

SURVEY OF WORKPLACE SMOKING RESTRICTIONS

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TABLE OF CONTENTS

	<u>PAGES</u>
I. INTRODUCTION.....	1
II. SMOKING CESSATION PROGRAMS.....	4
III. UNWRITTEN SMOKING RESTRICTION POLICIES.....	9
IV. WRITTEN SMOKING RESTRICTION POLICIES.....	11
V. LEGISLATION.....	15
VI. LITIGATION.....	19
VII. REVIEW OF SURVEYS OF SMOKING RESTRICTIONS.....	25
VIII. REPORTS FROM TI FIELD STAFF.....	27

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I. INTRODUCTION

As evidenced by recent media attention and increased activity by anti-smoking groups in this area, the restriction of workplace smoking has become an important issue warranting tobacco industry concern and action.

To insure that the concern is well-based and the action is well-planned, The Tobacco Institute has developed this survey of corporate smoking control policies. The information was collected through a search of data bases, review of literature, contact with trade associations and reports from Institute field staff.

By no means is this survey a complete catalog of workplace smoking restrictions in the private and public sectors. After all, there are over three million operating businesses in the United States today. However, without being exhaustive, the survey highlights the marked increase in and the nature of anti-smoking activity in the work environment.

In 1982, the American Lung Association targeted "smoking in the workplace" as the primary issue in the nonsmokers' rights movement. Also, Smokenders established a corporate services division to market its smoking cessation program to the business community.

Through legislative and regulatory mandates, state and local governments became more involved in anti-smoking activity. For example, in California a law was enacted which essentially requires that each state department adopt the state Personnel Board's existing restrictive policy on smoking or develop a new policy with certain limitations. In Kansas, the state health department has begun a new program - Project Vote - to encourage employers to allow an employee plebiscite on whether smoking should be permitted in their workplace.

Federal and state courts provided notable legal victories for anti-smoking interests. In Vickers v. Veterans Administration, a U.S. District Court ruled that a federal employee who is hypersensitive to tobacco smoke is "handicapped" within the meaning of the Rehabilitation Act of 1973. The Missouri Court of Appeals, in Smith v. Western Electric Co., held that an employee may have a common law duty to ensure a smoke-free environment for employees sensitive to burning tobacco.

Each day bring with it new developments "smoking in the workplace" - few, if any, of which will have a salutary effect on the tobacco industry. It is with this important understanding in mind that the "Survey of Workplace Restrictions" has been compiled. The information presented here is only a first - but key - step in addressing this complex issue. Already, The Tobacco Institute is preparing a detailed bibliography on workplace smoking, which will further assist the industry in confronting this important problem in the 1980s.

Information Services
The Tobacco Institute

II. SMOKING CESSATION PROGRAMS

- A. "Freedom from Smoking": Sponsored by the American Lung Association, this nationwide program, consisting of smoking cessation clinics and literature, is aimed specifically at employee smoking. The following sample of companies have participated in "Freedom from Smoking":

Blue-Cross-Blue Shield, Research Triangle Park, NC
Boeing Co., WA
Burroughs Welcome, Research Triangle Park, NC
Eddie Bauer Inc., WA
EDS Federal, Cary, NC
EPA, Research Triangle Park, NC
Equitable Life Assurance Co., Charlotte, NC
General Electric, Research Triangle Park, NC
Hanes Knitwear, Winston-Salem, NC
IBM, Raleigh, NC
North Pacific Insurance Co., WA
Seattle First National Bank, WA
Springdale Mills, Rutherfordton, NC
WRAL Television, Raleigh, NC

- B. Smokenders: In 1982, Smokenders established a Corporate & Group Services Division. The pamphlet advertising this new aspect of Smokenders' operations claims each smoking employee costs a company \$4600 and 75% of smoking employees want to quit smoking. It goes on to report the unsubstantiated allegations of Professor William L. Weis, a leading anti-smoking figure in the effort to restrict workplace smoking. In an apparent attempt to gain credibility for its claims and clients for its business, Smokenders includes in its pamphlet the following list of organizations which have participated in the Smokenders' program:

Allied Chemical
American Can
American Express
American Petrofina, Inc.
Anheuser-Busch, Inc.
AT & T
Bally's Park Place Casino
Blue Cross and Blue Shield
Boeing Company
Chase Manhattan Bank
Computer Vision
Connecticut General Life Insurance Co.
Consolidated Freightways

Daon Corporation
DeLoitte Haskens & Sells
Dewey Ballentine
Bushby Palmer & Wood
Dow Chemical Company
Doyle Dane Bernbach
Eaton Corporation
Educational Audio Visual
Ernst & Whinney
Fairchild Test Systems
Farrand Industries Inc.
Federal Home Loan Bank New York
Federal Reserve Bank

03737615

II. SMOKING CESSATION PROGRAMS

General Dynamics
General Electric Co.
General Telephone of Florida
Hartford Insurance Co.
Harvard University
Honeywell
Inductotherm Corp.
Intsel Corp.
Johns-Manville Corp.
Johnson & Johnson
Kaiser Aluminum
Lear Siegler, Inc.
Lever Brothers
Lockheed
Los Angeles Times
Merck & Co. Inc.
Mobil Oil
Montclair State University
National Broadcasting Co., Inc.
New York Times
Northwestern Bell Telephone
Olinkraft, Inc.
PepsiCo.
Queensboro Community College
Rockwell International
Rodale Press, Inc.
Salomon Bros.
Shaklee Corporation
Singer-Kearfot
Society National Bank of
Cleveland
Stouffer Corp., The
Sun Gas Co.
Syntex Lab
Temple Beth Ami
Texas Instruments, Inc.
Trammell Crow Company
TransWorld Airlines, Inc
Travelers Insurance Co.
Union Carbide
United Airlines
Western Electric
Xerox Corporation
Young Men's Christian
Association, Pottstown, PA
Young Men's Hebrew
Association, NY
American Oncologic
Hospital, Philadelphia, PA
Blue Cross Employees
Woodland Hills, CA.

