

WORKPLACE SMOKING  
RESTRICTIONS THAT WON'T GO UP IN SMOKE

by

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A rumble went through the Boeing Company in April 1984 when it announced a policy of progressive work-site smoking restrictions eventually culminating in a total ban on smoking in all Boeing facilities. With this announcement, the 83,000-employee aerospace giant becomes the largest U.S. employer to make a commitment to a smoke-free work place.

The rationale for adopting the clean indoor air policy was summed up by Boeing's Vice-Chairman, Malcolm Stamper, "It is the responsibility of management to provide the cleanest, safest, and most healthful environment for its employees. Boeing is continually striving to meet these objectives and developing a smoke-free environment is an essential ingredient." (1)

Before reaching this decision Boeing spent over a year examining the problems associated with smoking on company property and reviewing its options. Company officials stressed that no single event or complaint was responsible for adoption of the smoking restrictions; rather the decision was based on a growing sense that the mood was right for a healthful change in the environment. The new policy is also responsive to the company's duty to provide its employees with a safe and healthy work environment.

The interim Boeing policy bans smoking in company libraries, computer rooms, elevators, lobbies, restrooms, hallways, stairways, auditoriums and classrooms. A total ban on smoking is the announced goal. Although Boeing anticipates that the policy will be largely self-enforcing, its policy announcement states "Supervisors have a responsibility to see that the spirit and the intent of this policy are complied with and to enlist the cooperation of employees in accomplishing this objective recognizing the needs and problems of both smokers and non-smokers. Supervisors should be alert to smoking problems and make every reasonable effort to minimize the effects of smoking on their employees."

## MOTIVATIONS FOR CLEAN INDOOR AIR POLICIES

Boeing is not alone in its decision to institute a no-smoking policy in its workplace. Many other employers are learning that smoke in the corporate environment has an impact far beyond the lungs of smoking employees. The motivation for policy development can come from four areas: legislation, litigation, cost containment, and workplace health and safety.

\* Legislative mandates are an increasingly important

factor. Recently, Los Angeles, the second largest city in the United States, joined a growing list of municipalities with ordinances requiring private employers to establish smoking policies in their workplace. Failure to adopt a company policy will soon be punishable in Los Angeles by a fine of up to \$1,000, incarceration of company officials for up to six months, or both jail and a fine.

- \* Judicial decisions throughout the United States uphold the right of employees to work in a smoke-free environment. In the seminal case on the subject, a New Jersey judge ruled that the common law duty to provide a safe workplace requires the employer to protect non-smoking employees from the hazards of secondhand tobacco smoke. The court described the employer's duty as one based on a widely recognized common law concept existing in every jurisdiction of the United States. Responding to the common misconception that employees have a right to smoke on company time, the judge declared, "The right of an individual to risk his or her own health does not include the health of those who must remain around him or her to properly perform the duties of their jobs." (2)
- \* Significant cost containment can be achieved through creation of a smoke-free workplace. For example, a Seattle-based insurance company discovered that its smoking restriction policy was like money in the bank. After Unigard Insurance Group implemented a stringent no-smoking policy it received an unsolicited \$6,000 annual rebate from its janitorial contractor for one office building alone. The savings were made possible, according to the contractor, by the reduced workload required to keep smoke-free areas clean.
- \* The health effects of sidestream smoke exposure are documented in a recent study of 2,100 non-smokers who worked in a smoke filled work environment. The results, published in the New England Journal of Medicine, revealed that the non-smokers had pulmonary function levels equal to those of light smokers (between one and ten cigarettes a day). (3)

#### LEGISLATION

Statutory restrictions on smoking in the workplace seem to many to be a relatively recent phenomenon inspired by the new non-smoking ordinance in San Francisco. The fact is, there is a long history of smoking restrictions in the United States. Several leading corporations, such as the Campbell Soup Company, have enforced their own corporate ban on smoking since before the turn of the century. In addition, starting with the Surgeon General's report in 1972 which first announced a relationship

between smoking and disease and death in non-smokers, all but fourteen states have imposed various restrictions on smoking in public places. Statutes in nine states specifically regulate smoking in the private sector workplace. (4)

Supplementation of state statutes by counties, cities and other governmental subdivisions is becoming increasingly common. Many local jurisdictions have adopted ordinances like those in Los Angeles and San Francisco which require employers to develop policies which protect employees from the hazards of sidestream smoke.

