

# EEOC Targets Wisconsin School Districts' Early Retirement Incentives

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Practice Area: Labor and Employment & School Law

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In June 2000, the Milwaukee office of the Equal Employment Opportunity Commission began the process of sending compliance questionnaires to Wisconsin school districts regarding the early retirement incentives found in their employees' collective bargaining agreements. School attorneys sharing information on this matter report that hundreds of Wisconsin school districts have now received the same questionnaire, and that the same EEOC office is also targeting Minnesota school districts.

The EEOC is seeking information regarding any early retirement incentives that provide for a maximum age for receiving the special benefits. It is not uncommon for unionized public employees in Wisconsin to bargain for early retirement benefits, including health insurance coverage, that will help them retire prior to the normal retirement age of 65. At age 65, eligible school district employees receive significant aggregate benefits under the Wisconsin Retirement System, Social Security, and Medicare. Thus, the early retirement benefits help employees to "bridge the gap" between early retirement and normal retirement.

The EEOC has taken the position that early retirement benefits, including health insurance coverage, which cease at the time the employee qualifies for "normal" retirement benefits constitutes prima facie age discrimination, in violation of the Age Discrimination in Employment Act. It also takes the position that there are no applicable affirmative defenses to this type of age discrimination. Several courts of appeal have agreed, finding both school districts and unions liable for damages suffered by older employees who missed out on the full amount of early retirement benefits available to younger employees.

The EEOC has asked school districts and unions to voluntarily pay the full amount of damages accrued by older employees who have retired in the last two years, and to correct collective bargaining agreements for the future. The EEOC has stated that if school districts and unions do not voluntarily pay the damages it calculates are owed to older retirees, the matters will be referred to the EEOC's litigation department.

von Briesen & Roper, s.c., is working with many Wisconsin school districts and other local governmental employers to resolve these problematic issues without protracted litigation. Given the unusual posture of the EEOC against the unions in this matter, we believe that there are likely ways to negotiate win-win solutions with the unions and the EEOC.

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