

# Virtual Mentor

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## Medicine and society

### The ethics of requiring employees to quit smoking

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In early 2005 a Michigan firm, Weyco Inc., made national news by firing several employees who smoked. The company had given employees advance warning about the new policy and provided a free smoking cessation program. A number of employees successfully quit smoking; those who did not were fired. The company justified the firings based on the cost of health insurance for employees at risk for smoking-related illnesses.

In this article, we investigate the ethical issues such a policy raises by examining a spectrum of possible employer actions. We assume from the start that employers can, and should, create a smoke-free workplace so that nonsmokers do not face additional health risk. But the employer's right to regulate an employee's health-related behavior outside of working hours remains in question.

Consider three companies.

- Company A provides a fully voluntary smoking cessation program and other health-promotion programs at the worksite during lunch as an employee benefit.
- Company B provides a free smoking cessation program and imposes a health insurance surcharge on employees who smoke. The surcharge is eliminated upon successful smoking cessation.
- Company C provides a smoking cessation program and fires employees who fail to quit by a given date.

We argue that the behavior becomes harder to justify as one moves down the list.

### Assessing the burdens

Company A demonstrates the exemplary policy. The workplace seems an excellent and often underutilized site for health promotion, although efficacy data are not striking [1]. Company A will benefit eventually as more of its employees quit smoking and become healthier in other ways. The benefit to the company does not detract from the policy's real benefits to the workers; it promotes health, is voluntary and intrudes minimally into their private lives. We believe that, absent an emergency, voluntary and less-intrusive approaches to a public health problem ought to be tried before mandatory and more intrusive methods are resorted to.

Company B's policy is more intrusive and burdensome for employees. It bases its justification purely on cost, explaining that it is simply passing along the extra cost of insurance to the employee. It is of some interest that smoker protection laws, which have been passed in 30 states and the District of Columbia, prohibit the employer from discriminating against smokers for tobacco use during nonworking hours yet permit the insurance surcharge that Company B imposes.

Our major ethical concerns lie with Company C. First, note the possibility of a slippery slope. After firing employees who did not give up smoking, Weyco Inc. decided to charge an additional \$1,000 per year to employees whose *spouses* tested positive for nicotine in monthly tests [2]. It is unclear whether or not the surcharge applied only to spouses who were covered by the employee's health insurance. Considerable research has shown that those who attend church regularly are healthier than those who do not [3]. Would we permit an employer to demand church attendance as a condition of employment? These examples demonstrate that the mere fact that a certain employee behavior has implications for the employer's insurance costs does not automatically grant the employer the right to regulate that behavior.

Company C's policies have important implications for the personal physicians of its employees. How will compliance with company policy be monitored? Company C is within its legal rights to require that its employees submit to urine screens for smoking markers, for example, as a condition of continued employment. So long as employees sign a release, the physicians are not violating confidentiality if they transmit the test results to the company. Yet the physicians are nonetheless being conscripted to help police the company's workforce. The implications for patient-physician trust could be serious.

Several legal challenges to Company C's approach could be considered. Smoking occurs more commonly among the members of some minority groups; American Indians and African American men, for example, have a higher incidence of health problems related to smoking [4]. Patients with chronic mental illnesses are also at higher risk for smoking [5]. Therefore, Company C's policy could be viewed as unjustly discriminatory.

Company C's policy regarding workers who smoke could be challenged under Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act [6] assuming that they are otherwise able to function well in the workplace. If it can be shown that there are genetic factors that make some individuals more prone to addiction to nicotine, then the case could be made that Company C's policy punishes some employees for factors beyond their voluntary control [7]. Genetic or not, nicotine addiction is difficult to overcome. The overall success rate of smoking cessation programs, even among those who are highly motivated to quit, is sufficiently low to call into question the assumption that lurks behind Company C's policy—smokers can readily quit if only they choose to do so. For instance, one review reported “quit rates” at 6 months for various intervention strategies ranging between 2 percent and 35 percent, with relapse being extremely common [8].

## Conclusion

Even if Company C were able to ward off legal challenges, we find its approach ethically objectionable. The company failed to try voluntary, less intrusive means before resorting to more draconian policies. The same logic that is used to justify this smoking cessation measure could be applied to other measures that would seriously violate employees' and others' basic rights. And the ripple effects of the policy, such as the impact on the employees' relationships with their physicians, create further cause for concern.

It is not enough, however, merely to object to the specific policy used by Company C. Recall the logic chain that was used to justify the company's behavior. At one end of the chain, the cost of health care coverage for smokers is higher than that for nonsmokers, a fact that has important implications for the company's bottom line. At the other end of the chain is the American public policy choice to tie the provision of insurance for the majority of working adults to their worksite and employer. If we find the fire-the-smokers policy objectionable, we must at least raise the ethical question of whether this tight link between place of employment and health insurance status is a serious part of the problem. If so, it provides us with yet another reason to demand major reform in how the U.S. provides and pays for health care.

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