



WORKSITE WELLNESS & THE MINNESOTA CONSUMABLE PRODUCTS ACT

October 2010

MINNESOTA EMPLOYERS who establish worksite wellness programs must comply with certain legal requirements. Important legal issues to consider are the HIPAA nondiscrimination regulations, the HIPAA Privacy Rule, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Minnesota Consumable Products Act, federal and state nursing mothers laws and federal income tax law. Please refer to the corresponding fact sheet for a description of each legal requirement. This fact sheet provides an overview of the Minnesota Consumable Products Act as it applies to worksite wellness programs. When setting up a worksite wellness program, it is important to consult with an attorney to make sure that the program meets all legal requirements.

QWhat does the Minnesota Consumable Products Act¹ do?

AThe Minnesota Consumable Products Act, sometimes known as the Smokers Rights Act, prohibits an employer from refusing to hire, disciplining or discharging an employee based on use of legal consumable products as long as those products are consumed during nonworking hours and off the employer's premises. Approximately 30 other states have similar laws.

“Legal consumable products include tobacco, alcoholic and non-alcoholic beverages and food.”

QWhat are lawful consumable products?

AProducts whose use or enjoyment are legal and are consumed, include:

- » Tobacco
- » Alcoholic & non-alcoholic beverages
- » Food

Q How does the Minnesota Consumable Products Act apply to worksite wellness programs?

A An employer may make distinctions about the type or cost of health or life insurance coverage based on an employee's use of lawful consumable products, but the difference in premiums must reflect the employer's actual difference in cost.

Example: An employer wants to encourage the smokers in its workforce to stop smoking. To give them an incentive to quit, the employer decides to penalize employees who smoke by charging them higher health insurance premiums. According to the Minnesota Consumable Products Act, an employer may only pass on any actual increased cost for covering smokers. But before raising premiums for employees who smoke, the employer must also comply with HIPAA nondiscrimination requirements by offering a reasonable alternative to quitting smoking (such as cessation services). This issue is addressed in the fact sheet *Worksite Wellness and HIPAA Nondiscrimination Regulations*.



Q Are there exceptions to the requirement that an employer not prohibit use of lawful consumable products?

A Yes, there are two relevant exceptions:

- » An employer may prohibit an employee from using lawful consumable products if the prohibition is reasonably related to employment activities or responsibilities.

Example: A fire department may prohibit firefighters from smoking on their own time because of the requirement that firefighters have good lung capacity.

- » An employer may prohibit an employee from using lawful consumable products to

avoid a conflict of interest or the appearance of a conflict of interest with the employee's job responsibilities.

Example: The American Lung Association may refuse to hire smokers because smoking conflicts with the Association's mission of reducing tobacco use.

Q What issues should I discuss with my attorney?

- A
- » May I refuse to hire, discipline or discharge employees because they use legal consumable products off-site during non-working hours?
 - » Is there an exception to the Minnesota Consumable Products Act that allows me to prohibit their use?
 - » May I increase an employee's health or life insurance premiums for use of lawful consumable products?



For related publications, visit www.publichealthlawcenter.org

The Public Health Law Center provides information and technical assistance on issues related to tobacco and public health. The Public Health Law Center does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, consult with an attorney.

1 MINN. STAT. § 181.938.