

# LEGAL UPDATE

## EEOC Issues Opinion Letter on ICHRAs and the ADEA

A Jan. 7, 2021 [opinion letter](#) from the U.S. Equal Employment Opportunity Commission (EEOC) addresses employer contributions to Individual Coverage Health Reimbursement Arrangements (ICHRAs) and compliance with the Age Discrimination in Employment Act of 1967 (ADEA). The letter clarifies that an employer may offer an ICHRA under two scenarios without giving rise to ADEA liability:

- A **defined contribution**, meaning each employee receives the same employer contribution to the ICHRA. (This could result in older employees bearing both a larger amount and larger proportion of their health insurance premium costs because of age.)
- A **specified percentage** of premium costs to all employees, rather than a defined contribution. (This would likely result in employers providing larger amounts to older workers.)

### Key Points

Because ICHRAs are funded entirely by the employer, they are not subject to the ADEA's prohibitions with respect to fringe benefit plans that require employee contributions. Similarly, the ADEA's prohibition against less favorable health insurance plans for older employees only applies to plans that are offered or provided by the employer. Where the employer has no control over the plans and plays no role in making them available to employees, the ICHRA is not covered by the ADEA.

The EEOC makes clear that providing a greater level of compensation to older employees because of their older age does not violate the ADEA—regardless of whether the contributions reflect a percentage of the employee's premium for individual health insurance or whether the amounts increase with an employee's age based on other terms.

Provided to you by [Cowden Associates, Inc.](#)

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### General Principles

#### Background

ICHRAs generally must be integrated with individual health insurance coverage. Current law allows age rating of individual major medical health insurance policies.

#### Good Faith Defense

Employers may rely upon the letter in good faith as a defense to liability for age discrimination.

#### Only ADEA Addressed

The EEOC takes no position on whether these two scenarios would be permitted under any other law.

*Employers that choose to increase contributions to older employees' ICHRAs to offset age-based increases will not violate the ADEA.*

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