"Laws restricting smoking in the workplace are spreading because they are necessary, they are self-enforcing and they work," observed Charles Mawson, legislative Director for Californians for Non-Smokers' Rights. "Based upon our track record of success in 31 communities in California, I see those ordinances spreading across the country."

This patchwork of laws can have a profound impact on companies operating in more than one state or municipality. Boeing found it prudent to develop its own no-smoking policy in order to maintain consistent personnel rules in all of its locations. Faced with a veritable flood of legislation, other companies now realize that strict smoking controls are the only way of assuring efficient and uniform administration of company work rules while also avoiding penalties for violation of state and local ordinances.

#### LITIGATION

Many organizations shy away from smoking bans or restrictions for fear of lawsuits brought by smoking employees. They justify their inaction by assuming an affirmative obligation to protect the "rights" of smokers as much as non-smokers. They conclude, without benefit of legal counsel, that a company clean indoor air policy must strike a balance between the interests of smokers and non-smokers. These assumptions are based upon a fundamentally unsound premise that smokers have a "right" to smoke in the workplace. Although this premise has gained popular acceptance it finds no support in the law.

The common law of every American jurisdiction holds that employees serve at the pleasure of their employer except where restrictions are imposed by labor contracts or civil service statutes. This basic principal, commonly referred to as the Employment at Will doctrine, affirms the employer's legal authority to control the conduct of its employees and to restrict personal behavior to those things which are essential to the employee's assigned tasks. The national Labor Relations Board succinctly summarized the rule by observing, "Working time is for work." (5) In our American common law system there is no more a right to smoke in the workplace than there is a right to sing at the top of one's voice or to play a radio at high volume or to do anything else which is not necessary to the performance of the employee's job.

Not only are employers free to control smoking in the workplace, they are under an affirmative obligation to do so

when smoking harms other members of their workforce. For example, the Washington Supreme Court has spoken in unison with the other American jurisdictions in declaring, "That it is the positive duty of the master to exercise reasonable care to furnish a safe place of work and that the duty is a continuing one, has so often been stated by this and other courts as to require no citation of authority." (6) In ordering the New Jersey Bell Telephone Company to create a smoke-free environment for one of its employees in 1976, the trial court declared: "The portion of the population which is especially sensitive to cigarette smoke is so significant that it is reasonable to expect an employer to foresee health consequences and to impose upon him a duty to abate the hazard which causes the discomfort. I order New Jersey Bell Telephone Company to do so." (7) A growing body of similar court and arbitration awards makes it clear that employers will pay increasingly heavy legal penalties for indecision on the smoking issue.

The U. S. Public Health Service reports that 15.5 million persons in the United States suffer from chronic lung problems. Although these members of the work force have long suffered in silence, persons sensitive to secondhand smoke are increasingly filing suit against their employers to obtain injunctive relief and monetary awards when their job requires them to be exposed to secondhand smoke in the workplace. In Shrimp v. New Jersey Bell Telephone Company, and Smith v. Western Electric Company, employers were granted injunctive relief against their employers. (8) Violation of such injunctions is punishable by daily fines and/or incarceration of key company officials in the discretion of the court.

In California, an airline stewardess sensitive to secondhand smoke has been granted a permanent disability indemnity plus all expenses and attorneys fees because of her allergic reaction to the in flight cabin air containing tobacco smoke. (9) This disability recovery against TransWorld Airlines is representative of numerous public and private sector disability awards granted to non-smoking employees injured by secondhand smoke exposure. (10) In some states employers are paying the price of inaction even where employees leave the workplace or decline a job offer before suffering the ill effects of secondary smoke. In Iowa and California unemployment benefits have been granted to non-smoking workers who have resigned or declined work because of the employer's failure to provide smoke-free work areas.

In yet another landmark case, Federal Judge Donald Vorhees ruled in Vickers v. Veterans Administration that an employee suffering the ill effects of secondary smoke exposure is a handicapped worker entitled to special employment accommodation under the Federal Rehabilitation Act of 1973. (11) The Act applies to all public and private employers receiving more than \$2,500 in federal funds from any source during a single year. A violation of the Rehabilitation Act of 1973 renders the employer ineligible for receipt of further federal funds until reasonable accommodation has been made for the handicapped employee or job applicant. Elimination of the secondary smoke is such a "reasonable accommodation" and one which the employer is obligated to

provide.

