

# AN EMPLOYER GUIDE TO TOBACCO

**This toolkit is intended** as a guide for employers who want to address workplace-related tobacco issues from the perspective of labor-management cooperation. Timely data and research findings about the health and economic costs associated with smoking and exposure to secondhand smoke in workplaces are presented in a user-friendly format, designed to increase awareness of smoking and exposure to secondhand smoke as serious workplace hazards. Within these pages, you will find practical information about how to shape and implement effective smoke-free workplace policies and how to help smokers quit for good.

Four topics are addressed, each in a separate unit: Smoking & Healthcare Costs; Smoke-Free Workplace Policies; Legal Issues; and Helping Employees Quit. Sources are cited in footnotes in each unit and are listed in the Sources section, which follows the topic units.

Why should employers care about tobacco prevention? Most employers know that smoking and exposure to secondhand smoke is unhealthy, yet many remain unaware of the magnitude of the health risks and associated economic costs. Secondhand smoke is something many people still think of as a mere annoyance to be avoided, not as a cause of disease and death. All employers, particularly those whose employees work in smoky environments or with hazardous materials, should understand the impact that smoking and exposure to secondhand smoke can have on health, safety and cost containment issues.

Tobacco use is taking a terrible toll on America's working class. Among those most at risk are blue-collar and service employees who work in settings where smoking and chewing tobacco remain the norm. Also at high risk are those workers who are employed in restaurants, bars and other hospitality settings where smoking is still permitted. Within these pages, you will find valuable resources to facilitate educational outreach to management and workers, shape and implement workplace policies, and explore cessation coverage options that can help your employees achieve the goal of quitting.

## contents

Smoking & Healthcare Costs . . . .	2
Smoke-Free Workplace Policies . . .	7
Legal Issues . . . . .	13
Helping Employees Quit . . . . .	23
Sources . . . . .	29

# An Employer Guide to Tobacco: INTRODUCTION

## unit contents

Costs of Smoking .....	2
Tobacco Taxes & Healthcare Costs .....	2
Employer Costs Attributable to Smoking .....	3
Cost Benefits of Smoke-Free Workplace Policies .....	5

**This unit addresses** the economic costs associated with tobacco use and exposure to secondhand smoke in the workplace, including pertinent information about how smoking affects employers' costs of doing business and how employer-provided cessation coverage and smoke-free workplace policies can provide financial benefits.

The question of how to stem the tide of rapidly escalating healthcare costs has become one of the most pressing concerns of both management and labor. A review of recent economic data shows that tobacco-related workplace costs are primary drivers of the rapid escalation of healthcare costs. Looking at Minnesota and the U.S. as a whole, we see that roughly two-thirds of all deaths are caused by chronic diseases and that smoking is the leading cause of many of these diseases.<sup>1</sup> Every year, Minnesota loses billions of dollars on healthcare expenditures and lost productivity caused directly by smoking.<sup>2</sup>

The good news is that tobacco-related healthcare costs can be reduced dramatically when employers provide comprehensive cessation services and implement smoke-free workplace policies. In fact, the most cost-effective health insurance benefit an employer can provide to adult employees is to support their quit attempts by paying for access to comprehensive cessation services.<sup>3</sup>

## Costs of Smoking

The impact of smoking on rising healthcare costs is huge and cannot be ignored. In less than ten years, Minnesota's healthcare costs have increased over 70%, from \$12 billion in 1993 to almost \$22 billion in 2001.<sup>4</sup> The chief drivers of the cost increases have been hospital care, physician services, prescription drugs, and other healthcare spending.<sup>4</sup> Five chronic diseases—heart disease, cancer, chronic obstructive pulmonary disease (COPD), and strokes—account for 62% of all Minnesota deaths and 68% of all U.S. deaths,<sup>1</sup> and smoking is the leading cause of four of these five diseases.

In all, Minnesota loses over \$1.6 billion each year on healthcare-related costs that are directly attributable to smoking and more than \$1 billion per year in lost productivity as a direct result of smoking.<sup>2</sup> Approximately 20% of the adult population of the city of Minneapolis and the state of Minnesota smoke cigarettes.<sup>5</sup>

Nationally, among adults, the economic cost of lost work time due to premature deaths related to smoking rose from \$47 billion in 1990 to \$84 billion in 1999.<sup>6</sup> These calculations are low estimates, in that they do not include productivity losses that result from absenteeism, breaks, performance declines, early retirements, terminations due to smoking-related illnesses or disabilities, or training to replace workers who leave a job or die from smoking. These estimates also do not take into account the costs associated with deaths caused by workers' exposure to secondhand smoke or smoking-related fires.

