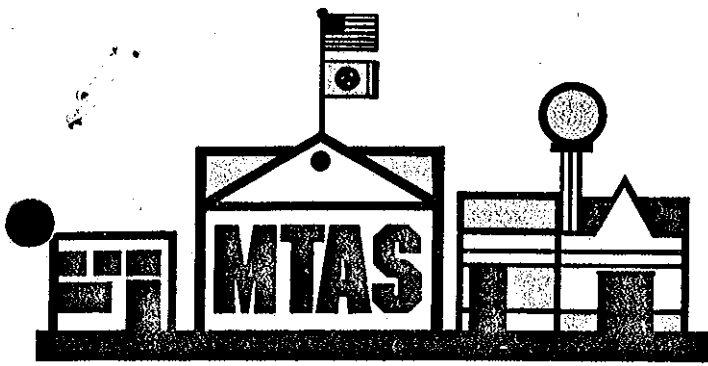




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SMOKING IN THE WORKPLACE

by Richard L. Stokes

Introduction

During the past several years, workplace smoking has become a controversial issue in both the public and private sectors. Battle lines have been drawn by both sides, convinced that their position is the most defensible. This bulletin explores the need to regulate employee smoking on the job; why employees feel their rights are being infringed upon; legal issues associated with workplace smoking; policies and practices in effect across the country; and steps to develop a successful policy.

Interest in smoking control began to increase in 1985 after the Surgeon General of the U.S., Dr. C. Everett Koop, reported that smoking caused more deaths and disabilities than the workplace environment itself. In December of 1986 Dr. Koop produced evidence to support the belief that exposure to "side-stream," "second-hand," or "passive" smoke increased nonsmokers' risk of developing diseases related to cigarette smoke.

As a result of Dr. Koops's work, there has been a drastic increase in the number of organizations developing policies regulating workplace smoking. It is not unusual to see "No Smoking" signs in elevators, theaters, museums, hotel rooms, buses, trains, or taxis; and it has long been accepted that smoking is generally prohibited in hospital rooms where oxygen is in use, doctors' offices, airplane rest rooms, and in certain sections in restaurants.

Smokers, though, have been slow to respond to the public outcry. This may be due to the perception that smoking is an individual right that cannot be regulated by government. Many also argue that the research findings are too preliminary to justify the regulations.

Nonsmokers have rights also. Nonsmokers have the right to work in a healthy environment, and it is the employer's responsibility to provide such an environment. In *Shrimp v. New Jersey Bell Telephone Company*, 368 A.2d408 (1976), the New Jersey Supreme Court held that it is the employer's common-law duty to provide a safe workplace. The courts found that the right of an individual to risk his or her health does not include the right to jeopardize the health of others who must work close by.

Statistics suggest that cities spend about \$4,600 more a year to keep a smoker on the payroll than a nonsmoker. This estimate includes lost productivity; damages from cigarette burns; accidents resulting from loss of attention, eye irritation, or coughing; lost time due to increased chances of illness and early death; medical care; absenteeism; and increased fire insurance.

Only about 31 states have passed legislation restricting smoking in the workplace. In addition, some 42 states have passed laws restricting smoking in public places. To date, Tennessee has not joined the list of states that have passed legislation; however, smoking policies have been implemented by individual departments of state government and some cities.

Legal Issues

The question of an organization's ability to restrict cigarette smoking on the job has begun to find its way into our legal system. Hundreds of cases have been heard, but only recently have tobacco companies and employers been held liable for disabilities associated with smoking.

Historically, Congress has attempted to regulate public behavior in a number of ways. In 1905 a movement began to prohibit "spitting" (of tobacco) as a public health measure. The concern centered around the public's fear of the spread of tuberculosis. In the 1920s Prohibition was the issue. Today we regulate loud music on beaches and public transportation systems and alcohol and drug use.

In 1965 Congress ordered that mild warnings be printed on cigarette packages and advertisements. In 1970, as medical research identified more links to diseases, Congress mandated stronger warnings. Cigarette ads were pulled from television and radio advertisement in 1971. Recently, relying on medical information from the Surgeon General's Office, Congress has mandated even stronger warnings on cigarette packages.

As mentioned, 42 states have passed laws restricting smoking in public places. Maine has removed cigarette-vending machines from sites where teenagers might have easy access. Utah forbids cigarette advertisements on billboards, while California has banned smoking on trains, buses, and planes traveling within the state. In 1971 and 1975 Minnesota passed the first Clean Indoor Air law. New York recently passed a Clean Indoor Air Act that requires

that half the tables in restaurants with more than 50 seats be reserved for nonsmokers. Most recently, federal bans prohibiting smoking on scheduled airline flights of two hours or less have gone into effect.

