

## EEOC redeemed

*by The San Diego Union-Tribune*

Pitting seniors against their juniors can be a loser for both. That didn't stop an AARP lawsuit hazardous to both.

For three years, the AARP pursued a suit to force the Equal Employment Opportunity Commission to force employers who offer retiree health coverage to pay as much from their pocket for retirees eligible for Medicare as for retirees who aren't yet 65.

The EEOC also took that position until probable adverse consequences changed its mind. But remedying those flaws has taken years, and it may not be over yet. The saga starts in 2000 with a suit involving the health insurance plans that Erie County, Pa., offered its retirees. A federal appeals court ruled that the county could not offer lower benefits to retirees eligible for Medicare than it offers to younger retirees ineligible for Medicare. Since the only qualification for Medicare is age 65, the court saw a violation of the federal age discrimination law.

That certainly seemed the case. Older retirees paid more of their Medicare premium than younger retirees paid for their insurance premium, were charged a higher co-pay and had one choice of health providers, health maintenance organizations.

The EEOC then advised that such discrepant health care plans would be presumed discriminatory. But other EEOC rules take note that the same health coverage generally costs more for older than younger retirees. So employers could offer the two groups the same benefits or spend the same amount on each.

The real kicker, however, was the court decision that employers must equalize their own contributions to the two groups' coverage, omitting the considerable value of Medicare to the older retirees.

The EEOC began writing a rule incorporating the court rulings - until businesses and unions nationwide howled that the increased expense would end employer plans for younger retirees, or for all retirees.

After many analyses confirmed those consequences, the EEOC switched sides. In 2003 it created a narrow exemption from the age discrimination act. It issued a rule that leaves younger retirees' coverage out of the equation and puts Medicare coverage back in. It allows employers to reduce or end their contribution to health plans for retirees covered by Medicare or a similar state program. In 2005 the AARP sued, challenging the EEOC's authority to create an exemption that it said in effect cheats retirees eligible for Medicare. The courts halted action on the rule.

In June the same appeals court that decided the Erie case unanimously ruled that the exemption and subsequent rule are a "reasonable, necessary and proper exercise" of the EEOC's authority.

On Dec. 26, this common-sense, real-world rule became final.

The AARP could still appeal to the Supreme Court. But the justices recently telegraphed a contrary view in another case. More useful for the AARP is an in-house review of an agenda that ignored disparate interests of retiree groups, and jeopardized both.

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