Cancer Therapy &
Research Center
San Antonio, TX
Cherry Hill Hospital
Cherry Hill, NJ
The Cleveland Clinic
Cleveland, Ohio
Columbia Presbyterian
Hospital, NYC
Grand Prairie Community
Hospital,
Grand Prairie, TX
Hershey Medical Center
Hershey, PA
Homewood Hospital
Guleph, ONT
Veterans Administration
Hospital
Albuquerque, NM

II. SMOKING CESSATION PROGRAMS

- C. Employee Programs: A number of companies utilize an incentive program, or some variation, to assist employees with smoking cessation efforts. For example, a business may give cash bonuses to employees who stop smoking or it may encourage employee participation in organized smoking cessation programs through the payment of fees. The companies listed below illustrate the variety of employer programs.

Alcoa honors employees who have stopped smoking by posting their pictures in a lobby display.

American Cancer Society and the American Heart Association offer stop-smoking programs for employees.

American Health Foundation offered a smoking cessation program at no cost to employees which was conducted on company time and in company facilities.

Becton Dickinson and Company offered manuals at cost to employees, then returned the money to employees when they quit smoking.

Blue Cross-Blue Shield of New Jersey has run in-house cessation programs.

Burger King, at its headquarters in Miami, FL, featured a "Freedom from Smoking" manual in its "Employee Service Bulletin." A special coupon requested that employees contact the Dade-Monroe Lung Association.

Campbell Soup offered smoking cessation programs. It cost the company \$500 for every employee who quit smoking, mainly for time off the job. About 70 employees participated-- a 20% quit rate.

Consolidated Edison Co. Employees pay their own way through stop-smoking programs but Con Ed adds an extra: spouses of employees are also invited to attend the clinics at the reduced rates.

Cybertek Computer Products, Inc., in Los Angeles, CA, offers employees a \$500 bonus if they quit smoking.

G. W. Dahl Co., Inc., (Bristol, RI.) offers a monetary bonus program to encourage employees to stop smoking. It has been in effect for 13 years.

II. SMOKING CESSATION PROGRAMS

Deluxe Check Printers offered the "Freedom from Smoking" manuals at company expense to all 900 employees. Also offered special personal checks that feature "Thanks for not Smoking" imprints.

Dow Chemical division in Midland, TX, has awarded money in a special lottery for nonsmokers.

Ebsco Industries in Red Bank, NJ, sponsored a program in the early 1970s to pay a \$10-per-month bonus to employees who stated they did not smoke. Reporting was entirely on the honor system. Employees who were previously nonsmokers and smokers who quit received the bonus, paid at year's end. The program was instituted by a senior vice president, himself an ex-smoker, who was struck one day by the amount of smoke he encountered as he walked into the company's cafeteria.

Educational Testing Service in Princeton, NJ, has an educational program, with sessions on company time and on employees' time, led by staff and assisted by a non-profit group.

Fafnir Bearings (CT) - is using "Freedom from Smoking" manuals.

G. Fox & Co. sponsored lung association workshops on smoking and health.

General Foods helps employees pay for smoking-cessation courses.

General Motors Corp. subsidizes the Smokenders program for over 600 employees in New York offices.

Hoffman-LaRoche offers partial payment for any off-site smoking cessation program chosen by employees.

IBM initiated a Health Education Program in 2/81 which includes a smoking cessation course. The course is available free to employees, retirees and families. Also promoted "Freedom from Smoking" manuals.

Instematic Inc. (IL) which manufactures small electrical appliances, offers its smoking employees incentives to quit. It has run three separate programs. In one program, employees could bet the company up to \$100 that they would quit smoking for one year. In the most recent campaign, 18 quitters were eligible for a lottery.

II. SMOKING CESSATION PROGRAMS

JC Penney Co. Inc. (NYC) offers free guidance and counseling and directs employees to stop smoking programs of the American Cancer Society.

The Leslie Company (NJ) used the American Cancer Society smoking cessation clinic (educational, behavior modification) on part company time and part employee time with no charge to participants or employer.

Massachusetts Mutual Life Insurance will pay up to \$100 for 2 hypnosis sessions performed by qualified physicians or psychologists. Half the payment is made when the treatment begins and half after six months, assuming the patient has stopped smoking.

Miles Laboratory (Elkhart, IN) using its corporate training department, conducted a program which was based on the ACS program. As a result, the participants have formed an "I Quit Club" open to all who complete the class.

NY Institute of Hypnotherapy offers stop-smoking programs at special industry rates.

NY Telephone sponsored smoking cessation programs.

NY Life Insurance Co. offered at company expense copies of the "Freedom from Smoking" self-help manuals to group policy holders.

Riveria Motors (OR), since 1978, has run annual smoking-cessation classes and has maintained a psychological "support system" for those who were trying to quit.

Sears Roebuck & Co.'s New York fashion buying office offered employees the 5-week Smokenders program. Approximately half the cost was refunded to employees who were still not smoking 6 months after the end of the program.

South Central Bell through the company newsletter and with the assistance of the ALA of Alabama, promoted the coupon for the "Freedom from Smoking" manual.

Union Pacific set up displays and offered "Freedom from Smoking" manuals to employees in company offices in LA, Portland, Omaha, Salt Lake City, Denver and Kansas City.

Youngstown Steel and Alloy Co. initiated a \$1,000 bonus and savings plan for staff members who stopped smoking.

Zales Corp. of Dallas, TX, offered a one-time program a few years ago. Those who did not smoke following the Seventh-day Adventist Plan were refunded the fee.

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III. UNWRITTEN SMO(NG RESTRICTION POLICIES

AT & T (Whippany, NJ) has designated 70% of its cafeteria for nonsmokers.

Bank of California permits employees to post "no-smoking" signs at their desks.

Bell Laboratories has divided its cafeteria into smoking and nonsmoking.