The Supreme Court of Washington State recently ruled in *McCarthy v. The Department of Social and Health Services* that if an employer is aware of an employee's special sensitivity to tobacco smoke, it has a duty to take reasonable steps to accommodate the employee's sensitivity. This implies that if an employer does not protect employees from involuntary exposure to tobacco smoke, the employer is "negligent" and may be held responsible for conditions that are a direct consequence. The Washington Supreme Court has sent this case back to district court for trial.

Though the McCarthy case has not been settled, it does provide an avenue for more smoking-related lawsuits. The McCarthy decision may start a wave of "asbestos-type" lawsuits by nonsmokers against employers who fail to provide a safe, healthy, and smoke-free workplace. As a result, employers who do not have a smoking policy may be well advised to begin considering one.

Policy Options

Before implementing a smoking policy, however, employers are obligated to carefully consider their position. They should consider such variables as employee health issues, legal ramifications, smoker and nonsmoker preferences, ventilation and circulation systems, workplace logistics and types of available options.

The options available to municipalities are numerous. Smoking policies range from very restrictive to totally nonrestrictive. Organizations tend to be less restrictive in their smoking policies; however, this trend is expected to be reversed. It is anticipated that by 1990 organizational smoking policies will be more restrictive.

The most restrictive smoking policy not only restricts smoking on the job but off the job as well. Usually employers with this type of policy refuse to hire individuals who smoke. Some companies prohibit smoking on their premises but will hire smokers and allow them to do as they please away from the office. Similarly, other employers may prohibit smoking in company buildings but will hire smokers and allow them to smoke outdoors.

The most common policy is prohibiting smoking in the company building, with a few exceptions. Smoking might be permitted in smoking section of the cafeteria, in designated smoking rooms, or in private offices designated by the occupants. This policy does not prohibit hiring smokers, nor does it prohibit employees from smoking in the privacy of their own homes. Other modifications may permit smoking in designated smoking rooms or lounges. Private offices may be designated "smoking permitted" or "no smoking" by the occupant.

Some organizations try to respect the preferences of both smokers and nonsmokers. Where smokers' and nonsmokers' preferences conflict, employees and management try to find a satisfactory compromise. If they fail, the preferences of the nonsmokers prevail.

The least restrictive smoking policy is no policy. The organization places no restrictions on employee smoking except where safety and fire hazards are important considerations.

Developing and Implementing A Smoking Policy

Many municipalities have begun taking steps (in some cases drastic steps) to limit or curtail smoking by their employees. The actions are motivated by the organization's need to either (a) protect equipment or property, (b) comply with laws or regulations, (c) ban smoking in specific areas, (d) ban smoking throughout the municipality, except in designated areas, (e) ban smoking throughout the municipality, (f) preclude the hiring of smokers, or (g) any combination of these.

A good smoking policy makes clear an organization's motivation for regulating workplace smoking and forms the basis for how employees view the effort. It is imperative that a municipality considering a smoking policy develop one that is enforceable and has employee support.

Top management must be committed to the policy, too. Because smoking policies in most municipalities will affect not only employees but also the citizenry, elected officials may also need to be included. It is also a good idea to involve employees or employee groups (both smokers and nonsmokers) either on committees or through employee surveys on logistical considerations.

Once the need for a policy has been agreed upon, the municipality is ready to research the legal, economic, and health issues regarding smoking and smoking policies. Also, during this phase, the city must determine the scope of the policy (whether to permit smoking in designated areas) and how it will be implemented.

Then the policy must be drafted. The draft should include details about why smoking must be reduced at work, what the policy covers, how it will be enforced, and how noncompliance will be addressed.

Once a policy has been developed, employees should have ample notice of the implementation date. If the municipality combines the policy with a smoking cessation program, the policy shouldn't take effect until after the cessation program begins. Cities may also hold open meetings to allow employees to vent their feelings and make recommendations for improving the implementation of the plan.

The final consideration in developing and implementing a smoking policy is that the policy must be enforced consistently for all employees. The policy should state clearly how it will be enforced and what discipline can be expected. A policy without a penalty for violation is often ignored; therefore, some form of disciplinary action should be taken for smoking violations.

After a smoking policy is implemented, it should be monitored and evaluated. The person responsible for enforcement should receive feedback and should be flexible enough to make changes if required.

Further Information

For further information on smoking in the workplace, contact Rick Stokes, Personnel Consultant, in Nashville at (615) 256-8141 or contact your MTAS Municipal Consultant.

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and wastewater management.

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