

# THANK YOU FOR — NOT — SMOKING OR YOU'RE FIRED?

Smokers. They are being unceremoniously banned from bars and restaurants in scores of municipalities — even in France, for Pete's sake. What's next, a ban on foie gras?<sup>1</sup> But seriously, it seems like everyone has it out for smokers. If smokers are everyone's favorite target these days, why can't employers deal with the out-of-control spiraling health care costs by announcing that smokers need not apply? After all, no one bats an eye when smoking is banned from the workplace.

One reason is that many jurisdictions have passed legislation that prohibits an employer from disciplining an employee who uses tobacco or other lawful consumable products while off duty, or from taking the use of lawful, consumable products into account during the hiring process.<sup>2</sup> What can an employer looking to reduce health care costs do? There is no question that those smokers huddled outside your office building, littering the ground with unsightly cigarette butts, drive up the rates charged for health insurance for all employees. Isn't there some way of passing on that increase to those responsible?

States have answered that question in many ways. For example, Minnesota has a statute that allows an employer to adopt a health or life insurance plan that distinguishes between employees for the cost of coverage based upon the employee's use of lawful consumable products.<sup>3</sup> Illinois, Indiana, Missouri, Montana, New York, North Carolina, South Dakota, and

West Virginia have similar exceptions for differing health insurance premiums. Some of these statutes, such as Minnesota's, specify that the differing premium rates must reflect the actual difference in cost of health care caused by the consumption of tobacco. Despite the existence of such laws, many employers don't attempt to pass on the increased premiums to employees who smoke. So, if you are looking for ways to reduce those ever-increasing health care premiums, think about passing those increased costs directly on to those responsible for them.



<sup>1</sup>As a matter of fact, yes. The City of Chicago passed a ban on foie gras in 2006. The City of York, England, also enacted such a ban. <sup>2</sup>States like California, Colorado, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, West Virginia, Wisconsin and Wyoming have enacted similar statutory bans that prohibit taking smoking into account in the hiring process. <sup>3</sup>MINN. STAT. § 181.938, subd. 3(c) (2007). "Lawful Consumable Products" includes food, alcoholic or nonalcoholic beverages, and tobacco. *Id. at subd. 2.*



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