

Quest

Employer's smoker ban draws heat

By Carol Oppenheim
Chicago Tribune

LOS ANGELES — Can a city require its firefighters to pledge not to smoke either on or off the job before putting them on the payroll? And fire them for breaking their oath of abstinence?

The city of San Mateo in northern California decided a year ago it could do just that with all newly hired firefighters and now finds itself the object of a lawsuit expected to have wide-ranging impact.

"There is no constitutional right to smoke," said James Linenberger, San Mateo deputy city manager. "And no one has a right to a public job."

"Firefighting is a dangerous occupation. We want qualified, healthy people who can perform the work. . . . Every employer deals with regulating the private lives of employees when it affects their jobs."

"SMOKING IS A matter of personal preference involving a private choice," responded Alan C. Davis, the lawyer for nine rookie firefighters and their union, which filed the suit. "The promise not to smoke impinges on several fundamental rights guaranteed by the Constitution."

"Furthermore, it is absurd and arbitrary to impose different standards on people performing the same task. Other department members are not banned from smoking, even in the firehouse."

Davis said he did not know whether any of the nine recruits uses any form of tobacco, though all of them signed the pledge. And to date, the city has not fired or disciplined any of them for breaking the oath.

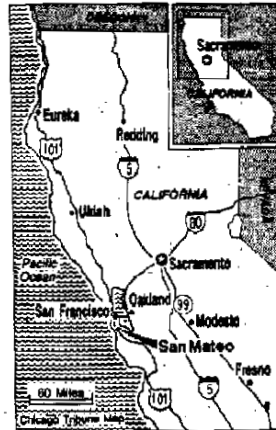
Linenberger said the idea for a mandatory pre-employment contract containing both a no-smoking provision and the requirement that new firefighters must pass an annual physical fitness test resulted from the increasing cost of disability payments to the city's public safety employees.

"WE HAVE TWO to four firemen and policemen retire each year on disability, and it's ending up costing us \$250,000 for each one," he said.

Under state law, Linenberger said, any public safety employee forced to leave the job because of heart disease, lung cancer or emphysema is presumed to have a work-related disability.

"We can say the employee has been smoking two packs of cigarettes a day for a year but the law always finds in favor of the worker. If the law makes that type of connection, we are going to discriminate in favor of nonsmokers and the taxpayers."

There is no ban on hiring smokers in the police department or in any other city job. Ninety firefighters on the job before the new policy went into effect merely were requested to voluntarily attend no-smoking and health education lectures at the fire-



houses. "If newspapers started hiring only reporters who are thin and have master's degrees, they don't ask the senior employees to get skinnier or smarter," Linenberger said.

THE LAWSUIT against the city, scheduled to be heard Dec. 16 in San Mateo County Superior Court, contends that any change in working conditions such as a pre-employment contract is subject to bargaining by the union.

The suit also charges that the no-smoking pledge violates the state constitution by requiring public employees to take an oath and violates federal constitutional guarantees of equal protection under the law and right to privacy.

"How far can you carry a work rule that invades the privacy of the home?" Davis asked. "The union never would have agreed to a rule covering off-duty time."

The city said it did have the approval of San Mateo Firefighters Local 2400 last December, but the union later changed its mind. Union President Dean Williamson denied that any such agreement was reached.

FIRE CHIEF Art Koron, a nonsmoker, said the number of smokers in the department had dropped considerably in the last decade. "We have whole firehouses that have quit," he added. "One of the assistant chiefs quit and the other is trying like the dickens."

At least two other cities have instituted no-smoking and annual fitness tests for new firefighters, and some firehouses across the nation have confined smokers to special areas.

In Alexandria, Va., Fire Chief Charles Rule said that about 50 firefighters, one-fourth of the department, had been hired since the ban on smoking on and off duty was instituted five years ago. None has been dismissed for violating the ban.

"We're not the KGB, and we don't go sneaking around their homes," Rule said. "But we haven't caught anybody. I don't think many people are smoking tobacco today, though I don't know about the other stuff."

The Wichita, Kan., Fire Department initiated its policy 18 months ago. Since then, the number of smokers on the 400-member force has dropped from one-third to one-fifth and ex-smokers have improved on physical fitness tests.

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