## Tobacco Taxes and Healthcare Costs

Reducing tobacco use is essential to controlling healthcare costs. One of the most successful and proven methods of reducing tobacco use among adults and youth is increasing the price of tobacco products by raising tobacco taxes. Currently, Minnesota taxes consumers 48 cents per pack of cigarettes, well below the national average of 79 cents per pack. Although Minnesota was once a leader among U.S. states on the rate of cigarette excise taxation, we now rank 35th in the nation. Seven states have cigarette excise taxes of \$1.50 per pack or more. Rhode Island, at \$2.46 per pack, has the highest cigarette excise tax rate in the U.S.<sup>7</sup>

Estimates indicate that raising Minnesota's cigarette excise tax by \$1.00 per pack would reduce adult smoking by 5% (or approximately 43,100 adults), and reduce youth smoking by 20% (or 69,500 children). It is estimated that raising Minnesota's cigarette tax by \$1.00 would save \$15 million over 5 years in healthcare costs related to heart attacks and strokes, \$9.4 million over 5 years in healthcare costs related to smoking-affected pregnancies and births, and \$1.2 billion in long-term healthcare costs.<sup>7</sup>

### quick facts

- Medical costs attributable to smoking comprise 6 to 9% of the total national healthcare budget.<sup>8</sup>
- Every pack of cigarettes sold creates more than \$7 in medical care expenses and lost productivity.<sup>3</sup>
- For every smoker who quits, \$1,623 is saved annually in healthcare costs alone.<sup>9</sup>
- Smokers tend to have more hospital admissions, take longer to recover from illness and injury, have higher outpatient healthcare costs, and have lower birthweight babies.<sup>8</sup>

## Employer Costs Attributable to Smoking

In a 1994 report, the Congressional Office of Technology Assessment estimated that each worker who smokes costs an employer between \$2,000 and \$5,000 per year in increased healthcare and fire insurance premiums, absenteeism, lost productivity and property damage.<sup>10</sup> A more recent 2002 report by the Centers for Disease Control (CDC) estimated that each adult smoker costs employers \$3,400 per year in lost productivity and excess medical expenditures.<sup>9</sup>



### U.S. Smoking Rates by Occupation<sup>11</sup>

Transportation and material moving occupations	.46%
Waiters/waitresses	.45%
Construction laborers	.42%
Construction trades	.40%
Laborers, except construction	.39%
Fabricators, assemblers, inspectors	.37%
Health service occupations	.35%
Sales and retail workers	.27%
Executives, administrators, managers	.24%
Secretaries	.21%
Teachers	.12%

### How much does tobacco cost employers?

Determining an employer's smoking-related costs is difficult because many factors and variables can influence the calculation. Based on the CDC's estimate that each adult smoker costs employers \$3,400 per year, the following formula may provide a useful starting point in determining the cost of smoking to a particular employer.

**Step 1:** Multiply the total number of employees times the estimated percentage of employees who smoke. To calculate the percentage of employees who smoke, enter either the percentage of adult Minnesotans who smoke (20%), or the percentage of smokers within a given occupation (from the occupation table). The resulting number provides an estimate of the total number of smokers within a workplace.

**Step 2:** Multiply the total number of smokers times the CDC estimate of the cost per smoker (\$3,400).

$$\begin{array}{r}
 \text{_____} \quad \text{Total number of employees} \\
 \times \\
 \text{_____} \quad \text{Estimated \% of employees who} \\
 \quad \text{smoke (20\% of Minnesota adults} \\
 \quad \text{or \% from occupation table)} \\
 = \\
 \text{_____} \quad \text{Total \# of smokers} \\
 \times \\
 \$3,400 \quad \text{cost per smoker (CDC estimate)} \\
 = \\
 \text{_____} \quad \text{Employer's estimated cost of smoking} \\
 \quad \text{per year}
 \end{array}$$

## Smoking-Attributable Employer Costs<sup>8</sup>

- Increased absenteeism
- Decreased productivity
- Increased health and life insurance premiums and claims
- Increased level of early retirements
- Increased cleaning and maintenance expenses, property damage and related expenses
- Increased fire insurance premiums and costs of fires caused by smoking
- Increased potential legal liability
  - Where smoking is permitted, nonsmoking employees have received workers' compensation settlements, unemployment compensation benefits and disability benefits based on claims of exposure to secondhand smoke.

## Investing in Tobacco Cessation Cuts Employer Costs<sup>3</sup>

### Short-term benefits:

- Increased productivity
- Savings on fire insurance premiums
- Savings on ventilation services, property upkeep and repair

### Long-term benefits:

- Reduced healthcare costs
- Reduced absenteeism
- Increased productivity
- Reduced life insurance costs

Smoking cessation treatment is referred to as the 'gold standard' of preventative interventions.<sup>12</sup>



## Cost Benefits of Smoke-Free Workplace Policies

Among our nation's health goals for the year 2010 is to reduce the rates of current smoking among adults to 12% or less;<sup>13</sup> however, unless cessation programs and other tobacco control efforts are expanded, this 2010 national health objective will not be achieved.<sup>14</sup> This is because unless smoking cessation among current smokers increases quite rapidly, the rate of smoking-attributable deaths is not expected to decline substantially for many years.<sup>8</sup> Employers can help reduce the rate of current smoking by working with unions to develop smoke-free workplace policies and negotiate the provision of cessation coverage.

Reducing the number of smokers in the workplace is cost-effective, even for cash-strapped budgets. Cessation programs are relatively low-cost, and studies show that they yield financial returns for employers over the short- and long-term that far outweigh their costs.<sup>15</sup> The single most cost-effective clinical preventive service that employers can provide to employees, tobacco cessation treatment costs considerably less than other disease prevention interventions, such as treatment of hypertension and high blood cholesterol.<sup>3</sup> A theoretical model for the U.S. estimates the potential net benefit of a smoking cessation program in a manufacturing workforce of 10,000 to be about \$4.7 million after 25 years.<sup>15</sup>

### How Much Does Cessation Coverage Cost?<sup>3</sup>

- Providing a comprehensive tobacco cessation benefit costs between 10 and 40 cents per employee per month. Costs vary based on utilization and dependent coverage.
- Cost analyses have shown tobacco cessation benefits to be either cost-saving or cost-neutral. Generally, cost/expenditure to employers equalizes at 3 years; by 5 years, benefits exceed costs.