In Vickers, Judge Vorhees indicated that if the employer had "promulgated a directive forbidding the smoking of tobacco in any office space, this court would readily enforce that ban." Similarly, where employers have honored their obligation to bargain in good faith with unions prior to implementing a smoking policy, smoking restrictions have been systematically enforced by arbitrators, with or without union consent. In an arbitration award involving Litton Industries, for example, the employer's unilateral policy was upheld even in light of a long and unsuccessful history of attempting to develop a policy by mutual agreement with its labor organizations. Litton Industries justified its action by citing its reserved management right to adopt "reasonable rules." The impartial arbitrator agreed, stating, "[T]he prohibition of smoking in a work place where non-smokers are present is eminently reasonable. Given the state of scientific knowledge on the subject, such prohibition can be beneficial to all concerned." (12)

By one estimation, 30% of all businesses in this country already restrict smoking in the workplace. They do so with the full knowledge that it is legal to ask about smoking in a job interview and to refuse to give hiring consideration to job applicants who smoke. They also know that they have a significant legal and economic risk exposure if they do not have a smoking restriction policy. There is no corresponding risk exposure when a smoking policy is properly implemented.

#### COST CONTAINMENT

Recent analysis of the costs associated with smoking on the job reveals that smoking restrictions are a powerful cost containment measure. Weyerhaeuser, a major forest products company headquartered in the Pacific Northwest, recently studied the impact of smoking at its corporate headquarters. In an interoffice communication, this Fortune 500 company, widely recognized for its progressive human resources policies, concluded "we estimate smoking costs at corporate headquarters to be 4.9 million (a year)."

This internal cost analysis was based on published research findings in the field of work-site smoking costs. When applied to the Weyerhaeuser Company, these findings produced the following results:

**ABSENTEEISM:** "Smokers average 50% more absences than non-smokers...males smoking over 40 cigarettes a day are absent 84% more often than their non-smoking counterparts."

**ON-THE-JOB-PRODUCTIVITY:** "Smokers waste 30 minutes a day in the smoking ritual...this results in a collective annual time loss of 44 man-years."

**INSURANCE PREMIUMS:** "Male heavy smokers use the health care system, particularly hospital stays, 50% more than non-smokers...reducing the number of smokers could reduce corporate health care coverage premiums by \$384,457."

**EFFECTS ON NON-SMOKER:** "Non-smokers in a smoking work

environment (sic) can be exposed to the equivalent of 1-10 cigarettes a day...employees may be unable to do work under these conditions."

MORTALITY: "Mortality, on the average, is 70% greater in smokers than in non-smokers...297 high risk employees may be 270% more likely to die than their non-smoking peers of the same age.

ADDITIONAL COST SAVINGS: "Personnel costs will decline... Maintenance costs will decline...Actual physical depreciation on furniture and equipment will slow substantially...Insurance rates can be slashed through renegotiation for new fire, health, accident and disability coverage...employee morale will improve."  
(13)

Based on these findings, Weyerhaeuser is working on development of a corporate smoking policy for its headquarters.

A second Seattle-area company had documented dramatic savings from its non-smoking policy in yet another way. "In today's dollars, that decision (to eliminate smoking) is saving me \$30,000 per year in cleaning costs alone," reported Warren McPherson, president of Radar Electric. The result of these savings is that the maintenance budget at this small Seattle electric supply firm is only one half what it would be had smoking not been banned.

Smoke-free organizations are also saving in health care costs, the most rapidly rising cost component in employee benefit packages. The Austad Company, located in Sioux Falls, South Dakota, has never allowed smoking in its facilities. The cost of its employee health coverage is only one-third as expensive as comparable organizations where smoking is allowed.  
(14).

#### WORKPLACE HEALTH AND SAFETY

The R. J. Reynolds Tobacco Company asserts in a recent media blitz that "there is little evidence--and certainly nothing which proves scientifically--that cigarette smoke causes disease in non-smokers." (15) This position is not shared by experts outside the tobacco industry. In a 1983 in-depth examination of the issue, the American Medical Association concluded, "Research during the last decade has yielded steadily accumulating evidence indicting tobacco smoke as a significant health hazard to the non-smoker." (16)

"The evidence is very solid," states United States Surgeon General C. Everett Koop, who recently announced he is convinced that the relationship between "passive smoking" and illness and death can now be proved. This evidence is used increasingly, and with striking success, by employees who sue to enforce their right to a safe, healthy and smoke-free work environment.

Smoking-related health risks fit into three major categories. Short term effects on otherwise healthy individuals, short term effects on people with existing heart, lung or other respiratory problems, and long term effects on both populations.

