

Employee Benefits E-news

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Time is Now to Consider Modifying Retiree Medical Benefits

One of the less publicized provisions in the mammoth health insurance reform bill passed by the U.S. House of Representatives on November 7, 2009, severely limits the ability of employers to terminate or reduce retiree medical benefits.

The proposed Affordable Health Care for America Act prohibits a group health plan from reducing benefits provided under the plan to a retired participant or beneficiary if the reduction occurs after retirement and affects the benefits provided to the participant or beneficiary as of the date the participant retired --- unless the reduction is also made for active employees. This proposed restriction applies regardless of any explicit language in the plan document providing the employer with the right to amend or terminate the retiree medical plan.

A reduction of benefits occurs when a participant's/beneficiary's share of premiums substantially increases or if there is a substantial decrease in the actuarial value of the benefit package under the plan. (For these purposes, "substantial" means greater than 5%.)

The proposed bill allows a plan to enforce a total aggregate cap on amounts paid for retiree health coverage that is part of the plan *at the time of retirement*.

The proposed bill allows an employer to apply for a waiver from this proposed restriction if the employer can demonstrate that the proposed restriction would impose an undue hardship on the employer.

The proposed restriction becomes effective if and when the proposed Affordable Health Care for America Act (as currently drafted) becomes law. Accordingly, if this restriction remains in any final health care reform legislation passed by Congress, there will be virtually no time to terminate or modify retiree medical provisions before the restriction becomes effective. Because of this time constraint, an employer currently contemplating whether to modify or terminate its retiree medical benefits program should seriously consider whether to take this action now.

Please contact the undersigned or any member of the Butzel Long Employee Benefits practice group for further information regarding retiree medical plan benefits.

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