

Case 13

“Smokescreen”

Since 2005, a nicotine-free hiring policy has been adopted by a growing rank of employers including, among others, the Cleveland Clinic, Medical Mutual of Ohio, Scotts MiracleGro Company, and USI Financial. In early 2010, Summa Health Systems, the largest employer in Akron OH, stopped hiring smokers. As of 1 May 2010, St. Luke’s Hospital and Health Network in Bethlehem PA no longer hires smokers.

Employers justify the selective hiring practice, citing data that support this decision. The U.S. Centers for Disease Control and Prevention (CDC) assert that smoking is the # 1 preventable cause of death, leading to heart disease, emphysema, lung cancer and other costly health problems. A 2006 study published on the website of the Ohio Health Policy Institute reported a number of findings demonstrating the impact of smoking on business costs. Businesses lose \$3,400 per year for every employee who smokes. Smokers average 6.16 missed days of work per year due to illness compared to 3.86 days for nonsmokers. Employees who smoke have almost twice as much lost production time per week as nonsmokers. Businesses average \$2,189 in workers’ compensation costs for smokers compared to \$176 for nonsmoking employees. Employees who smoke drive health insurance premiums up. Health-related and insurance companies maintain that hiring only non-smokers models good behavior for clients and society.

Short of a ban on hiring smokers, many companies have taken advantage of federal workplace clean air rules to encourage their smoking employees to quit smoking. Some employers have extended smoking prohibitions to the entire workplace (including outdoors), and ban employees from starting their workday smelling like smoke. In the Dayton OH area, Kettering Health Network employees are not allowed to smoke during breaks because they may return to work smelling of smoke. Other companies offer insurance incentives (within Health Insurance Portability and Accountability Act – HIPAA limitations) and other inducements to encourage smokers to quit smoking. However, employers that have gone to the more extreme ban on hiring smokers hope that eventually the culture of their companies will change and lead to a completely smoker-less workforce.

For companies with a no-hire policy, new hires are required to take a urine test as part of their pre-employment physical. The test indicates the presence or absence of cotinine, a nicotine metabolite with a relatively long half-life that remains in the urine of habitual smokers. Job offers are withdrawn for those who test positive for cotinine, or, in some cases, the smoker must agree to take a smoking cessation class and pass a follow-up urine test before the job offer is finalized. Current smokers are not affected at organizations banning new hires who smoke, except for possible disincentives to smoking (like higher insurance premiums) or incentives to quit (bonuses, etc.).

The Cleveland Clinic website posts the following hiring policy:

To take further steps in preserving and improving the health of all its employees and patients, Cleveland Clinic has recently implemented a nonsmoking hiring policy requiring all job applicants and individuals receiving appointments to take a cotinine test during their pre-placement physical exam. This is a pre-employment test only.

During a presentation at the Akron Roundtable, reported on 29 July 2008 in the Akron Beacon Journal, Cleveland Clinic President and CEO Dr. Cosgrove said that not hiring smokers had saved the Cleveland Clinic system about \$7 million in 2007.

Uwe Reinhardt, Professor of Economics and Public Affairs at Princeton University, is quoted on the Ohio Health Policy Institute website:

“Management is facing tough decisions with regard to controlling [health] costs. You really have two choices: make everyone share more of the cost burden, or use your legal right to go after those who are demonstrably reckless with their health. Since a small minority uses the majority of health-care resources, they need to be held accountable for their actions.”

Not surprisingly, the no-hire policy has its critics who argue that employees should be free to engage in any legal activity during their off-work hours. They wonder whether not hiring smokers presages prohibitions against hiring those who are overweight, for example, given that the CDC confirms that obesity is the # 2 preventable cause of death in the US. Perhaps employers will avoid prospective employees who engage in risky activities such as hang gliding or mountain climbing.

Lewis Maltby, President of the National Workrights Institute, is quoted in The New York Times on the Web (8 February 2005): “Once you cross the line and allow employers to control any type of behavior that’s not related to job performance, there’s no limit to the harm that can and will be done.”

The American Civil Liberties Union also opposes these hiring limitations, but Ohio is an ‘employment at will’ state, which limits the possibility of legal action. States cannot interfere with federal laws banning discrimination based on race, color, religion, sex, national origin, gender, age, disabilities, or genetic information. Individual states can pass specific legislation to prevent employers from making smoking status a condition of employment. Unlike Ohio, more than half the states plus the District of Columbia have done just that, offering varying levels of protection. Connecticut and California have laws prohibiting hiring discrimination based on any legal behavior. The remaining states have no such limitations.