Smoking in the Workplace: Smokers’ Rights?

“We won’t be able to establish the ‘right to smoke.’ No legal basis for this right.”

(Philip Morris internal document, Bates No. 2021502102/2134, June 1987)

Smoking is not necessary to job performance and therefore cannot be used as a basis for asserting any right in a legal sense. That fact has not stopped smokers from suing for the so-called “right to smoke,” but their claims have been consistently rejected by the courts. They have sought their “right to smoke” based principally on one of the following legal arguments:

1. **Discrimination on the basis of a handicap:** Smokers might threaten to sue on the basis of handicap. This argument is not allowable under either the Federal Rehabilitation Act of 1976 or the Americans with Disabilities Act (ADA) of 1990. In one case, a smoker sought protection under the Federal Rehabilitation Act, which protects disabled persons from job discrimination. The smoker claimed her addiction to tobacco constituted a disability. The court, however, dismissed the suit as having no merit. The ADA specifically states that smoking may be banned in workplaces to protect individuals with bona fide disabilities from tobacco smoke.

2. **Constitutional Right to Smoke:** Although the tobacco industry likes to refer to smokers’ “rights,” smoking is not protected under the Constitution and smokers do not have a legal right to smoke in the workplace. Employers are free to set policies and implement restrictions that are necessary to provide for a safe and healthy working environment. The courts have consistently upheld the constitutionality of statutes and rules that restrict or prohibit smoking in the workplace.

**Note:** Several states have instituted “smoker protection laws,” which prohibit employers from discriminating against employees and prospective employees with respect to hiring, compensation, promotion or the terms, conditions, and privileges of employment, because of their legal use of tobacco products during non-work hours. These laws do not prevent an employer from regulating tobacco use at the workplace or during work hours. For more information on smoker protection legislation in your area, contact the ANR Foundation.

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