### quick facts

- Tobacco use treatment doubles quitting success rates.<sup>12</sup>
- Working in a smoke-free workplace is associated more strongly with successful quitting than either physician advice or use of nicotine replacement products.<sup>16</sup>
- The smoking rate among Union Pacific Railroad employees decreased from 40% to 25% in a 7-year period during which the employer offered a cessation benefit as part of a comprehensive cessation program.<sup>17</sup>
- Smokers employed in smoke-free workplaces smoke fewer cigarettes per day, are more likely to be considering quitting, and quit at greater rates than smokers employed in workplaces that allow smoking.<sup>18</sup>
- If all workplaces became smoke-free, the per-capita consumption of cigarettes across the U.S. would decrease by 4.5% per year.<sup>19</sup>
- Minnesota can save \$9.2 million in Medicaid costs per year by expanding and funding programs that reduce tobacco use by only 25%.<sup>20</sup>
- Employers with smoke-free workplaces may be able to negotiate reduced insurance rates for life, fire or health insurance. Some insurers have offered up to 45% discounts on life insurance for nonsmokers.<sup>21</sup>

# An Employer Guide to Tobacco: SMOKE-FREE WORKPLACE POLICIES

## unit contents

Smoke-Free Policies Benefit All . . .	8
Education Builds Support for Policy Change . . . . .	9
Smoke-Free Policy Goals . . . . .	9
Shaping Effective Policies . . . . .	9
Minnesota Workplace Smoking Policies . . . . .	10
Developing a Smoke-Free Workplace Policy . . . . .	11
Sample Smoke-Free Workplace Policy . . . . .	12

**This unit demonstrates** why a smoke-free policy is the most effective type of workplace smoking policy and shows how employers and unions, by working together, can achieve reasonable and effective policies with the highest level of acceptance among workers.

The most effective type of workplace smoking policy is one that does not allow smoking in any indoor areas of a workplace and is paired with employer-provided cessation services for workers who want to quit their use of tobacco.<sup>22</sup> After a smoke-free workplace policy is implemented, smokers are more likely to consider quitting, to quit at increased rates and to consume fewer cigarettes per day than smokers employed in a workplace with a less restrictive policy or no policy in place.<sup>18</sup>

Reports show that employees, be they smokers or nonsmokers, support reasonable smoke-free policies. Even workers who at first oppose workplace smoking restrictions tend to comply with a reasonable policy once it has been implemented.<sup>18</sup> To achieve success, employers and unions should work together to develop and implement a policy, conduct outreach to employees, provide ample notice, and offer meaningful, ongoing opportunities for smokers to obtain cessation services.

## Tobacco use declines as the strictness of workplace smoking policies increases.<sup>22</sup>

### Smoke-Free Policies Benefit All

Smoke-free workplace policies impact employers, workers and workplaces in many ways. They eliminate workers' exposure to secondhand smoke while at work; help lower smoking rates among workers; improve the health, attendance and productivity of the workforce; and reduce many additional costs associated with tobacco use, including healthcare costs.

A smoke-free workplace policy is most effective in helping smokers quit smoking and in reducing cigarette consumption among workers who continue to smoke.<sup>18</sup> This is particularly relevant for blue-collar and service-sector unions because not only are smoking rates among blue-collar and service workers much higher than for U.S. adults, in general, but these workers are also less likely than white-collar workers to be covered by a smoke-free workplace policy or to know about or have access to comprehensive services to help them quit smoking.<sup>23,24</sup>

Smoke-free policies benefit smokers and nonsmokers by protecting all workers from unhealthy exposure to secondhand smoke and providing a supportive environment that helps smokers cut back or quit smoking for good. An overwhelming majority of U.S. adult smokers want to quit but have not yet succeeded in doing so. The reality is, most smokers succeed in quitting only after they have accessed multiple types of cessation services and made multiple quit attempts.<sup>25,26</sup>

Studies show that smokers who work in smoke-free workplaces smoke fewer cigarettes per day (about 50 packs less per year for the average smoker), consider quitting more often, and quit at increased rates compared to smokers whose workplaces have weak policies or no policies in place.<sup>18</sup> Smoke-free policies have the greatest impact on worker populations with the highest smoking rates.<sup>22</sup>

**70% of U.S. adult smokers have tried to quit at least once.<sup>25</sup>**

**76% of Minnesota union workers who smoke have made at least one attempt to quit.<sup>27</sup>**

The bottom line is that smoke-free workplaces make a critical difference in the ability of many smokers to achieve their personal goals of quitting. This holds true for multiple demographic groups and in nearly all industries. Requiring all workplaces to be smoke-free would lower overall rates of smoking by approximately 5 to 10 percent.<sup>22,19</sup>



## Education Builds Support for Policy Change

While it may be true that most people know smoking is harmful to health, many remain unaware of the magnitude of the personal health risks to themselves, their co-workers and family members from tobacco use or exposure to secondhand smoke.<sup>27</sup>

By providing workers with pertinent information about the health, safety and economic benefits of smoke-free workplaces, labor and management representatives can help to resolve workers' concerns about the implementation of a smoke-free workplace policy.