Becker Electrical Co. (Arlington, VA) imposed a no-smoking policy on behalf of a bookkeeper who claimed she got sick from being around smoke. The 85 employees have been instructed not to smoke in the office area of the building.

Boeing segregates smokers and nonsmokers in cafeterias and wherever individual problems arise.

Chicago Tribune, although it has no written company policy regarding smoking, has taken certain steps to make sure that the rights and privileges of both smokers and nonsmokers are not abused, including designating certain rooms and locations as no-smoking areas, dividing lunchrooms into smoking and nonsmoking areas, not allowing smoking on elevators and adding new and more efficient ventilating systems throughout the building.

Continental Illinois Bank set up no-smoking sections in employee lounges.

General Mills (MN) has smoking and nonsmoking areas and numerous health education activities to encourage employees not to smoke, but no actual incentive programs.

Gillette, (Boston, MA) has 1,200 employees. Smoking is permitted with the exception of one room in the cafeteria.

IBM has established no-smoking sections in cafeterias and smoking bans in elevators and copy rooms. Also provides no smoking signs on request from employees. Smoking in conference rooms is governed by a set of guidelines that takes into account factors such as ventilation and room size.

International Mktg. Group Inc. (Arlington, VA) advertised for a nonsmoker.

New England Mutual Life Insurance Co. (Boston, MA) has signs requesting no smoking in the presence of nonsmokers, placed in all meeting and conference rooms.

J.C. Penney and NLT Corp have established no-smoking sections in company cafeterias.

III. UNWRITTEN SMO(VG RESTRICTION POLICIES

Matthew Levine, president of Pacific Select Corp., a San Francisco, CA, sports marketing firm, refuses to hire smokers because he claims they would irritate their co-workers and they would frustrate his efforts to maintain a "clean, fresh atmosphere" in the company offices. ("Many Burned-Up Bosses Snuff Out Employment Prospects of Smokers" Wall Street Journal, 4/15/82).

The Oak Brook, IL, office of Peat, Marwick, Mitchell & Co. "makes a point of hiring a non-smoking receptionist" as a matter of personal appearance. "It's always more impresssive to meet a person who doesn't smell like a smoker or have a cigaret hanging out of her mouth," the administrative assistant who does the hiring said. (Wall Street Journal, 4/15/82).

Minneapolis-based Physical Electronic Division of Perkin-Elmer Corp. limited smoking to two employee lounges back in 1974.

Riviera Motors, a Volkswagen/Porsche/Audi dealership in Hillsboro, OR, restricts on-the-job smoking to specified areas.

All meeting rooms at the New York City offices of Sears Roebuck and Co. have smoking and no-smoking sections. Nonsmokers have signs on their desk saying, "Thank you for not smoking."

State of Oregon bans smoking in all its meeting rooms.

Travelers Insurance Companies (Hartford, CT) limits smoking, where practical, in areas where air movement is minimal, or in confined areas where smoke may cause discomfort to nonsmokers regardless of air circulation. Two lunchrooms have been set aside for nonsmokers, and smoking in the auditorium, classrooms, and elevators has been prohibited.

The Wall Street Journal divides its New York copy desk into smoking and nonsmoking areas.

Curtis Wright (Caldwell, NJ) which has no smoking in much of its manufacturing area, recently banned smoking in an enclosed testing room after receiving complaints from nonsmokers. The restriction was accepted by the union.

Zale Corporation's smoking rules vary among departments and are set by department managers. The only company-wide regulations provide for nonsmoking areas in the cafeteria, and no smoking in elevators (by city regulation).

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IV. WRITTEN SMOKING RESTRICTION POLICIES

Adrian Construction (TX) has a nonsmoking code which applies to office workers. The firm forbids secretaries and clerks to smoke but permits the smoking habit among professionals.

American Biltrite (Trenton, NJ) "Amtico," an asbestos handler, has a smoking ban in offices and factory.

Austad Company is a mail-order sports equipment outfit with a showroom and retail store in Sioux Falls, SD. Oscar Austad, who started the company in 1963, has never permitted smoking-- no one is allowed to smoke-- not workers, customers or sales people. Any employee caught smoking is immediately fired.

HR Block (Madison, WI) Client complaints led management to forbid smoking in all but ventilated restrooms.

Brewster Realty and Investment Co. (TX) will not have smoking employees, claiming they are frequently sick.

Campbell Soup Company has banned smoking on the job since the company was founded in 1869. Smoking is permitted only in designated break areas.

Control Data Corp. (MN) According to an ALA of WA newsletter, CDC has issued as policy statement that "those areas of our buildings in general use by employees will be nonsmoking, except where specific 'smoking permitted' areas are designated." Control Data was one of the first national corporations to develop an extensive nationwide policy on smoking.

Dean Equipment and Furniture Company (Fairfield, NJ) No smoking allowed anywhere in this company of eight employees.

Florida Life Care. All 700 employees have been restricted from smoking at work. Dr. Karl R. Rolls, president and chairman of the board, cited computer equipment that can not tolerate tobacco smoke as a primary reason for the rule.

G. Fox & Co. has banned smoking since 1977 in offices where more than one person works.

IV. WRITTEN SMOKING RESTRICTION POLICIES

U.S. General Services Administration rules ban smoking in libraries and shuttle vehicles but permit it in mediation conference rooms of the Federal Mediation and Conciliation Service. GSA regulations specify that employees occupying an office may unanimously declare that space as a 'no smoking' area. They state also that 'no smoking' work areas in open space should be planned, providing that (1) the efficiency of work units is not impaired; (2) additional space will not be required; and (3) that costly alterations will not be needed.

Harvard University adopted a new personnel policy for staff members who smoke within university buildings. If the rights of smokers and nonsmokers come into conflict, the policy calls for the smoker to "respect the expressed wishes and needs of the nonsmoker."

U.S. Department of Health and Human Services adheres to a relatively rigid no-smoking policy. Work areas for smokers and nonsmokers are separate. Any nonsmoker with an especially severe reaction to smoke is given a smoke-free work area.

