

FYI

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The issue is cloudy on smoking at work

NEW YORK (UPI) — Smoking in the workplace has become a management issue, and some corporations are acting to clear the air.

"We basically tell employers it would be to their benefit to develop a policy on smoking. Why wait until a problem appears?" said lawyer James Williamson, whose firm, Jackson, Lewis, Schnitzler & Krupman, advises companies around the country on labor issues.

Antismoking groups believe almost 20 percent of absenteeism from work is attributable to smoking-related illnesses. A few businesses have responded to new evidence of the danger in tobacco smoke by simply banning cigarettes and cigars from the office.

A handful of states and a number of municipalities have enacted Clean Indoor Acts to protect the right of nonsmokers at work. Court cases have upheld workers' rights to lobby for tobacco-free environments, and fined companies that discouraged antismokers from complaining.

Williamson compares the smoking issue to sexual harassment, which employers tended to treat lightly until a raft of state legislation and lawsuits convinced them to be more careful.

"In the last few years there's been increased awareness of the issue and its importance, and a surge of activity," he said.

Williamson's firm has researched court decisions on nonsmokers rights, and found "there haven't been many cases, but those cases which have come down have been significant."

In 1976 in New Jersey, for instance, the court ruled an employe at New Jersey Bell was entitled to a smoke-free environment. The court noted that the company had a rule against smoking around telephone equipment, since the machines were extremely sensitive. "A company that has demonstrated such concern for its mechanical components should have at least as much concern for its human beings," the court said.

Similar decisions restricting or prohibiting smoking in the workplace have been handed down in Massachusetts and Missouri, Williamson said. But courts in Oklahoma and Washington have refused to require employers to ensure a smoke-free environment in the absence of state legislation.

Some employers have sidestepped the issue by deciding not to hire anyone who smokes, Williamson said. The Wichita Fire Department, for instance, now hires only nonsmokers. Manville Corp. stopped hiring smokers for plants that handled asbestos. "If you don't smoke, the chances of getting lung cancer from asbestos are greatly reduced," a spokeswoman said.

Manville is getting out of the asbestos business, which drew so many health-related suits against the corporation it sought protection from bankruptcy courts. But the company still has a stringent smoking policy, prohibiting cigarettes in the cafeteria, company vans, and other public places.

"You can smoke in your private office, but not in hallways. I don't think you can smoke in the open secretarial pools, either," a spokeswoman said.

Other companies are preferring the carrot approach, developing programs to encourage employes to stop. "They perceive the economic benefits, particularly if they're self-insured," Williamson said. "They pay their smoking employes bonuses to stop, or reimburse them for attending nonsmoking programs."

Employers whose workers are unionized could face a two-edged sword, Williamson said. "If your company has a contract with a clause ensuring the provision of a reasonably safe workplace for employes in the bargaining unit, you may find yourself defending a grievance by a smoke-sensitive individual."

But if the company acts to restrict smoking without consulting the union, it could run into trouble for changing the rules mid-contract, he said.

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