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"Columbus is outpacing national trends in unemployment and job growth. Offering competitive employee benefits are a great way to attract and retain valuable employees."

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THE CHANGING LANDSCAPE OF EMPLOYEE BENEFITS

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Employers today face the ever-increasing challenge of remaining competitive in the global economy. This often requires employers to slash costs – including retiree benefits. In doing so, employers must not only consider the impact on employee morale, but also the significant legal ramifications.

Employers have modified or eliminated retiree benefits since the 1980s, often resulting in litigation by retirees under the Employee Retirement Income Security Act of 1974 (ERISA) or the Labor Management Relations Act of 1947 (LMRA). Both ERISA and LMRA permit employers to unilaterally terminate welfare benefits, which are non-pension benefits like healthcare and life insurance, so long as the benefits are not vested. Thus, in these cases, retirees argue that the employer promised the welfare benefit for the retirees' lifetime (thereby creating a vested benefit). Employers argue either that the benefit was promised for a limited duration, or that they have no obligation to provide the benefit for a set duration in the future.

For more than three decades, retirees filing employee-benefits lawsuits in the Sixth Circuit often won because of a 1984 Sixth Circuit decision known as UAW v. Yard-Man. In Yard-Man, the Court said that it inferred that the parties intended welfare benefits to vest because retiree benefits are not a mandatory subject of bargaining and employees typically view retirement benefits as a form of deferred compensation.

Recently, however, the U.S. Supreme Court gave employers a big win when in 2015 it rejected Yard-Man's inferences in its M&G Polymers USA, LLC v. Tackett decision. The Court in Tackett instructed lower courts to look to the plain language of the collective bargaining agreement or plan document creating the welfare benefit to determine whether the parties intended the benefit to vest. Between 2015 and 2017, the Sixth Circuit attempted to distinguish Tackett and continued to apply Yard-Man's inferences to create ambiguity in retirement benefits contracts. The Sixth Circuit now appears to have totally abandoned Yard-Man based on its recent post-Reese decision, Cooper v. Honeywell International, Inc. in March 2018.

Since 1988, the number of large workplaces that offer retiree health plans has decreased by

43%

Source: Kaiser Family Foundation

Sixth Circuit employers considering modifying or eliminating retiree benefits are now on better footing to argue that they never intended retiree welfare benefits to vest, and that they may unilaterally choose to terminate such benefits. Still, retirees have not given up, and continue to use several legal theories to persuade courts that the parties intended retiree benefits to vest. For this reason, employers looking to reduce or eliminate retiree benefits should seek assistance from competent legal counsel in navigating this complex area of the law. ■

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CHOOSING BETWEEN EMPLOYER COVERAGE AND MEDICARE

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If you have health coverage from your employer, you may be wondering whether it makes sense for you to enroll in Original Medicare, Part A (hospital insurance) and Part B (medical insurance) when you turn 65. While every person's case is different, here are some things to consider when deciding between Medicare and employer group coverage.

Should I enroll in Medicare Part A?
Most people enroll in Medicare Part A when they turn age 65, even if they have other health coverage, since Medicare Part A has no monthly premium if they have worked at least 40 quarters and paid Medicare taxes. If your employer health coverage is a high-deductible Health Savings Account (HSA) plan, you may not be able to make further contributions in the Health Savings Account once you're enrolled in Medicare (although you can make withdrawals for the funds you have in the account). If you have a HSA plan, I would highly recommend getting professional advice on what you should do regarding enrolling in Medicare.

Should I enroll in Medicare Part B?
Under some circumstances, you might have to pay a late enrollment penalty for Medicare Part B if you don't enroll when you're first eligible. Most people are first eligible for Medicare when they turn age 65 unless they qualify earlier because of disability.

However, if you have health coverage based on current employment (either through you or your spouse's employer), usually you can delay enrollment in Medicare Part B without having to pay a late enrollment penalty when you enroll later. Many people wait to sign up for Medicare Part B if they are on a Large group (over 20) because their group plan is primary, and Medicare is secondary. If you choose not to take Part B when you retire or lose group coverage, you will have a Special Enrollment Period to sign up for Medicare Part B. The Special Enrollment Period lasts eight months, beginning as soon as your employer group coverage ends or the employment that it's based on ends, whichever event occurs first. If you use this period to enroll in Medicare Part B, you avoid a late enrollment penalty.

Employer coverage and Medicare Part D
Medicare Part D Prescription Drug Plans are available from private insurance companies contracted with Medicare. Like Medicare Part B, there is a late enrollment penalty for Medicare Part D if you don't sign up when you're first eligible and you don't have creditable prescription drug coverage. Creditable coverage is coverage that is as good as standard Medicare Part D. Most employer coverage is creditable coverage, but if it's not you will have to pay a penalty if you enroll in a Medicare Part D at a later date. The Medicare Part D penalty may apply any time you go without creditable coverage for longer than 63 consecutive days after the end of your Initial Enrollment Period.