Johns-Manville, an asbestos manufacturer, bans smoking in plants where asbestos and asbestos products are made. The company instituted the ban in 1976. In some Johns-Manville facilities the ban is total. In others, where unions saw the ban as an issue in contract negotiations, the company has had to set up break areas where smoking is permitted. In implementing the policy, Johns-Manville also announced that they would no longer hire smokers in their asbestos operations.

The no smoking policy also was extended to world headquarters in Denver, CO. Employees may smoke only in private offices and in one part of the dining room.

The Leslie Co. (Parsippany, NJ) which employs 450 people in the manufacturing of valves and regulators for steam systems, does not allow smoking during meetings, in restrooms or in the cafeteria except at designated tables. In addition, the company installed "smoke-eater" units at the intake of major recirculation ducts to help remove smoke from recirculated air.

IV. WRITTEN SMOKING RESTRICTION POLICIES

Merle Norman Cosmetics Co. banned smoking for its 825 employees. It claims to have saved \$13,500 from reduced housekeeping.

Navy Federal Credit Union with offices throughout Northern Virginia discourages smoking. "We have it on our employment application---it's the policy not to have people smoke unless there is a dire need," stated John Battaglia, personnel staff.

New York Telephone provides for separate smoking and nonsmoking sections in areas of common use, such as cafeterias and conference rooms. Employees having private offices can decide for themselves whether to smoke or not. In areas with two or more workers, accommodation is urged, with a series of steps to be followed if someone objects to smoking for medical reasons.

Pratt & Whitney Aircraft, Govt. Products Division, (West Palm Beach, FL) has a policy that does not attempt to ban smoking but restricts it in areas which are frequently shared by smokers and nonsmokers. The policy affects over 7,000 employees.

Radar Electric is a Seattle, WA, firm whose first question on their application asks "Do you smoke?" An affirmative response eliminates the applicant from further employment consideration.

Rodale Press, which publishes an assortment of health and nutrition magazines, employs 800 persons in Emmaus, PA. It began a nonsmoking program by informing employees that smoking would be banned in its offices and plants as of a particular date. Employees who continue to smoke on the job once the ban is in force will be reprimanded. Repeat offenders will be fired.

Simi Valley, CA Post Office instituted a smoking policy in April 1982. There is no smoking allowed on the workroom floor. However, this ruling is being challenged by employees.

Snelling and Snelling Inc. does not hire smokers. Those smokers who remain in its employ are continually offered incentives to kick the habit. Policy has been maintained since 1975. Before that smoking was restricted to work areas.

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IV. WRITTEN SMOKING RESTRICTION POLICIES

Spenco Medical Corp. (Waco, TX), has not hired a smoker in 14 years and states it will never do so.

The State of New Jersey in 1980 instituted a new smoking policy for state agencies and employees in which a number of areas are specifically designated no-smoking areas, including entrances, lobbies, elevators, classrooms, auditoriums and conference rooms. Smoking also is prohibited in group work areas unless the occupants unanimously decide otherwise.

Terry Communications (Bradenton, FL) has had the policy of no smoking at work since the business opened 20 years ago, without enforcement problems. The company claims it has a lot of test equipment with gold contact points and smoke tarnishes them.

Thomas Heating and Air Conditioning (Phoenix, AZ) for the past 10 years has not only banned smoking on the premises, but refuses to hire smokers.

U.S. Department of Health and Human Services prohibited smoking in elevators, libraries and conference rooms.

The University of Arizona employees are subject to a new rule that prohibits them from smoking in their offices unless they win the unanimous consent of their coworkers. The rule was drawn up by a committee of faculty and staff members at the urging of University President Henry Koffler. Offenders would be warned, then suspended or fired. The rule became effective 11/1/82.

Western Electric has smoking permitted in all office areas. In the shop area there are specific designated "smoking pens" or "cages". Workers are not allowed to smoke at their benches but may go the smoking pens whenever and for as long as they choose.

03737625

V. LEGISLATION

A. Bills Enacted into Law

1. California, A-2980, Sept. 8, 1982:

Requires the Department of Personnel Administration to mandate that each state department either adopt the existing policy of the state personnel board on smoking, or adopt their own policy on smoking which addresses specified items.

2. San Diego, California, Ordinance 15865, Dec. 6, 1982:

Revises current smoking restriction ordinance (number 11459) to prohibit smoking in "public places and places of employment," except in designated areas. Also requires restaurants seating more than 20 persons to have no-smoking sections.

3. Atlanta, Georgia, June 14, 1982:

Restricts smoking in city owned and operated buildings.

4. Montgomery County, Maryland, Nov. 15, 1982:

Extends coverage of existing law to restrict smoking in retail stores, health care and in certain county facilities.

5. Hawaii County, Hawaii, August 24, 1982:

Amends Article 2 of the Hawaii County Code to prohibit smoking in certain areas owned and operated by the county of Hawaii, including meeting or conference rooms, elevators, auditoriums or sport arenas that are enclosed, community centers, workplaces and on mass transportation buses.

6. Rochester, New Hampshire, March 2, 1982:

Implements the state law banning smoking in all "enclosed public places."

V. LEGISLATION

B. Regulatory Action

1. Kansas, "Project Vote," Oct. 20, 1982:

A cooperative effort of the state and local health departments, Project Vote is a program designed to encourage employee plebiscites on whether individual workplaces will be nonsmoking areas.

C. Pending Legislation

1. New Jersey, S-675, A-293:

Would control smoking in places of employment.

2. Columbia, Missouri:

The Columbia Board of Health has prepared six different proposals to restrict smoking in

1. In city owned buildings except where "no-smoking" signs are posted,
2. In city owned buildings except where "smoking permitted" signs are posted,
3. In certain public places where a proprietor has posted "no-smoking" signs, including restaurants,
4. In certain public places except where proprietor has posted "smoking permitted" signs,
5. In workplaces where "no-smoking" signs are posted,
6. In workplaces except where "smoking permitted" signs are posted.

