

# NO ADA VIOLATION FOR TERMINATING EMPLOYEES ON RETIREE-ONLY HEALTH PLAN

*Hodgson Russ Newsletter*  
December 30, 2016

**Practices & Industries**

Employee Benefits

In a recent case out of the US District Court of the Northern District of Indiana, a group of rehired retirees brought an age discrimination claim after they were terminated due to complications associated with their retiree-only health plan coverage. When these individuals were rehired, their continued coverage on the employer's retiree-only plan presented potential compliance issues with the Medicare Secondary Payer (MSP) rules and threatened the plan's "retiree-only" status under the Affordable Care Act (ACA). Under the ACA, a "retiree-only" health plan is not subject to many of the insurance market reforms applicable to other medical plans. The MSP rules govern whether Medicare pays primary or secondary to employer sponsored coverage. While Medicare may be the primary payer when a retired individual has both Medicare and employer sponsored coverage, the employer sponsored plan generally must be the primary payer if the individual is rehired. To avoid these compliance concerns and the additional associated expenses, the employer terminated the rehired employees. The court dismissed the age discrimination claim, holding that age was not the only reason for the terminations. Rather, it was motivated by an effort to maintain the retiree-only status of the health plan under the ACA and comply with the MSP rules. This case is significant because it highlights a number of complex issues associated with the administration of retiree health plans. When rehiring former employees, employers are encouraged to consult with their benefits counsel to discuss potential benefit concerns and design solutions. *Carson v. Lake County, Ind.* (2016, N.D. Ind.)