Most importantly, by integrating educational information about tobacco use and exposure to secondhand smoke with other health and safety issues relevant to workers, labor and management can achieve support for and acceptance of a new policy, resulting in substantial health and economic benefits for both workers and employers.<sup>28</sup>

## Smoke-Free Policy Goals

A goal of every smoke-free workplace policy is to promote a healthy and productive work environment for all workers—smokers and nonsmokers alike. A policy should clearly communicate an employer's concern for the health and well-being of all employees and be designed to treat all workers fairly, without attacking smokers or promoting anti-smoker messages. To achieve the best policy implementation results, smokers and chewers should be provided with access to comprehensive cessation services.

In a workplace that employs union labor, the employer and union should work together to shape an effective smoking policy or to modify an existing policy. To begin this process, management representatives may find it useful to ask the following questions: Under the existing contract, do employees have the right to smoke at the workplace? How does the collective bargaining process affect the development and implementation of smoking restrictions?

## Shaping Effective Policies

Today, smoking in the workplace is either prohibited altogether, limited to designated areas, or unrestricted. Policies that allow smoking in designated areas, indoors or outdoors, do not protect all workers from exposure to secondhand smoke and are less effective than smoke-free policies in helping current smokers quit using tobacco.

The health impact of workplace smoking restrictions diminishes as smoking is allowed in designated areas. Workplaces that adopt smoke-free indoor policies see declines in smoking that are twice as great as workplaces that allow smoking in designated indoor areas.<sup>22</sup>

The worldwide trend is toward 100% smoke-free workplace policies—those that prohibit smoking in all indoor and outdoor areas of a workplace, including company vehicles when more than one person is present. As the public becomes more knowledgeable about tobacco's harmful health and economic impact on workers, co-workers, their families and friends, smoke-free workplaces are becoming the norm.

For more information about the laws in effect in a particular community or how existing or proposed laws affect your workplace, please contact WorkSHIFTS at 651-290-7506.



# Minnesota Workplace Smoking Policies

The Minnesota Clean Indoor Air Act (MCIAA) currently prohibits smoking in some, but not all, workplaces. Certain types of workplaces, including restaurants, bars, casinos, resorts, hotels and motels, are less restricted under the Minnesota Clean Indoor Air Act. In a growing number of communities, including the cities of Bloomington, Duluth, Cloquet, Minneapolis, Moose Lake and the counties of Hennepin, Ramsey, Olmsted and Beltrami, ordinances have been enacted that exceed the requirements of state law, extending protection to employees in workplaces where smoking is still allowed under state law, such as restaurants and, in some instances, bars.

Below is a brief overview of types of smoking policies in Minnesota workplaces, starting with the most effective type, a smoke-free policy.

## Smoke-free workplace policies

Smoke-free workplace policies prohibit smoking in all indoor areas of a workplace and may prohibit smoking on part, or all, of the grounds of a workplace, as well as in company vehicles. Smoke-free workplace policies protect all employees from workplace exposure to secondhand smoke and reduce the number of smokers and the extent of smoking among workers.

They help smokers quit by providing them with a supportive workplace environment that is conducive to quitting. Smoke-free policies also lower employers' costs of doing business by reducing absenteeism, increasing worker productivity, and lowering healthcare and maintenance costs.<sup>29</sup>

## Outdoors-only smoking policies

Outdoors-only smoking policies prohibit smoking inside workplace buildings, but allow employees to smoke in designated outdoor areas on company grounds. This type of policy has not been associated with reduced rates of smoking nor successful cessation among workers.<sup>30</sup>

## Designated indoor area smoking policies

Policies that allow a designated smoking-permitted area, such as a smoking-permitted break room, attempt to isolate smokers from nonsmokers. To accomplish this purpose, the Minnesota Clean Indoor Air Act (2002) requires that every designated smoking area must be at a negative pressure, compared to nonsmoking areas.

The air from a smoking-permitted area must not re-circulate into nonsmoking areas and must be exhausted directly to the outdoors. Every smoking-permitted area must have: A wall with closed doors, except to permit necessary entry and exit, that separates the smoking-permitted area from non-smoking areas; or, a ventilation system that ensures that all air that crosses the boundary between the nonsmoking and smoking-permitted areas flows only from the nonsmoking area to the smoking-permitted area.

Numerous additional requirements apply to smoking-permitted break rooms or lunch rooms in offices, factories, warehouses or similar places of work.

Like outdoors-only smoking policies, designated indoor area policies are less effective than smoke-free policies because they do not prevent all workers from exposure to secondhand smoke and do not reduce smoking rates among smokers.<sup>22,30</sup> They also tend to be difficult to enforce. In addition, the ventilation systems on which these policies depend are expensive to install, update and maintain, and cannot eliminate all health risks from secondhand smoke.<sup>31</sup>

Even the newest ventilation technologies under ideal conditions are incapable of removing all secondhand smoke and its toxic constituents from the air.<sup>32</sup>

## quick facts

### Restaurants, bars and lodging establishments

Food service workers, such as waiters, waitresses, cooks, bartenders and counter help, are least likely to work in smoke-free environments. These and other types of workers exposed to secondhand smoke have up to a 50% increase in risk of heart disease and lung cancer compared to those in other occupations.<sup>33,34</sup>

# Developing a Smoke-Free Workplace Policy

Employers and unions can work together to shape an effective workplace smoke-free policy by:

