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Judge Blocks Rule Allowing Companies to Cut Benefits When Retirees Reach Medicare Age

By [ROBERT PEAR](#)

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WASHINGTON, March 30 - A federal district judge on Wednesday blocked a Bush administration rule that would have allowed employers to reduce or eliminate health benefits for retirees when they reach age 65 and become eligible for Medicare.

Ten million retirees could have had benefits cut under the rule, which was adopted last April by the Equal Employment Opportunity Commission.

The judge, Anita B. Brody of the Federal District Court in Philadelphia, struck down the rule and issued a permanent injunction that prohibits federal officials from enforcing it.

The rule "is contrary to Congressional intent and the plain language of the Age Discrimination in Employment Act," the 1967 law that bans most forms of age discrimination in the workplace, Judge Brody wrote.

The erosion of retiree health benefits is an explosive political issue. Before issuing the rule, the commission was deluged with letters opposing it.

The rule would have created an explicit exemption to the age discrimination law, allowing employers to reduce health benefits for retirees when they became eligible for Medicare. Under the rule, Judge Brody said, employers could have given older retirees "health benefits that are inferior" to those given retirees younger than 65.

The commission argued that employers were more likely to continue providing health benefits to retirees under 65 if they were allowed to reduce or eliminate benefits for those 65 and older.

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AARP, the main plaintiff in the case, rejected that argument. It said the rule would accelerate the erosion of retiree health benefits, a trend that has been evident for more than a decade.

Christopher G. Mackaronis, a Washington lawyer for AARP, said Wednesday: "The rule was an example of executive arrogance. Federal agencies have no authority to rewrite laws passed by Congress. The rule was adopted in April 2004, but officials tucked it in their back pocket while they courted older voters last year. After the election, they moved forward with the regulation."

The rule, written by the commission, was reviewed and cleared by other agencies, including the Department of Health and Human Services.

Cari M. Dominguez, the chairwoman of the commission, said her agency would ask the Justice Department to appeal the ruling to the United States Court of Appeals for the Third Circuit, in Philadelphia.

The appeals court ruled on the same legal issue five years ago, in a case involving retirees who had worked for Erie County, Pa. Judge Brody closely followed the precedent laid down by the appeals court.

The commission's rule would allow employers to engage in "the exact same behavior" prohibited in the Erie County case, Judge Brody said. In that case, the appeals court found that Congress had intended the age discrimination law to apply "when an employer reduces health benefits based on Medicare eligibility."

In the district court, the commission argued that it had the power to exempt certain conduct from the age discrimination law as long as the exemption was reasonable, "necessary and proper in the public interest."

Judge Brody rejected that contention. The commission, she said, was trying to "issue a blanket exemption for illegal behavior," not confined to a few individual cases. "An administrative agency, including the E.E.O.C., may not issue regulations, rules or exemptions that go against the intent of Congress," she added.

The law clearly forbids employers to discriminate on the basis of age in setting pay and employee benefits, Judge Brody said. And the law, as interpreted by the appeals court, "prohibits the practice of coordinating retiree benefits with Medicare eligibility," she said.

No law requires employers to provide health benefits to workers or retirees. Employers can legally provide benefits to active workers and not to retirees. Many employers have eliminated retiree health benefits. But, Judge Brody said, if an employer provides benefits to retirees, it cannot discriminate among them on the basis of age.

Lawyers said the ruling would apply to companies that give health benefits to early retirees and want to reduce coverage when the retirees reach 65 and become eligible for Medicare. Employer-provided health benefits do not duplicate Medicare. Rather, they help retirees pay medical expenses not covered by Medicare. Those expenses could include co-payments and deductibles and prescription drug costs, beyond what Medicare might pay.

Michele Pollak, a lawyer at AARP, said, "It is less expensive for employers to purchase a health plan that supplements Medicare than it is to purchase health benefits for younger retirees not eligible for Medicare."

The American Benefits Council, a trade group for large employers, and the HR Policy Association, which represents human resource executives at 250 large companies, said they were disappointed



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with Judge Brody's decision.

Daniel V. Yager, senior vice president of the association, said the ruling was "a major setback for many employers that are trying to maintain employer-provided benefits for pre-65 retirees."

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