

Early Retirement Incentive Programs: Do's and Don'ts

An early retirement incentive program (ERIP), such as the one recently announced by USA Today, is one of the tools companies use to strategically adapt to their changing workforce needs.

The hallmark of these plans is that they are incentives that employees can choose or not. Care needs to be taken with all such retirement-based programs to comply with the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), which was added to the ADEA in 1990.

The OWBPA contains an exemption to what the ADEA would otherwise ban as follows:

It shall not be unlawful for an employer, employment agency, or labor organization ... to observe the terms of a bona fide employee benefit plan ... that is a voluntary early retirement incentive plan consistent with the... purposes of [the ADEA].

The Senate Report accompanying the OWBPA made it clear that if plans are truly voluntary, made available for a reasonable period of time and do not result in arbitrary age discrimination, they will survive an ADEA challenge.

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