Study Commission report tentatively scheduled to be submitted to City Council on Feb. 15, 1983.

3. Los Alamos County, New Mexico:

County Council voted down (Nov. 22, 1982) a proposal that would ban smoking in county buildings, elevators, public transportation (except cabs), theatres, hospitals, retail stores and museums and would require restaurants to establish no-smoking sections. However, the Council voted to place the proposal on a public referendum, scheduled for a Jan. 11, 1983 vote.

03737627

V. LEGISLATION

4. Monona, Wisconsin:

Proposed ordinance would ban smoking in restaurants, taxis, buses, businesses and during government meetings. Tabled until January 1983.

D. Defeated Legislation

1. New York, S-2400, A-2746, May 18, 1982:

Would have restricted smoking in certain public places, and workplaces and at public meetings. Bars, places of work or any public place with less than 1000 sq. ft. of area may have been designated as a smoking area in its entirety.

E. Bills-Died with Adjournment

1. Hawaii, H-776, April 28, 1982:

Would have amended existing law which restricts smoking in certain areas to cover all places "owned or operated" by the state.

2. Maryland, SB-200, April 12, 1982:

Would have restricted smoking in certain indoor areas, including places of work, food stores, auditoriums, arenas, public meetings and educational facilities.

3. Michigan, SB-486, Dec. 29, 1982:

Proposed enactment of the Michigan Clean Indoor Air Act. Would have restricted smoking in indoor areas used by the public or serving as a place of work including restaurants, retail stores, offices, etc.

4. Pennsylvania, H-1174, Nov. 11, 1982:

The Comprehensive Clean Indoor Air Act would have prohibited smoking in public places, including restaurants, retail stores, arenas, and offices and other commercial establishments, or at public meetings except in designated smoking areas.

V. LEGISLATION

5. Vermont, H-474, April 22, 1982:

Would have prohibited smoking in public places, workplaces, elevators and at public meetings except in designated smoking areas. "Public Place" means any enclosed, indoor area greater than 100 square feet or seating or normally accomodating more than 25 persons.

6. West Virginia, SB-81 and SB-126, March 13, 1982:

Would have enacted West Virginia Clean Indoor Air Act, restricting smoking in health facilities, mass transportation, work places and elevators.

7. Wisconsin, S-80 and A-80, April 1, 1982:

Would have enacted Wisconsin Clean Indoor Air Act. Would have restricted smoking on public transportation, in educational and health care facilities, indoor movie theatres, certain offices, elevators, government buildings, retail stores, and restaurants with the capacity to seat more than 50 patrons.

F. Bills - Other Legislative Action

1. New York, S-9234:

Would have prohibited persons from smoking in places of work or any indoor areas open to public, except in designated smoking areas. April 19, 1982: Introduced and referred to Health Committee.

2. Punta Gorda, Florida:

Would have banned smoking in any publicly owned building and certain retail stores, except in designated areas, with exemption for bars and restaurants. March 3, 1982: Proposed ordinance died for lack of a second motion to introduce it.

3. Brunswick, Maine:

Would have banned smoking in municipal building. No action after January 18, 1982, introduction by Town Council.

VI. LITIGATION

A. Private Actions to Prohibit or Restrict Smoking in Private Places of Work

1. Shimp v. N. J. Bell Telephone Co.,
368 A 2d 408 (N.J. Sup. Ct. 1976):

In the single case in which a court has found an employee has a right to a smoke-free work environment, a New Jersey court prohibited smoking in all work areas of a company office. Alleging a severe allergic reaction to cigarette smoke, the plaintiff Shimp sued her employer to compel it to provide her a no-smoking work area. This case was not actively defended by N.J. Bell Telephone.

2. Mitchell v. Bell Telephone Co.,
C-4159-76 (N.J. Sup. Ct. 1978):

This was another case in which the plaintiff, an employee of the defendant and allegedly allergic to tobacco smoke, sought an injunction compelling the defendant to provide him with a smoke-free place of work. The court dismissed the case, in response to the defendant's motion which was based on preemption grounds. Mitchell, which was actively defended, was brought by the same attorney who represented Shimp and the dismissal was entered by the same judge.

3. Gordon v. Raven Systems and Research, Inc.,
14092-79 (D.C. Sup. Ct. 1981):

Plaintiff sought reinstatement and damages from her former employer, alleging that she was fired when she insisted that she be provided with a smoke-free environment because of her allergy to tobacco smoke. The court dismissed the case, finding that defendant had no contractual or legal obligation to accede to plaintiff's demands. The court expressly declined to follow Shimp, discussed above, and observed that "neither statute, regulation, nor principles of common law required the Raven Corporation to furnish the plaintiff with the kind of smoke-free workplace she demanded."

VI. LITIGATION

4. Kensell v. State of Oklahoma et al.,
Civ. No. 81-786-T (W.D. Okla. 1982):

The plaintiff, an employee of the Oklahoma Department of Human Services, filed suit in U.S. District Court against his employer, the State of Oklahoma and numerous state officials and employees, contending, inter alia, that their refusal to provide him with a smoke-free workplace violated his rights under the First, Fifth, Ninth and Fourteenth Amendments. Citing FENSR and Gasper, discussed below, the court dismissed the plaintiff's suit, concluding that "[f]or the Constitution to be read to protect non-smokers from inhaling tobacco smoke would be to broaden the rights of the Constitution to limits heretofore unheard of." Like the court in Gasper, the Kensell court noted that the results sought by the plaintiff might better be accomplished through the legislative process.

5. Vickers v. Veterans Administration,
No. (81-85V) (W.D. Wash., August 31, 1982):

A U.S. District Court in Washington State ruled that a federal employee who is hypersensitive to tobacco smoke is "handicapped" within the meaning of the Rehabilitation Act, 29 U.S.C. § 794. The court, however, found that the supervisor's reasonable efforts in this case to accomodate the employee's handicap satisfied the Act's requirement that federal agencies not discriminate against handicapped persons. No damages were awarded to the plaintiff.

