

Smokers' Advocate

MARCH 1991

A SERVICE OF PHILIP MORRIS U.S.A.

SPECIAL EDITION

Did Your Leisure Time Activities Cost You A Job?

Were you or someone you know fired or denied a job because your employer did not approve of a particular legal product you enjoyed during non-working hours? If so, we want to hear from you.

Most law-abiding, hard-working Americans are unaware that the legal products they enjoy while off the job — activities like eating red meat, smoking a cigarette or drinking an alcoholic beverage — could get them fired. As incredible as it may seem, employers are increasingly making hiring and firing decisions based on what employees do while in the privacy of their own homes.

Unfortunately, a growing number of Americans can give firsthand accounts of how their legal behavior while away from work landed them in the unemployment line.

Some misguided employers feel they have a right to control how their workers spend their non-working hours. These employers claim that allegedly dangerous or unhealthy products can cause

injury or illness and that in turn drives up healthcare costs. Such claims are without basis, although many employers refuse to concede this fact.

Organizations including business and labor groups have spoken out forcefully in favor of curbing this dangerous trend. Some have even called for enactment of federal legislation to prohibit employers from basing hiring or firing decisions on the legal activities an employee engages in during non-working hours. While federal action is unlikely in the near future, employees have had far better luck at the state level, where 21 states have enacted laws to protect employees from intrusive bosses.

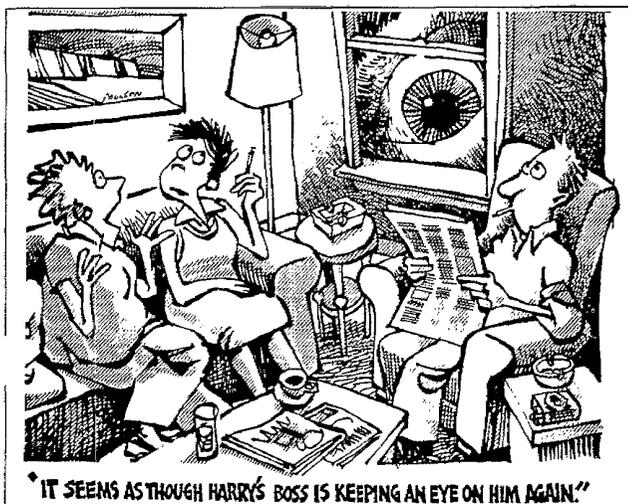
You can help us document just how widespread violations of employee privacy have become. If you, or someone you know, was either fired or not hired because an employer disapproved of a particular legal leisure time activity, please let us know. You can contact us at the following address:

"Employee Privacy"
c/o Smokers' Advocate
120 Park Avenue, 14th Floor
New York, NY 10017

HOTLINE

Let us know what's happening in your area. Call the Hotline weekdays between 9 a.m. and 5 p.m. EST.

(212) 880-3680



Legislation Provides Relief From Employer Discrimination

In the late 1980's things seemed to be looking up for Janice Bone. Her supervisors at the Ford Meter Box Company in Wabash, Indiana were pleased with her work and had recently promoted her. In accordance with company policy, Bone was required to undergo a drug screening exam.

That's when the trouble started.

The exam revealed traces of cotinine (a chemical marker for nicotine) in Bone's urine. Citing its policy of no smoking whether on the job or away from work, the company fired Janice Bone immediately.

Around the same time, in nearby Indianapolis, Daniel Winn was dismissed from his job at Best Lock Corporation. The reason? He admitted that, several years earlier, he had taken a few drinks away from work and Best Lock's policy was no drinking — ever.

If there is any good news involved in these cases it's simply this: lawmakers are recognizing that a serious problem exists. Inspired by the stories of Bone, Winn and others, the Indiana legislature enacted a privacy law which prohibits employers from firing, or refusing to hire, employees for smoking while away from the workplace.

Illinois is among the most recent states to join a growing trend toward protecting the off-duty privacy rights of workers. Twenty other states have enacted laws similar to Illinois's and more are likely to follow suit before the year is out.

The growing number of privacy laws comes in response to an alarming increase in attempts by employers to try to control employee behavior away from the workplace. Employers, motivated by skyrocketing health insurance costs, have been trying to weed out employees they perceive as bad health risks.

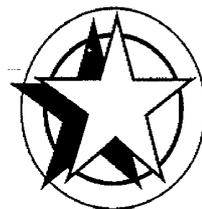
Are you a bit overweight? U-Haul International might deduct more than \$100 annually from your paycheck. Cholesterol too high? Then you could have been turned down for employment by the city of Athens, Georgia which, for a time, rejected job applicants whose cholesterol levels exceeded the city standard. And if you smoke, don't

even think about being hired by Ted Turner's Cable News Network.

