

July 17, 2003

**Austin**

600 Congress Ave., Suite 1600  
Austin, Texas 78701-3236  
Phone: 512.867.8400  
Fax: 512.867.8470

**Austin Loop 360**

7501 North Capital of Texas Highway  
Bldg A, Suite 130  
Austin, Texas 78731  
Phone: 512.692.8300  
Fax: 512.692.8370

**Dallas**

901 Main St., Suite 3100  
Dallas, Texas 75202-3789  
Phone: 214.651.5000  
Fax: 214.651.5940

**Fort Worth**

201 Main Street, Suite 2200  
Fort Worth, Texas 76102-3126  
Phone: 817.347.6600  
Fax: 817.347.6650

**Houston**

1000 Louisiana St., Suite 4300  
Houston, Texas 77002-5012  
Phone: 713.547.2000  
Fax: 713.547.2600

**Richardson Telecom Corridor®**

2505 N. Plano Road, Suite 4000  
Richardson, Texas 75082-4101  
Phone: 972.680.7550  
Fax: 972.680.7551

**San Antonio**

112 E. Pecan St., Suite 1600  
San Antonio, Texas 78205-1540  
Phone: 210.978.7000  
Fax: 210.978.7450

**Washington, D.C.**

555 11<sup>th</sup> Street, N.W. Suite 650  
Washington, DC 20004-1314  
Phone: 202.654.4500  
Fax: 202.654.4501

**Mexico City**

Torre Esmeralda, Boulevard  
Manuel Avila Camacho No. 40  
Despacho 1801  
Col. Lomas de Chapultepec,  
México, D.F. 11000  
Phone: 011.525.540.5558  
Fax: 011.525.540.0630

**EEOC ISSUES – GOOD NEWS FOR RETIREE MEDICAL PLANS**

On July 14, 2003, the EEOC issued Proposed Regulations on the coordination of an employer's retiree health benefits with Medicare and state health benefits for retirees. The Proposed Regulations were issued in response to the Third Circuit's *Erie County* decision, which found that coordination of retiree health benefits with eligibility for Medicare violated the Age Discrimination in Employment Act of 1967 ("ADEA") unless the equal cost/equal benefit exception applied.

The Proposed Regulations provide that retiree health benefits for retired participants that are altered, reduced or eliminated when the participant becomes eligible for Medicare benefits or for health benefits under a comparable state health benefit plan are exempt from the prohibitions of the ADEA. The exemption also applies to dependent and spousal health benefits that are included as part of the health benefits provided for retired participants, and applies to newly-created as well as existing retiree health plans.

This exemption does not apply to employees who are currently employed and covered as active employees who are at or over the age of Medicare eligibility; active employee coordination is already prohibited by the Medicare Secondary Payer rules. The exemption also does not apply to the use of eligibility for Medicare or any state health benefit plan to determine eligibility for any other benefit, act or practice of employment.

The exemption will not be applicable until the Proposed Regulations are finalized. Any comments to the EEOC on the Proposed Regulations must be submitted on or before September 12, 2003.

If you should have any questions regarding how these Proposed Regulations impact your plan, you may contact any of the undersigned members of the Employee Benefits / Executive Compensation Practice Group.

Charles F. Plenge  
(214) 651-5573  
[plengec@haynesboone.com](mailto:plengec@haynesboone.com)

Jesse J. Gelsomini  
(713) 547-2233  
[gelsominij@haynesboone.com](mailto:gelsominij@haynesboone.com)

Allison Kohler  
(214) 651-5423  
[kohlera@haynesboone.com](mailto:kohlera@haynesboone.com)

John M. Collins  
(214) 651-5564  
[collinsi@haynesboone.com](mailto:collinsi@haynesboone.com)

Susan A. Wetzel  
(214) 651-5389  
[wetzels@haynesboone.com](mailto:wetzels@haynesboone.com)

Tiffany Walker  
(214) 651-5266  
[walkert@haynesboone.com](mailto:walkert@haynesboone.com)

Greta E. Cowart  
(214) 651-5592  
[cowartg@haynesboone.com](mailto:cowartg@haynesboone.com)

Robert L. Potts  
(214) 651-5236  
[pottsr@haynesboone.com](mailto:pottsr@haynesboone.com)

Eric Winwood  
(214) 651-5944  
[winwoode@haynesboone.com](mailto:winwoode@haynesboone.com)

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