1. **Establishing a working group.** By involving representatives from all parts of the organization, a working group can communicate the importance of smoking as a workplace issue. To be effective, a working group should consult with employees and management about workplace issues and policy development and advocate for policies that address workplace tobacco issues. The composition of a working group should reflect the diversity of the organization. Participants should include senior management, union and occupational health representatives, employees, human resources, safety officers and work committees or councils.
2. **Assessing current practices.** An assessment of current practices helps to determine their strengths and weaknesses, an essential step in guiding policy development. An evaluation of current worksite practices may include: Review of a company's existing tobacco policy (if any); review of the types, patterns, and extent of tobacco use within a company; review of current state or local legal restrictions on smoking in the workplace; review of provided cessation services for employees who use tobacco; and, development of a timeline for the new policy creation and implementation.
3. **Involving and informing employees.** Open communication between employees and management is crucial to gaining initial and long-term support for a new policy and will help ensure that all employees are aware of the policy changes and their implications. Supervisors and mid-level managers need to know what to expect when implementing a new policy so that enforcement will be fair and consistent. Maintaining open communication will help to reduce potential problems, such as misuse of break time or development of tensions between smokers and nonsmokers.

One way to involve employees in the development of a new policy is by conducting a short survey to learn about behaviors and opinions related to the proposed policy. In a unionized workplace, unions should be involved in the development of employee surveys. Gathering opinions of all employees—smokers and nonsmokers—is important and can help to determine potentially effective ways for smokers to quit.

4. **Developing a written policy.** A written smoking policy needs to clearly identify its goals and the steps necessary to meet those goals. Policy goals should be achievable, even if they cannot all be achieved immediately. If, for example, the ultimate goal is to make a workplace entirely smoke-free, full policy implementation might best be phased in over the course of several months or a year or more. Whenever possible, the new policy should be integrated with other programs and procedures on health and safety in the workplace to achieve the greatest effect.

A written policy should include:<sup>29</sup>

- Purpose of the policy
- A link between the policy and company values
- Time frame for implementation
- A clear statement of whether smoking is allowed on the premises, and if so, where
- Number and duration of acceptable smoking breaks (not to exceed those for nonsmokers)
- Details of support, such as counseling and cessation services, available for smokers
- Disciplinary actions or consequences of non-compliance
- Names of contact persons who can answer questions related to the policy

5. **Providing support for smokers.** Smoke-free workplace policies should include active and multiple types of support for employees who are smokers or chewers. For many workers, being restricted from access to tobacco during the workday may be very difficult because of their addiction to nicotine, one of the most addictive substances on earth. Examples of accommodations that employers can provide to help employees who are most in need of assistance include: Employer-paid cessation options and incentives; information about cessation support and treatment options; flexibility in scheduling cessation services; and, allowing support groups to meet during working hours.<sup>35</sup>

# Sample Smoke-Free Workplace Policy\*

To fully comply with the Minnesota Clean Indoor Air Act (MCIAA) (*or insert reference to local ordinance if the local provision is more restrictive than the MCIAA*), and in the interest of providing a safe and healthy environment for both employees and the public, smoking restrictions have been established.

## Purpose

A smoke-free policy has been developed to comply with current state (*or local*) regulations (*insert specific legislative provisions*) and to protect all employees and visitors from secondhand smoke, an established cause of cancer and respiratory disease. The policy set forth below is effective *[date]* for *[organization name and location]*.

## Smoke-Free Areas

All areas of the workplace are now smoke-free, without exception. Smoking is not permitted anywhere in the workplace, including all indoor facilities and company vehicles with more than one person present. Smoking is not permitted in private enclosed offices, conference and meeting rooms, cafeterias, lunchrooms, or employee break rooms or lounges.

## Sign Requirements

"No smoking" signs must be clearly posted at all entrances and on bulletin boards, bathrooms, stairwells and other prominent places. No ashtrays are permitted in any indoor area.

## Compliance

Compliance with the smoke-free workplace policy is mandatory for all employees and persons visiting the company, with no exceptions. Employees who violate this policy are subject to disciplinary action.

Any disputes involving this policy should be handled through the company's established procedures for resolving other work-related problems. If the problem persists, an employee can speak to *[company department, name and phone number for complaints]* or lodge an anonymous complaint by calling the *[insert local government unit's complaint line or the state's indoor air unit complaint line or web address, where applicable]*.

## Smoking Cessation Opportunities

*[Company name]* encourages all employees who smoke to quit smoking. The *[insert the company department, e.g., worksite wellness program]* offers a number of cessation services for employees who want to quit smoking or chewing tobacco. Smoking cessation information is available from the QUITPLAN Helpline<sup>SM</sup> for uninsured Minnesota residents and from major health plans for their members:

English speakers: 1-888-354-PLAN (that's 7526)

Spanish speakers: 1-877-266-3863

Hearing impaired: 1-877-777-6534

## Questions

Any questions regarding the smoke-free policy should be directed to *[company department/union representative, including phone number(s) for handling inquiries]*.

\*Every workplace is unique. This sample policy may require modifications to meet the needs of specific workplaces. Please contact WorkSHIFTS for more information at 651-290-7506.

Adapted from a smoke-free policy developed by the American Cancer Society<sup>25</sup>

# An Employer Guide to Tobacco: LEGAL ISSUES

## unit contents

Bargaining Authority & Related Policy Implementation Issues . . .	14
Smoking Policy Violations . . . . .	16
State Laws & Regulations . . . . .	17
Related Federal Laws & Regulations . . . . .	22

**This unit addresses** legal principles and issues that may come into play, particularly in unionized workplaces, when an employer seeks to modify an existing smoking policy, introduce a new policy, or address problems that may arise following the implementation of a policy.

