirees at age 65 simply have a less valuable benefit than retirees under age 65, even after taking Medicare into account. The new ruling also gives employers a tool for designing early retirement incentive programs. For those incentive programs which grant retiree health coverage, costs can be brought down by building in a reduction or termination of benefits once Medicare eligibility is achieved.

Although the Third Circuit's recent ruling clears the way for issuance of final regulations by the EEOC, the agency has not done so yet. Also, other Federal courts or the Supreme Court could reach a different conclusion, although the Third Circuit's unanimous ruling was concise and well-reasoned. Since the rule applies only to retiree health benefits, other retiree benefits are still subject to prohibitions against reduction or termination unless the employer can demonstrate equal cost or equal benefit after the reduction. ■

## Containing Costs. . . (Continued from pg.1)



Since employers are in the best position to direct the workplace focus onto wellness, they can also be the best conduits for general health awareness. Workplace wellness expert Tom Gilliam, Ph.D., reminds employers that, "If you pay health insurance [premiums] for your employees, keeping your employees healthy is your business." Lower health costs, a more productive workforce, and an energized working atmosphere are good for the bottom line. Any employer who has not already done so should consider getting or expanding support for healthier lifestyles for their employees. ■

## Switching Control . . . (Continued from pg.1)

health for Principal Financial Group. "With CDHPs, people suddenly have to make a myriad other decisions about providers, price, and quality of care."

One downside is CDHPs lengthy education process and apprehension on the part of consumers to take on a large portion of their own health-care expenses. On the upside, some employers are getting employees' attention by seeding the accounts with startup money to help offset some of the initial deductible expenses. "The average seed is about \$1,200, but it varies widely," says Kirsten Trusko, banking senior manager for BearingPoint, Inc., a management and technology consulting firm.

"CDH, with a fully integrated wellness program, remains one of the best strategic approaches for employers to reduce the medical trend rate," says Lerche. ■

## Bulletin Briefs . . . . .

### ◆ *When Should Employers Make 'Comparable' Contributions?*

Under the recently proposed IRS-HSA comparable contribution regulations, employers who contribute to HSAs outside of cafeteria plans are required to notify employees in writing by January 15 each year that any employee who establishes an HSA by the last day of February, and who notifies the employer of this fact, will receive a comparable contribution to the HSA for the prior year. The employer's contribution must be made no later than April 15 and must include reasonable interest. An employer **may** accelerate HSA contributions in a given year in the case of employees who have incurred qualified medical expenses which exceed the employer's contributions to date. However, these contributions must be available to all eligible employees on an equal and uniform basis throughout the year. Also, the employer must establish reasonable uniform methods and requirements for acceleration of contributions and determination of medical expenses. ■

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