6. Smith v. Western Electric Company,
No. 44286 (Mo. Ct. of Appeals, Sept. 14, 1982):.

The Missouri Court of Appeals held that an employer's common law duty to provide a reasonably safe workplace might include an obligation to ensure a smoke-free environment for employees sensitive to burning tobacco. The court did not base its decision on any statute but rather on the "well-settled" law that employers must protect employees from avoidable perils. Western Electric had contended that the federal Occupational Safety & Health Act preempted any state action on this issue. This decision will allow plaintiff the opportunity to prove his allegation at a trial.

VI. LITIGATION

7. Parodi v. Merit Systems Protection Board,
80-7671 (9th Cir., Oct. 21, 1982):

The U.S. Court of Appeals for the 9th Circuit ruled a government employee with a hypersensitivity to cigarette smoke must be given a smoke-free office within 60 days or be granted disability payments. While acknowledging that most disability claims involve a physical or mental limitation, the court stated that an "environmental limitation", such as Parodi's hypersensitivity to smoke, may form the basis for an employee's disability.

8. Hentzel v. The Singer Co.,
(Calif. Ct. of Appeals, Dec. 20, 1982):

The California Court of Appeals found that an employee allegedly fired for insisting on a smoke-free workplace has the right to sue his former employer for damages. The decision, reversing a trial court's dismissal of the Hentzel complaint, emphasized the need to protect employees who voiced dissatisfaction with allegedly hazardous working conditions.

B. Private Actions to Prohibit or Restrict Smoking in Public Places

1. Gasper v. Louisiana Stadium and Exposition District
418 F. Supp. 716 (E.D. La. 1976), aff'd,
F.2d 897 (5th Cir. 1978), cert. denied,
439 U.S. 1079 (1979):

Plaintiffs sued to compel the authorities who manage the Louisiana Superdome to prohibit smoking in the Superdome during sporting and other public events. In support of this request, the plaintiffs claimed a constitutional right to a smoke-free environment, relying on the First Amendment (freedom of speech), Fifth and Fourth Amendments (due process right to life and liberty) and Ninth Amendment (which protects so-called unspecific but "fundamental" rights). The district court unequivocally rejected each of these claims. The court of appeals affirmed this decision in all respects, while noting that the legislature, as opposed to a court, would have broad power to regulate smoking in public places. The Supreme Court denied the plaintiff's petition for review of the lower courts' decisions.

VI. LITIGATION

2. Federal Employees for Non-Smokers Rights (FENSR) v. United States, 446 F. Supp. 181 (D.D.C. 1978), aff'd, 598 F. 2d 310 (D.C. Cir.), cert. denied, 444 U.S. 926 (1979).

Several anti-smoking organizations, whose members included federal employees, sought to compel the federal government to prohibit smoking in federal facilities except in designated smoking areas. Plaintiffs asserted a private right of action under the Occupational Safety and Health Act (OSHA), a deprivation of their First and Fifth Amendments rights (freedom of speech and right to due process) and a common law right to a smoke-free workplace. The district court, relying on the decision in Gaspar, rejected the constitutional claims, held that OSHA implies no private cause of action and found that it had no jurisdiction to consider the common law claim advanced by the plaintiffs in support of their demands. The court of appeals affirmed the district court decision and the Supreme Court refused to review the case.

3. Church v. Brown, et. al., Civ. No.78-4073 (S.D. Ill. 1979):

The plaintiff, an employee of Scott Air Force Base, brought this action in U.S. District Court alleging that the commander of the base and the United States had a duty, under both the common law and OSHA, to provide him with a smoke-free working environment. Accepting "wholeheartedly" the analysis of the court in FENSR, the Church court found that it had no jurisdiction to consider the common law claim propounded by the plaintiff and rejected his OSHA claim, finding "that no private implied cause of action exists under OSHA..."

4. GASP v. Mecklenburg County, 256 S.E. 2d 477 (N.C. 1979):

An anti-smoking group sought an injunction forcing county authorities to prohibit smoking in all county public buildings and places of work, relying, like the plaintiffs in FENSR and Gaspar, on an alleged constitutional right to a smoke-free environment. The North Carolina Court of Appeals, citing FENSR and Gaspar, held that no such constitutional right exists and dismissed the plaintiff's suit.

VI. LITIGATION

C. Other Decisions

1. Stevens v. Employment Security Commission
(Iowa, Nov. 1976):

An Iowa state court ruled eligible for unemployment benefits a woman whose health required that she accept a job only in a smoke-and-dust free environment. Suffering from asthma, the plaintiff quit her job because the cigarette smoke in her office allegedly aggravated her illness. Unable to find a job that met the conditions required by her health, she applied for unemployment benefits. The Employment Security Commission said her restrictions on possible employment had made her unavailable for work and ineligible for benefits. But a District Court in Iowa disagreed, saying her limitation was not so great as to remove any possibility of employment. The court compared her situation to the cases where benefits were granted to persons limited to "light work".

2. Ellen L. Meyer v. C.P. Clare & Co.,
(Idaho Industrial Comm., Nov. 1978):

Unemployment benefits were also granted to an Idaho worker who had quit because two cigar smokers were transferred into her work area. She could have been given a leave of absence until a suitable position opened, but no one told her of this option. According to the state industrial commission, her limited choice "would compel a reasonable person to leave her employment." Thus she had good cause for quitting and was eligible for benefits.

3. Alexandria Volunteer Fire Dept. v. City of Alexandria, (E.D. VA, Dec. 13, 1982):

A federal district court rejected a lawsuit by Alexandria volunteer firefighters which challenged a regulation requiring volunteer firefighters to meet city fire department standards, including no smoking. No violations of the due process or equal protection clauses were found in the requirement that the volunteers meet the same physical, mental and training standards that the professional firefighters must meet.