In these days of anti-smoking hysteria, smokers have a particularly good reason for supporting privacy legislation. The Fortunoff retail chain in New Jersey, for example, claimed that employees who smoked posed a fire hazard to their stores (though never explaining how employees who smoked at home posed a fire hazard to stores). When the New Jersey legislature passed privacy legislation (see story below), it put an end to discrimination that had gone on for years. □

Public Involvement Can Make A Difference

When the New Jersey State Legislature overwhelmingly passed a bill banning job discrimination against employees who choose to smoke off the job last May, Governor Jim Florio — an avowed anti-smoker — promptly made good on his promise to veto the legislation.



**YOU CAN
MAKE A
DIFFERENCE**

But the Governor did not count on the power of an aroused public coupled with an idea whose time had come. Thousands of letters to newspapers and elected officials echoed the same concern over and over again: today it might be smoking that employers are discriminating against; tomorrow it could well be cholesterol, obesity or even weekend hunting. These actions created a groundswell of popular support for a legislative override of the Governor's veto.

Facing the possibility of his first veto override since his election to the Governor's office, Florio said that he would not oppose the legislation if certain changes were made.

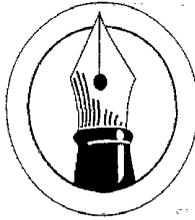
"[I]t is clear that an outright veto of this bill could in some ways restrict or abridge an employee's right of privacy," Florio finally admitted, and allowed a compromise bill to become law.

The lesson of New Jersey for other state officials seems clear: the movement to protect employee privacy enjoys both momentum and the broad support of the general public. □

Media Speak Out For Employee Privacy

The nation's media have been instrumental in bringing the issue of employee privacy to the forefront of America's social agenda. Editorials, feature articles, talk shows and television news magazines have presented all sides of this important issue to the American public.

Following are some examples of what the media are saying on the issue of invasion of employee privacy.



ON THE RECORD

"The trend is dangerous. It should be stopped," USA Today stated on its editorial page. "Employers should butt out of their employees' personal lives and base their hiring and firing decisions on the most important

factor: performance on the job."

The New York Times also spoke out against employers who pry into employees off-duty lives. "Employers would do well to refrain from invading an employee's personal life with edicts that do not bear on fitness for work," its editorial read.

Malcolm S. Forbes Jr., Editor-in-Chief of Forbes magazine seemed to share these sentiments when he wrote in an editorial: "Companies have no business prying into employees' personal habits unless they are truly related to job performance."

Business Week pointed out that once an employer strikes out against a particular legal product or behavior, it is likely that subsequent edicts will follow against other products with which he also disapproves. "Once you start regulating behavior, where do you stop? What about people who eat lots of greasy foods? Or someone with a family history of heart disease," the editorial asked.

But the Chicago Tribune may have summed it up best. In an editorial discussing employer claims that rising health care costs warrant supervision of employees' personal lives, the Tribune wrote: "People make choices, most of which include elements of risk and cost. If we must confess to our bosses and underwriters every possible chance we might take, we may as well give up on the idea of group insurance — and perhaps the whole notion of living and working together as well." □

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Facts about Employee Privacy

The issue of employee privacy is gaining increased attention as more and more employers try to dictate the personal behavior of the American workforce. Following are some facts that dispute employers' claims that they have a "right" to interfere in what employees do during non-working hours.

- A study by the National Chamber Foundation found that consumption of alcohol and tobacco products have no significant effect on employee absenteeism.
- The Congressional Budget Office cites three reasons for increasing health care costs:
 - aging of the population
 - cost of technology
 - abuse of the health care delivery system

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Most New Yorkers Support Employee Privacy

According to a poll by the National Consumers League (NCL), New Yorkers clearly believe that employers have no business asking intrusive questions about their employees' private lives; employers should not base hiring and firing policies on personal matters such as lifestyles or off-work activities; and employers have no right to try to change employees' private lives. Of the 600 poll respondents in the state of New York:

- 94 percent said it was inappropriate to base hiring or firing decisions on whether an individual smokes after work hours.
- 86 percent opposed requiring an employee to quit smoking.
- 82 percent said employers have no right to ask if an individual smokes after work hours.

Penn and Schoen Associates of New York City conducted the poll on behalf of the NCL in July, 1991.

YES, send me *Smokers' Advocate*.

Smokers' Advocate is a free monthly newsletter that updates smokers on efforts to protect their right to choose to smoke. If you are 21 years old or older and would like to receive this newsletter, please write your name and address in the box below.

By completing this form, I certify that I am 21 years old or older.

579

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