Smoking issues can be contentious in workplace settings. Careful planning, involving participation of all stakeholders—management and labor—will help yield the best policy with the highest level of acceptance among workers. The bottom line is that when new rules, including smoking policies, are negotiated in good faith, employers, employees and unions will be best served.

In this unit, you will learn about smoking policies as a mandatory subject of bargaining, the scope of management’s bargaining authority under management rights clauses, and the application of the **just cause standard** to smoking violations by employees. A succinct summary of state and federal laws and regulations that address smoking and exposure to secondhand smoke in workplace settings is also included.

## Bargaining Authority & Related Policy Implementation Issues

Two core legal concepts come into play when an employer seeks to introduce a new workplace smoking policy or make changes to an existing policy in workplaces that employ union members.

- The obligation to negotiate a mandatory subject of bargaining; and
- The authority granted to an employer under a contract's management rights language.

### The obligation to negotiate a smoking policy as a mandatory subject of bargaining under the NLRA

The National Labor Relations Board (NLRB), which is charged with enforcing the National Labor Relations Act (NLRA), has ruled fairly consistently that a smoking policy is a mandatory subject of bargaining. In the absence of clear contract language to the contrary, any proposed change to an existing workplace smoking policy can be implemented unilaterally only if both parties have bargained to impasse and have reached a good-faith deadlock on the policy issue. An employer's failure to bargain in good faith may be met by a union's filing of an 'unfair labor practice' (ULP) charge under Section 8(a)(5) of the NLRA.

- **Union action required: Notice of intent to bargain**  
A union can argue against an employer's unilateral implementation of a smoking policy by stating its intent to bargain over the policy to an employer as soon as learning of the employer's intent to take action—before a policy change is implemented. Unions have been found to have waived their rights to bargain by waiting too long to give notice of the intent to bargain or by never making a proper request. Please note that this differs from several other types of policy grievances wherein a grievance is filed after actual harm is incurred.
- **The impact on negotiations of a legislative mandate for a workplace smoking policy**  
When legislation mandates a change to an existing smoking policy or the establishment of a new policy, such as when changes are required as the result of recent amendments to the Minnesota Clean Indoor Air Act or a municipality's adoption of a new smoke-free workplace ordinance, a union has a right to request to bargain over the employer's new smoking policy terms, to the extent

that all proposed terms remain within the bounds of law. The NLRB has held that an employer may implement a smoking policy unilaterally as long as the policy change is mandated by legislation that does not allow any discretion in implementation of the policy. If discretion is allowed in the implementation of the law, the union retains the right to bargain over the **implementation of**, but not the **substance of**, the policy.

### The scope of an employer's authority to make unilateral changes in smoking policies

Almost every labor-management contract contains a management rights clause that grants management the authority to make policy changes unilaterally under certain conditions. When questioning whether management rights apply, it is essential to remember that every management rights clause is unique and must be examined independently.

- **Unilateral implementation**  
Disputes over an employer's right to implement a new smoking policy almost always occur when an employer attempts to implement a new policy unilaterally. When this happens, a union is apt to file a grievance, questioning whether a specific contract's management rights clause gives an employer this right. In contrast to unfair labor practice charges that are reviewed by the NLRB, smoking policy grievances are usually resolved through a grievance-arbitration process.
- **Duty of fair representation**  
Unions have an obligation to represent smokers and nonsmokers and to enforce contracts. An employer may argue successfully that a union's failure to grieve the unilateral implementation of a smoking policy constitutes a waiver of the union's right to bargain over the smoking policy change, thereby ceding to management the right to implement the change.

- **Grievance proceedings inquiries**

As a guideline in grievance proceedings, arbitrators examine the scope of an employer's authority under the existing contract's management rights clause and inquire whether the policy in question is reasonable. Unions may charge that the employer failed to fulfill its obligation to bargain, lacked authority to implement the policy change unilaterally, or was prohibited from doing so by specific contract language or past practice. They also may charge that the policy itself is unreasonable in that it is not implemented fairly, is discriminatory, creates undue hardship, or the like.

### **What authority does an employer retain under a management rights clause?**

An arbitrator may elect to sustain management's right to implement a smoking policy unilaterally if:

1. The management rights clause of the contract in question gives an employer the right to promulgate work rules and the rules are reasonable.
2. The applicable contract language obligates management to provide a *safe* or a *safe and healthy workplace*. To sustain such a claim, an employer may be required to document that smoking, as well as exposure to secondhand smoke, are hazardous to employees or to the safe operation of the employer's facility.
3. The policy prohibits smoking in workplace interior spaces only. Arbitration outcomes have been mixed when employers have sought to unilaterally prohibit smoking on a company's entire premises.