Of the 500 studies showing the relationship between passive smoking and disease and death in non-smokers, the most profound

was recently announced by the U.S. Environmental Protection Agency. Entitled "E.P.A. Finds About One-Third Non-smoking Cancers Due to Passive Smoking," the report concludes, "[t]hat somewhere between 500 and 5,000 persons per year die from cancer from inhaling smoke from other people's cigarettes." (17)

After examining these risks, the former Senior Vice-President of Health, Safety and Environment for the Manville Corporation, Dr. Paul Kotin, observed, "The bottom line impact of smoking is on an order of magnitude which exceeds any other factor in the work environment. The data was overwhelming and couldn't be challenged by foe or friend." Dr. Kotin concluded "Non-smoking must be integral to the total approach to a non-hazardous workplace."

Manville, prior to its divestiture of its asbestos plants, instituted a ban on smoking and refused to hire smokers in all of its asbestos plants. Although the policy was strictly enforced, the company did not have to dismiss anyone for smoking at work. The reaction of employees was varied; some quit smoking through company sponsored SmokEnders classes and a few moved to non-asbestos jobs within the company. According to Dr. Kotin, however, most employees understood and supported the policy.

#### COMPONENTS OF A SUCCESSFUL POLICY

While there is no absolute formula for successful implementation of no-smoking policies, the common denominator is a comprehensive understanding of the rationale behind the introduction of smoking restrictions and policy alternatives. Boeing spent almost a year reviewing the legal, labor and personnel implications of a clean indoor air policy before announcing its intention to implement a ban on smoking. Based on the visibility and volatility of the issue of smoking, it is important to create a partnership between management and labor on the issue of corporate no-smoking policies. Participatory management, which involves employees in policy development and implementation, is the key to success. Moreover, smoking restrictions are a mandatory bargaining subject and unions must be given an opportunity to negotiate over the company's proposals unless they have waived that right. If negotiations result in an impasse, however, the company is then free to unilaterally implement its last proposal. (18)

Regina Carlson, Director of the New Jersey Group Against Smoking Pollution, has studied hundreds of organizations with clean indoor air policies. "The companies who are successful at introducing stringent no-smoking restrictions clearly communicate what their policy is and why it is necessary," she observed. "The strategies, timelines and incentives may vary, but effective communication has always guaranteed success."

Experience shows that workplace smoking restrictions work well when they are properly implemented. "We have not had any problems enforcing our policy...(which) bans smoking entirely... In summary, I believe it can be said that the policy is working very well," reports Dr. William Paul, Corporate Medical Director

for the Manville Corporation.

The benefits of stringent corporate no-smoking policies include: the ability to satisfy smoking control ordinances, reduction in corporate legal liability exposure, substantial cost savings and the maintenance of a safe and healthy work environment.

Malcolm Stamper, Vice-Chairman of the Boeing Company, concluded, "When we provide a better operating atmosphere for our high tech machinery than we do for the people who operate them, then it's time to recess policies and that's what's been done." Like it or not, the time for reassessment is also here for all other American employers.

#### SIDEBAR

#### COMPONENTS OF A SUCCESSFUL POLICY -- RESTRICT

##### R -- REVIEW THE RESEARCH:

The first step to successful non-smoking policy implementation is a comprehensive understanding of the rationale behind the introduction of smoking restrictions and a review of the many possible alternatives.

##### E -- EMPLOYEE INVOLVEMENT:

Stringent smoking restrictions will present a hardship to certain employees based on their addiction to nicotine. Participatory management, which involves employees in policy development and implementation, is the key to success.

##### S -- STRATEGIC PLAN:

Resolution of any problem in a corporate environment requires the development of a strategy--clean indoor air policies are no exception.

##### T -- TIME FOR TRANSITION:

As with any change, people need time to make the required adjustments. Organizations need different timetables for policy implementation based on differences in employee populations.

##### R -- REDUCE EXPOSURE TO SMOKE:

It is possible to get so involved with policy development that an organization loses sight of the goal of the policy -- a smoke-free workplace.

##### I -- INCENTIVES FOR EMPLOYEES:

Many employees use the reduced opportunities to smoke at work as an incentive to quit smoking. Assisting these efforts is a wise corporate investment.

##### C -- CLEAR COMMUNICATIONS:

A lot of time, energy and resources goes into the Tobacco Industry's efforts to keep people smoking.



Any counter education efforts needs to be sophisticated in its message and delivery.

T -- TAKE A BOW:

Organizations that have successfully implemented stringent smoking policies tend to attract very favorable media attention.

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