VI. LITIGATION

4. San Mateo County Fire Fighters, Local 2400 v. City of San Mateo, No. 268890 (Calif. Sup. Ct. Dec. 16, 1982):

Stating the city may have violated a state law that requires local officials to negotiate working conditions, a superior court temporarily barred the city of San Mateo from enforcing a no-smoking policy for rookie firefighters. Under the court order, the city may continue to require fire department applicants to sign the no-smoking pledge, however, it would be unenforceable unless the temporary injunction is overturned at trial.

VII. REVIEW OF SURVEY OF SMOKING RESTRICTIONS

1977

Dartnell Institute of Business Research Target Survey
Nationwide survey of 250 office administrators from the U.S. and Canada. Results indicated the following-

Companies with office smoking policies	30%
Companies with anti-smoking campaigns	11%
Companies offering incentives to quit	3%

1979

National Interagency Council on Smoking and Health Survey
Nationwide survey of top-level management and medical officials in 3000 U.S. companies which revealed that approximately 15% of U.S. businesses have programs to encourage and assist their employees to quit smoking. In addition, one-third of the responding companies indicated an interest in developing or expanding smoking and health programs for their work force.

1980

Smoking in the Office: A Burning Issue

Survey conducted by the Administrative Management Society's Committee of 500. Results of 302 respondents. Eight-four percent indicated that their company does not have an official policy regarding the rights of smokers and nonsmokers. Of the 47 (15.6%) of the companies which do have an official policy, 70.2% of these have the policy stated in writing in an employee manual or the like. Among those companies which do have an official policy, only five (10.6%) forbid smoking in all office areas.

Survey of New Jersey Employers

Over 600 questionnaires were mailed to personnel officers of the top 100 New Jersey employers, the members of the occupational nurses association and about 33 employers who had attended the Governor's Conference on Smoking in 1979. Because the survey concentrated on large companies, companies with nurses and companies who had shown interest in the smoking problem, the results are most likely not representative. Furthermore, only 35 questionnaires were returned. That is a 6% response rate. However, while the findings are, no doubt, atypical, they do reveal what the survey was searching for--smoking prevention and cessation programs among New Jersey employers.

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VII. REVIEW OF SURVEYS OF SMOKING RESTRICTIONS

Survey of New Jersey Employers (continued)

Twenty-two or 63% of the respondents reported smoking restrictions of some sort. They are:

American Hoechst Corp., N. Somerville
C.R. Bard, Inc., Murray Hill
Becton-Dickinson & Co., Rutherford
Celanese Technical Center, Summit
Dean Equipment Co., Fairfield
DuPont, Linden
Educational Testing Service, Princeton
Exxon Bayway Refinery, Linden
Globe Products Co., Inc., Clifton
Hoffman-LaRoche, Inc., Belvidere
Johns-Manville, Manville
Lehn & Fink Products Co., Belle Mead
Leslie Co., Parsippany
Magnetic Metals Corp., Camden
McWilliams Force Co., Inc., Rockaway
Midland-Ross Corp., New Brunswick
Penick Corp., Lyndhurst
Public Health Service/Div. of Fed. Empl. Health, Newark
Public Health Service/Div. of Fed. Empl. Occ. Health, Belle Mead
Revlon Dist. Center, Edison
Scott Paper Co., Landisville
3-M Co., Freehold

Smoking Policies and Smoking Cessation Programs of Large Employers in Massachusetts

Survey of 128 large employers. Eighty-four (66 percent) responded. Fifty-four (64 percent) had designated jobs or work areas in which smoking was prohibited usually because of potential danger to products or equipment. Seven (8 percent) of the employers provided counseling, and 10 (12 percent) provided smoking cessation programs for those employees who desired to quit smoking.

VIII. REPORTS FROM T FIELD STAFF

The following information was obtained from State Activities area directors who were asked to survey their states for corporate smoking restriction policies.

1. NO SMOKING CONTROLS

ALABAMA

Maxwell Air Force Base

ARIZONA

Best Western International
The Greyhound Corp.
Mountain Bell
Phelps Dodge Corp.
Ramada Inn
U-Haul International

CALIFORNIA

Altec
Baker International
Blue Chip Stamp
Clorox
Crown Zellerbach
Farmers Brothers
First American Financial
First Executive
Foremost-McKesson
General Automation
Hewlett Packard
Kyocera
MCA
MSI Data
Oak Industries
Pennecorp Financial
RB Industries
Republic Corp
Safeway Stores
Science Applications
Signal Co.
Standard Oil
Standard Pacific

VIII. REPORTS FROM THE FIELD STAFF

1. NO SMOKING CONTROLS (continued)

CALIFORNIA (continued)

Teledyne
Times Mirror
Transamerica
Walt Disney Productions
Whittaker

GEORGIA

Coca Cola
Delta Airlines
Georgia-Pacific Corp.

MASSACHUSETTS

Wang Laboratories

MICHIGAN

Board of Water & Light
Consumers Power
Gerber
K-Mart Corp.
Oldsmobile

NEW HAMPSHIRE

Congoleum Corp.
Wheelabrator

NEW YORK

American Airlines
Ashland Oil
Bankers Trust
Chemical Bank
General Electric
TRW

OHIO

Academy of Nursing Homes
Banc Ohio National Bank
Battelle Memorial Institute
Bob Evans Restaurant
Bonded Oil Co.
Dayton Power & Light

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VIII. REPORTS FROM T FIELD STAFF

1. NO SMOKING CONTROLS (continued)

OHIO (continued)

E. F. McDonald Corp.
Franklin County
Georgia-Pacific Corp.
O. P. Gallo
Shelby Mutual Co.
State of Ohio
Wendy's International

TEXAS

American General Life Insurance Co. Home Office
American Security Life Insurance Co.
Brittania Manufacturing Co.
Continental Insurance
Data General
Eagle Signal Corp.
E.D.S.
Farah Manufacturing
Firestone Tire and Rubber Co.
Frito-Lay Inc.
General Foods Inc.
Glastron Boat Co.
Home Office
Hunt Wesson Foods
IBM
Land O'Lakes
Lennox Industries Inc.
Motorola
Republic National Life Insurance Co.
Southland Corp.
Tesoro Petroleum
Texaco
Union Oil
U.S. Homes
Wrigley's
York Air Conditioning Div. of Borg Warner

UTAH

Kennecot Minerals Co.