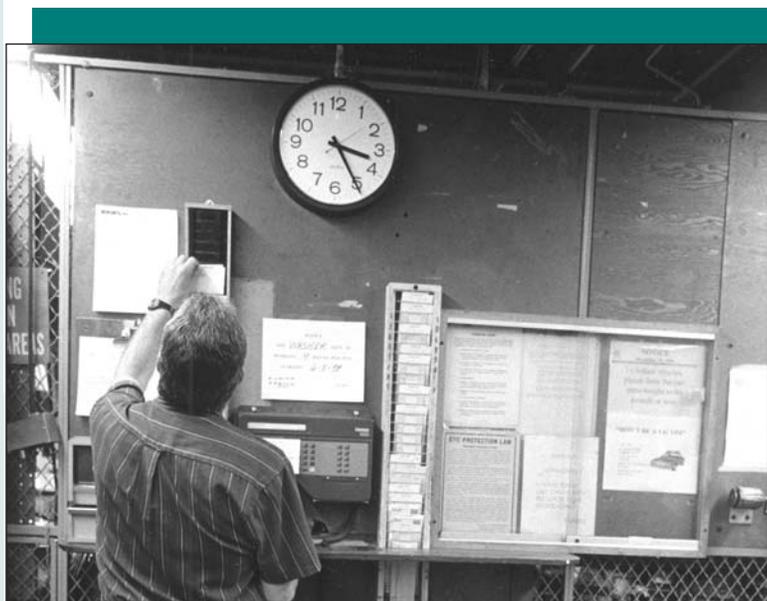
Generally speaking, arbitrators try to weigh an employer's obligation to maintain a safe workplace, including the corresponding right to promulgate reasonable work rules, against a union's arguments in favor of past practice, and make decisions based on the weight of evidence provided to substantiate each claim. Increasingly, rulings appear to favor employers' arguments that new scientific data demonstrating the hazards of secondhand smoke should overrule past practices.

### **Is the policy related to a legitimate business interest?**

Smoking policies have been upheld when they are reasonably related to a legitimate business interest. A smoking policy may prevail when an employer can show successfully that the policy will have a positive impact on employee productivity, absenteeism and health, or reduce safety hazards or workers' exposure to secondhand smoke. The latter rationale has met with greater success recently, in response to growing public awareness of the magnitude of the health risks caused by the presence of secondhand smoke in workplace settings.

Arbitrators apply conventional standards of reasonable work rules to smoking policies, asking:

- **Is the rule justified?** Is the smoking policy justified by demonstrable safety, health, and productivity concerns?
- **Is the rule balanced?** Does the policy attempt to address the interests and rights of both smokers and nonsmokers?
- **Is the rule fair?** Is the smoking policy arbitrary and capricious? Does it target specific workers for reasons other than smoking? Is the policy overly burdensome?



## Other contract language that may be disputed

Although most contractual disputes over smoking policies involve interpretations of management rights clauses, other contract provisions may be disputed, too. Each contract is unique and must be examined independently. Below are examples of additional contract provisions that may be disputed.

- **Specific smoking provisions.** Contracts may contain specific smoking language. Typically, the presence of specific contract language would suffice to prohibit an employer from implementing a change unilaterally, unless new legislation mandates that a change be made to the provision in question.
- **Safety committee provisions.** Some contracts establish a safety committee that is run jointly as a labor–management partnership. Safety committee language may apply to a smoking policy, especially when an employer’s rationale for implementing a policy is to protect employee safety.
- **Break language.** Break language within a contract may grant employees certain rights to use company premises during their breaks. In such a case, a smoking policy that permits smoking during breaks, but limits where smoking breaks may occur, may violate the existing contract in question.
- **Past practice.** Unions often charge that a new smoking policy violates past practice. Employers respond by arguing that what was once considered a legitimate past practice must now be understood differently in light of new scientific data demonstrating the dangers of secondhand smoke. Arbitrator rulings on past practice issues have been mixed. Unions have prevailed in some disputes in which contracts have contained specific maintenance of existing conditions language.

## Smoking Policy Violations

Employers may discipline or terminate employees for violating smoking policies, just as they may discipline them for violating any other legitimate workplace policy. Discipline is warranted when specific and direct safety issues are involved (e.g., an employee is smoking near flammable or hazardous materials). Disciplinary measures taken by an employer to address an employee’s alleged violation of a smoking policy involve **just cause** analyses.

Put simply, **just cause** means with good reason. The basic elements of the just cause standard have been reduced to seven tests that arbitrators apply routinely in disciplinary cases. An employer must satisfy all seven tests, but an arbitrator may give the tests varying weights when issuing a ruling. The seven tests are paraphrased below as they apply to smoking policy disciplinary issues.

1. **Notice.** Did the employer give the employee forewarning or foreknowledge of a change to the smoking policy?
2. **Reasonable Rule or Order.** Is the employer’s smoking policy reasonable?
3. **Investigation.** Did the employer make an effort to discover whether the employee violated or disobeyed the smoking policy before disciplining the employee?
4. **Fair Investigation.** Did the employer conduct a fair and objective investigation before issuing the discipline?
5. **Proof.** Did the employer have substantial proof that the employee violated the policy?
6. **Equal Treatment.** Has the employer applied its smoking policy evenhandedly and without discrimination?
7. **Penalty.** Was the disciplinary action appropriate in light of the alleged offense and the employee’s prior discipline record? Were there any mitigating circumstances?

## State Laws & Regulations

One of the most effective ways to eliminate people's exposure to secondhand smoke and reduce the rate of smoking among youth and adults is by enacting clean indoor air laws and adopting policies that limit or prohibit smoking in indoor settings. To date, the federal government has played a lesser role than cities or states in regulating smoking. Most restrictions have been enacted by state and local government.

This section provides a brief overview of key provisions of Minnesota laws that regulate smoking in workplaces and the impact of smoking on employees. For more information, or to inquire about the applicability of laws to specific settings or circumstances, please contact WorkSHIFTS.

