

AFL-CIO STATEMENT BEFORE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON
LABOR, HEALTH AND INSURANCE
MAY 6, 1994

Assemblywoman Nolan, Assemblyman Gottfried, Assemblyman Grannis, [members of the New York State Assembly Standing Committee on Labor, Health and Insurance,] good [morning] [afternoon].

My name is [Name], and I am [Title], of the New York State AFL-CIO. I speak today for more than [TK] working men and women in the State of New York.

Thank you for providing us with this opportunity to express Labor's concerns with A10242, a proposed amendment to New York's worker compensation law.

Members of the Committee, the AFL-CIO takes strong exception to the proposed act because we believe it is a woefully inadequate response to the very serious issue of indoor air quality in the workplace.

We are also opposed to related Assembly proposals A-10243 and A-10244, which seek to ban smoking in all New York State workplaces and restaurants, respectively, in a stated attempt to protect workers' health.

Honorable members of the Committee, make no mistake, safeguarding the health of New York's workers is one of the AFL-CIO's most pressing concerns. But that is precisely why we cannot support any of the tobacco smoke-based amendments under discussion here today. These proposals do not adequately protect workers from exposure to harmful agents on the job. On the contrary, these proposals actually put workers at greater risk.

They do so by focusing legislative attention on tobacco smoke alone -- a diversionary and relatively minor factor when it comes to protecting workers from potentially harmful indoor air-borne pollutants.

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Despite the fact that tobacco is currently the "hot issue" of the day, the subject of Congressional debates and front page news stories, it is only one small sliver of a very large pie when it comes to the high number of potentially harmful agents to which working men and women are exposed on a daily basis.

The Occupational Health and Safety Administration (OSHA) estimates that there are between 800,000 and 1.2 million buildings in the U.S. where the indoor air is unhealthy. A study by the National Institute of Occupational Safety and Health (NIOSH) found that tobacco smoke was a significant factor in only 2-3 percent of the buildings it studied where workers were experiencing health problems as a result of bad indoor air.

Sick Building Syndrome -- or SBS -- is the name that has been coined to describe buildings that are so afflicted.

A few years ago, a government building right here in Albany suffered a very bad case of SBS. We know cigarette smoke was not a factor there because smoking was completely banned from that building.

Ironically, even the Environmental Protection Agency in Washington D.C. is not safe from SBS, despite the fact that smoking is -- and always has been -- banned at EPA headquarters.

A few years ago, The Washington Post reported that as many as ten percent of EPA workers were complaining of SBS symptoms, which range from headaches, frequent colds, dizziness and nausea on up to potentially more dangerous reactions. The Post published a photograph of EPA employees reporting for work wearing gas masks. The air-borne culprit at the EPA turned out to be volatile organic compounds emanating from the carpeting.

Legionnaires disease, probably the most deadly and serious form of SBS, also has nothing to do with tobacco smoke. It is caused by a virus that breeds in stagnant water in dirty ventilation and air conditioning systems.

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In short, by focusing on tobacco smoke, legislators are giving the dangerous and misleading impression that they are doing something to clean up the air in indoor workplace environments when, in fact, they are actually ignoring much more serious threats to worker health.

Quite literally, they are engaging in a "smokescreen."

In addition, by attempting to control workplace smoking, the state is infringing upon matters that are rightfully within the scope of collective bargaining agreements in many cases.

Recently, the Court of Appeals for the District of Columbia struck down a smoking ban imposed unilaterally by the Department of Health and Human Services in its own offices, citing the authority of the collective bargaining agreement in force.

Some have argued that a workplace smoking ban is now necessary to satisfy the requirements of the Americans with Disabilities Act. The ADA, however, was never meant to be used as a justification for blanket smoking restrictions, and an official of the U.S. Equal Employment Opportunity Commission, which enforces the ADA, has said so publicly. This official was quoted in the *National Law Journal* as saying:

"The ADA does not require employers to have a smoke-free environment or prevent it. It does not interfere one way or the other."

Also, to dispel another myth, it is simply untrue that these measures will provide any additional protection under the state's workers' compensation law. According to Section 28 of the Act, workers would have to prove that their disability was both "peculiar to their occupation" and the result of prolonged exposure "due to the distinct nature of their job."

In other words, no one would qualify -- not even state legislators whose occupation requires that they spend much of their time making deals in smoke filled rooms.

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In summary, it is the position of the AFL-CIO that comprehensive workplace indoor air quality legislation is needed to provide New York's working men and women with the protection they both need and deserve.

For example, legislation establishing adequate ventilation rates in all offices and indoor worksites -- such as the ventilation standard set by the American Society of Heating, Refrigerating and Air Conditioning Engineers and known as ASHRAE 62-1989 -- would do far more to protect worker health and safety than a cosmetic smoking ban.

Adhering to ASHRAE 62-1989 ensures worker comfort and safety by making sure that all potentially toxic airborne pollutants -- including tobacco smoke -- are fully exhausted from indoor air spaces. Setting such a standard would prevent workers from getting sick in the first place.

By comparison, lengthening the statute of limitations on a health disability claim for which no one qualifies is simply a tease. It presents the appearance of protection without the reality.

Although the framers of these bills clearly have good intentions, the measures they propose are a diversion from issues of vital importance -- comprehensive indoor air quality protection through rigorous ventilation standards and a workers' compensation system that lives up to its name and truly compensates workers for job-related injuries. Neither of these goals will be accomplished by banning smoking.

We hope the Committee will take our concerns into account when debating this issue and reject the amendment under discussion. We look forward to working with the New York State legislature on a truly comprehensive clean indoor air law to govern New York's indoor workplaces.

Thank you.

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