VII. REPORTS FROM T FIELD STAFF

2. RESTRICTIONS FOR FIRE AND GENERAL SAFETY

ARIZONA

Chevron, USA

CALIFORNIA

Hewlett Packard
Linkabit Corp.

INDIANA

Chrysler Corp.
Chevrolet Motor Division of General Motors Corp.
Ford Motor Co.
Western Electric

KANSAS

Ford Motor Co.
General Electric

KENTUCKY

Ford Motor Co.
General Electric

MAINE

Bath Iron Works

MASSACHUSETTS

New England Telephone
Western Electric

MISSOURI

Eagle-Picker Ind.

NEW HAMPSHIRE

Digital Corp.

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VIII. REPORTS FROM THE FIELD STAFF

2. RESTRICTIONS FOR FIRE AND GENERAL SAFETY (continued)

LOUISIANA

Ciba-Geigy Corp.
Copolymer Rubber & Chemical Corp.
Dow Chemical
Ethyl Corp.
Monsanto Corp.

NEW JERSEY

Engelhard Industries
International Flavors & Fragrances

TEXAS

Allied Chemical Corp.
Austin White Lime
Exxon Co. USA

VIRGINIA

Allied Corp.
Dupont

WEST VIRGINIA

F.M.C. Corp.
Union Carbide Corp.

VIII. REPORTS FROM THE FIELD STAFF

3. OTHER RESTRICTIONS

CALIFORNIA

Bank of America

Employees not permitted to smoke around customers- only at breaks.

Caesars World

No smoking in front executive offices or at desks.

Conic

Segregated restrooms for smokers and nonsmokers.

Continental Airlines

No smoking for crew members- each department makes its own rules.

Fluor

Segregated cafeteria for smokers and nonsmokers.

General Dynamics

Segregated cafeteria and restrooms for smokers and nonsmokers.

Kennington Ltd.

No smoking around fabrics.

National Education

Each smoker is required to order an air purifier for his/her desk from the purchasing department.

Nucorp Energy

No smoking in reception area.

PSA

Flight crews and counter people are not allowed to smoke; no restrictions on office staff.

San Diego Gas & Electric

No smoking around customers.

Security Pacific

No smoking around customers or in vault; segregated cafeteria for smokers and nonsmokers.

Wells Fargo

Managers make their own rules; segregated cafeteria for smokers and nonsmokers.

VIII. REPORTS FROM THE FIELD STAFF

3. OTHER RESTRICTIONS (continued)

GEORGIA

Georgia-Pacific

Requests their receptionist not smoke while at desk.

Delta

Leaves smoking decision up to department heads.

IOWA

Iowa Department of Health

Posted a no smoking request in all of its offices.

KANSAS

State Dept. of Health

No smoking except in designated areas.

MICHIGAN

Auto Owners Insurance

Individual department heads determine smoking policy.

Meijers Inc.

No smoking when on floor- only allowed during break.

Michigan Bell Telephone

Not allowed where sophisticated equipment is used nor are operators allowed to smoke while working-only on break.

Michigan State University

Head of a department determines the issue in his/her dept.; if dept. head smokes- employees allowed to smoke. If not, employees can not smoke on the job.

Kraft Inc.

Restricted to designated "break" areas. No smoking in plant.

National Bank of Detroit

Employees may not smoke when in contact with customers.

State of Michigan

Some department heads determine whether smoking will be allowed in their individual departments.

Tony Lama Boot Co.

No smoking permitted in open offices; left to discretion of plant manager.

VIII. REPORTS FROM T FIELD STAFF

3. OTHER RESTRICTIONS (continued)

NEW JERSEY

Pru Pack Casualty Division of Prudential Insurance Co.

No smoking in cafeteria or dining room. Allowed in work area of each employee.

Bell Labs

No smoking in dining rooms, cafeteria or auditorium. Smoking permitted in employees' work area.

NEW YORK

General Mills

Segregated cafeteria for smokers and nonsmokers.

IBM

Segregated cafeteria for smokers and nonsmokers.

OHIO

C.E. Price Company

Does not hire smokers.

TEXAS

Abel Stationers & Office Suppliers

Owner anti-smoking. Restrictions in offices, showrooms, warehouses; smoking permitted only in designated areas.

Airtron

No smoking signs all over office; specifies non-smokers in employment ads; applies only to clerical and not plant workers.

Dunlop Tire & Rubber Corp.

No smoking in warehouses or manufacturing facilities except in designated areas.

Kraft Inc.

Restricted to designated "break" areas; no smoking in plants.

VII. REPORTS FROM T FIELD STAFF

3. OTHER RESTRICTIONS (continued)

TEXAS (continued)

Mary Kay Cosmetics

No smoking in manufacturing areas or warehouses.

Reserve Life Insurance Co. Home Office

Segregated cafeteria for smokers and nonsmokers.

Texas Instruments

No overall policy; majority rules in smoking policy in conference rooms.

Union Chemical Division of Union Oil

Air cleaning device is provided for each smoking employee.

Weiners' Dept. Store

Has printed employee policy- smoking allowed only in break area.

UTAH

Utah Power and Light Co.

Employees smoke only in private offices and other designated smoking areas which include restrooms, employee lounges and cafeteria.

VIII. REPORTS FROM FIELD STAFF

4. TOTAL SMOKING BAN

CALIFORNIA

Intermark

No smoking in corporate office.

IOWA

Dept. of Health

No smoking allowed in all of its offices; being contested by State Employees Union.

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