

## **EMPLOYMENT DISCRIMINATION**

- \* Employment policies that discriminate against smokers are contrary to sound public policy and may violate state and federal laws, as well as being a clear violation of personal privacy. Protecting the individual's rights has become so important that over half of the state legislatures have enacted laws prohibiting discrimination in employment based on an individual's use of legal products, such as tobacco or alcoholic beverages, during nonworking hours, or the involvement in lawful activities such as skydiving, mountain climbing or motorcycle riding.
- \* The goal of anti-discrimination legislation is to provide fair and equal treatment to employees regardless of their off-the-job use of legal products or involvement in legal activities. This does not mean that an employer could not fire a smoker or an occasional drinker for poor job performance. It simply means that whether you smoke, or have a beer off the job will not be a factor in hiring, firing and promotion decisions.
- \* Policies that allow an employer to discharge an individual because he or she smokes or has an occasional drink during time away from the job open the door to measures that may have a chilling effect on other protected employee activities. Blue collar workers in particular are vulnerable to seemingly neutral discriminatory policies that may be used selectively against those viewed as "troublesome" by employers. Workers who engage in otherwise protected activities, such as political advocacy or union participation, easily could be disciplined or discharged under the pretext of anti-smoker policies.
- \* Smoking discrimination also disproportionately harms the career advancement opportunities of blue collar workers. Of the 25-30 percent of adult Americans who smoke, a disproportionate percentage tend to hold blue rather than white collar jobs. Discrimination -- particularly when a product of unilateral action by an employer -- undermines basic employee and collective bargaining rights.
- \* A law of this kind makes sense because some employers have adopted unfair policies that allow them to fire workers for smoking off the job. Some employers have gone so far as to subject employees to lie detector and urinalysis tests to make sure they are not smoking on their own time away from work. Anti-discrimination legislation would limit this unwarranted practice.
- \* At the gubernatorial level, anti-discrimination legislation has received bipartisan support. Of the 28 privacy laws enacted by mid-1992, and one Executive Order, 10 were signed by Democratic Governors, 13 by Republican Governors, and one by an Independent Governor. Four were allowed to become law without a signature.

- \* As stated in the September 1991 Business & Health magazine: "The American Civil Liberties Union (ACLU) has strongly supported 'smokers rights' legislation. According to ACLU's National Task-Force on Civil Liberties in the Workplace, any company that refuses to hire people who use tobacco in their own homes, or that fires employees who don't quit smoking, is trampling on the rights of these persons."
  
- \* According to a 1989 national poll for the National Consumers League, Americans clearly believe it is wrong for employers to hire or fire an employee for personal matters unrelated to the job; they also believe employers have no right to attempt to change personal habits and lifestyles of employees. Simply stated, the sole criteria for winning and holding a job should be the ability to perform that job.