

Eighth Circuit Permits Employee to Maintain age bias Claim Based on Company's Age-Based Health Care Considerations

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With the rising costs of health care benefits for both employers and employees alike, a recent case out of the Eighth Circuit provides an important reminder that even seemingly innocuous cost control measures can have a discriminatory impact and can land an employer in hot water.

In the case, the employer, Associated Underwriters, was facing financial strain and considered lowering its health insurance fees as a cost-saving measure. In executing its plan to lower health insurance costs, the company urged employee Marjorie Tramp and another employee over the age of 65 to discontinue enrollment in the company's health insurance plan and to instead enroll in Medicare. Management then engaged in email correspondence with insurers concerning quotes for coverage, and those emails further revealed that the company anticipated that its costs would be lowered since many of the "older, sicker" employees had dropped off of the plan.

Tramp was ultimately terminated and filed suit claiming age discrimination, among other things.

The employer prevailed on summary judgment at the district court level, and Tramp appealed. The U.S. Court of Appeals for the Eighth Circuit reversed in part, [finding that Tramp could feasibly pursue a claim for age discrimination](#) because the employer's consideration and treatment of insurance premiums were not "divorced" from age. Further, the court held, a jury could find that considering age in conjunction with health care costs could be discriminatory. The court also pointed to the fact that the email correspondence reflected an insensitivity and crudeness about the relationship between age and health care premiums on the company's part, and those statements could very well demonstrate the employer's intent to lay off older, more expensive employees. Summary judgment was accordingly reversed on the age discrimination claim and Tramp was able to pursue her claim further.

Choosing to terminate employees based on the high cost of health care premiums alone may not necessarily be actionable, but like in this case, where age appears to be a significant basis for the decision, employers may be

faced with age discrimination claims. Making changes to employee benefits is a serious issue, and while wholesale changes which affect all employees are typical, employers must be mindful about the potential for a discriminatory impact due to age or disability.

If you have any questions about this case or your own benefits policies and practices, please contact your Hinshaw employment attorney.

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