

POST-RETIREMENT HEALTH INSURANCE AS AN EMPLOYER-PROVIDED BENEFIT

From time to time we are asked about post-retirement health insurance as a fringe benefit in a closely held business. Can it be provided on a discriminatory basis? Is there any problem if the employee pays for the benefit? Can the benefit be modified or terminated after someone retires? The answer to these questions may surprise you.

From a legal standpoint, an employer has wide discretion in providing all fringe benefits, including post-retirement health insurance. It is permissible under federal law, for example, to provide insurance benefits on a discriminatory basis. Thus, post-retirement health insurance could be offered to some employees and not others. Additionally, there are no legal requirements that the benefit be paid by the employer. A post-retirement health plan can provide that the employee is responsible for the cost. Finally, the law is clear that post-retirement benefits may be modified or terminated by an employer so long as the employer reserves the right to do so.

However, the fact that something is permissible under law, does not necessarily mean that it can be done. The biggest obstacle to providing post-retirement health insurance to retirees of a closely held business are contractual restraints imposed by the insurance companies. Most health insurance companies impose very specific conditions on a provision of post-retirement health insurance. Frequently, such insurance can only be provided if it is offered to all retirees and if the employer pays a significant percentage (typically, at least 50%) of the annual premium. Insurance companies impose such conditions in order to protect themselves from so-called "adverse selection," the tendency for insurance to be selected only by those who are quite ill and likely to use its benefits.

Occasionally, an employer will attempt to circumvent the contractual conditions of the insurance contract. For example, coverage is provided to an employee who is paying the entire cost of coverage, while the employer represents that it is paying for the coverage. This is a perilous course of action. When an insured has a large medical claim, the insurance company will typically perform an audit to confirm that the individual is eligible for coverage. If it is determined that the contractual conditions have not been satisfied, the insurance company has the right to deny coverage and deny paying benefits. If the retiree is lucky, the insurance company will return the premiums paid. If he or she is unlucky, they may be charged with insurance fraud.

While traditional health insurance policies only provide the retiree coverage in accordance with specified contractual conditions, there is a way for some individuals to obtain post-retirement health coverage legally. Many professional organizations, including the Ohio State Medical Association (OSMA) and the Ohio State Bar Association (OSBA) offer health insurance coverage to its members' employers. These policies include specific provisions which permit the individual retiree to maintain coverage at his or her cost after retirement. Employers who have a strong desire to provide post-retirement insurance coverage should consider purchasing health insurance coverage through a professional or trade organization.

