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U.S. Ruling Backs Benefit Cut at 65 in Retiree Plans

By ROBERT PEAR

WASHINGTON — The Equal Employment Opportunity Commission said Wednesday that employers could reduce or eliminate health benefits for retirees when they turn 65 and become eligible for Medicare.

The policy, set forth in a new regulation, allows employers to establish two classes of retirees, with more comprehensive benefits for those under 65 and more limited benefits — or none at all — for those older.

More than 10 million retirees rely on employer-sponsored health plans as a primary source of coverage or as a supplement to Medicare, and Naomi C. Earp, the commission's chairwoman, said, "This rule will help employers continue to voluntarily provide and maintain these critically important health benefits."

Premiums for employer-sponsored health insurance rose an average of 6.1 percent this year and have increased 78 percent since 2001, according to surveys by the Kaiser Family Foundation. Because of the rising cost of health care and the increased life expectancy of workers, the commission said, many employers refuse to provide retiree health benefits or even to negotiate on the issue.

In general, the commission observed, employers are not required by federal law to provide health benefits to either active or retired workers.

Dianna B. Johnston, a lawyer for the commission, said many employers and labor unions had told it that "if they had to provide identical benefits for retirees under 65 and over 65, they would just drop retiree health benefits altogether for both groups."

In a preamble to the new regulation, published Wednesday in the Federal Register, the commission said, "The final rule is not intended to encourage employers to eliminate any retiree health benefits they may currently provide."

But AARP and other advocates for older Americans attacked the rule. "This rule gives employers free rein to use age as a basis for reducing or eliminating health care benefits for retirees 65 and older," said Christopher G. Mackaronis, a lawyer for AARP, which represents millions of people age 50 or above and which had sued in an effort to block issuance of the final regulation. "Ten million people could be affected — adversely affected — by the rule."

The new policy creates an explicit exemption from age-discrimination laws for employers that scale back benefits of retirees 65 and over. Mr. Mackaronis asserted that the exemption was "in direct conflict" with the Age Discrimination in Employment Act of 1967.

The commission, by contrast, said that under that law, it could establish “such reasonable exemptions” as it might find “necessary and proper in the public interest.” The United States Court of Appeals for the Third Circuit, in Philadelphia, upheld this claim in June, in the case filed by AARP, which has asked the Supreme Court to review the decision.

In its ruling, the appeals court said, “We recognize with some dismay that the proposed exemption may allow employers to reduce health benefits to retirees over the age of 65 while maintaining greater benefits for younger retirees.” But the court said the commission had shown that the exemption was “a reasonable, necessary and proper exercise” of its authority.

Under the new rule, employers may, if they choose, provide retiree health benefits “only to those retirees who are not yet eligible for Medicare.” Likewise, the rule says, retiree health benefits can be “altered, reduced or eliminated” when a retiree becomes eligible for Medicare.

Further, employers will be able to reduce or eliminate health benefits provided to the spouse or dependents of a retired worker 65 or over, regardless of whether benefits for the retiree are changed.

Employers and some unions contend that retirees under 65 have a greater need for employer-sponsored health benefits because they are generally not Medicare-eligible. Large employers have often provided some health benefits to retirees 65 and older, to help cover costs not paid by Medicare. But employers have for years been trying to reduce retiree benefits or to shift more of the cost to retirees.

Lawyers for the commission said the new Medicare drug benefit, now nearing the end of its second year, had strengthened the case for the regulation because it guaranteed that retirees 65 and older would have access to drug coverage. Younger retirees have no such guarantee, so employers may want to provide drug coverage to them in particular, the lawyers said.

Helen Darling, president of the National Business Group on Health, which represents large employers, welcomed the rule.

“If employers could not coordinate with Medicare, they would be far less likely to provide health coverage” to retirees, Ms. Darling said. “They could not afford to.”

A study by the Government Accountability Office in 2001 estimated that one-third of large employers and fewer than one-tenth of small employers offered health benefits to retirees. Ms. Darling said newer retirees often received not comprehensive coverage but instead a fixed amount of money, based on years of service, to help them with their medical costs.

James A. Klein, president of the American Benefits Council, a lobby for large employers, said: “The new rule is a victory for common sense and for retirees. Retiree health coverage has been declining for many years. Without this rule, many more retirees, especially early retirees, could find themselves without employer-sponsored coverage.”

Gerald M. Shea, assistant to the president of the A.F.L.-C.I.O., also saw merit in the new rule.

“Given the enormous cost pressures on employer-sponsored health benefits,” Mr. Shea said, “we support the flexibility reflected in the rule as a way to maximize our ability to maintain comprehensive coverage for active and retired workers.”

Schoolteachers, like many other public employees, often retire early and rely on employer-provided health benefits until they become eligible for Medicare. At a Congressional hearing in 2005, the National Education Association and Representative John A. Boehner of Ohio, who is now the House Republican leader, supported the proposed rule. The teachers union said it feared that employers would cut health benefits for early retirees if they had to provide identical benefits to those over 65 and those under.

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