### Minnesota Department of Health

The Minnesota Department of Health has primary responsibility for enforcement of the Minnesota Clean Indoor Air Act (MCIAA). In some instances, this authority is delegated to city or county health departments. Below is a summary of the applicability of the Clean Indoor Air Act to common types of workplaces, including restaurants, bars, hotels and other workplaces where the Act's reach remains in flux.

#### Minnesota Clean Indoor Air Act (MCIAA)

Minnesota's Clean Indoor Air Act, enacted in 1975, was the first in the nation. The Act has been amended several times since then, most recently in 2002. The latest amendments, which took effect in 2003, have strengthened existing requirements regulating ventilation in smoking-permitted areas of offices, factories, warehouses and similar workplaces, by prohibiting smoking in those locations except in specific, designated smoking areas that conform to MCIAA regulations. Bars, restaurants, portions of hotels, and certain other hospitality venues remain subject to less restrictive requirements. [Please note that some, but not all, types of workplaces are referenced below. For specific inquiries, please contact WorkSHIFTS or the Minnesota Department of Health, Indoor Air Unit, 651-215-0909 or 800-798-9050.]

##### 1. Bars and Bar Areas of Restaurants

Under the MCIAA, a bar is defined as any establishment or portion of an establishment where one can purchase and consume alcoholic beverages, where there are tables and seating facilities for fewer than fifty people at one time, and where licensed food service is limited. If a bar does not provide food service during hours of operation, it may allow smoking on its entire premises, provided this information is posted at the entrance of the bar. If the bar has a license for limited food service and seating facilities for fifty or fewer people, it may designate all seating as smoking-permitted. If the bar seats more than fifty or serves more than a very limited food service, it is considered to be a restaurant. Bar operators who witness violations must ask violators to refrain from smoking in designated nonsmoking areas. Violators are guilty of a petty misdemeanor. Bar owners who violate this provision may be fined or lose their licenses. The Minnesota Department of Health or local public health inspectors may order violators to correct violations, when necessary. The Department may impose fines up to \$10,000 via administrative penalty orders.

##### 2. Food Handling, Processing and Manufacturing Establishments

Employees of food handling establishments (including grocery stores, restaurants, delicatessens, and other retail and wholesale food handlers; wholesale food processors or manufacturers; and food brokers) are prohibited from using tobacco in any form where exposed food, equipment, utensils, linens, unwrapped single-service or single-use articles or other items can be contaminated. Violators are guilty of a petty misdemeanor. Food handling establishments that violate this provision may be fined or lose their licenses. The Minnesota Department of Health may impose fines up to \$10,000 by administrative penalty order.

##### 3. Health Care Facilities

Smoking is prohibited in any interior area of a hospital, healthcare clinic, doctor's office, or other healthcare-related facility. No patient, staff, guest, or visitor on the grounds or in a state regional treatment center, the Minnesota security hospital, the Minnesota sex offender program, or the Minnesota extended treatment options program may possess or use tobacco or a tobacco-related device. There are some notable exceptions: The prohibition does not apply to nursing homes, boarding care facilities or licensed residential facilities; and the

provision applying to state treatment centers and security hospitals does not prohibit adult Indians from possessing or using tobacco or a tobacco-related device as part of a traditional Indian spiritual or cultural ceremony. Violations are misdemeanors. Fines up to \$10,000 may be imposed by administrative order.

#### 4. Hotels and Motels

The MCIAA requires lodging establishments, such as hotels, motels and resorts, to comply as follows:

**Lobbies and Common Areas:** Smoking in lobbies and other common areas is restricted to designated areas. A nonsmoking area must be at least 200 square feet, have appropriate signs, and be separated from the smoking-permitted area by a 4-foot wide unoccupied or occupied space, a physical barrier 56 inches or more in height, or outdoor air ventilation of not less than 15 cubic feet per minute per person. Smoking is prohibited in lobbies that are less than 200 square feet in size.

**Registration Desks:** Neither guests nor employees may smoke at a registration desk.

**Guest Rooms:** Lodging operators may leave the decision to smoke in rooms up to guests; designate nonsmoking and smoking-permitted rooms and assign guest rooms accordingly; or establish a smoke-free policy for an establishment.

**Meeting Rooms:** Lodging operators may designate nonsmoking and smoking-permitted areas in meeting rooms or leave this to the discretion of the organization that has rented the meeting room.

**Banquet Rooms:** Lodging operators or organizations renting the banquet room may designate nonsmoking and smoking-permitted areas within a banquet room. If the banquet room is rented for a private social function, smoking need not be restricted. A "private social function" means a specific social event, such as a wedding, for which an entire room or building has been reserved for entertainment or pleasure and not for the principal purpose of education, sales, or business; the function is limited in attendance to people who have been specifically designated and their guests; and seating arrangements for the function, if any, are under the control of the function's sponsor and not the person otherwise responsible for the banquet room.

**Employee Lunchroom/Lounge:** Employee lunchrooms or lounges must meet all requirements for lunchrooms and lounges described under "Offices, Factories and Warehouses" in this section, with the exception of ventilation and separation requirements.

**Indoor Swimming Pool Areas:** Smoking is restricted to designated areas. Nonsmoking space and separation must be provided, along with the appropriate signs.

**Nonsmoking Sleeping Rooms:** Smoking is prohibited in any hotel sleeping room designated as nonsmoking. Innkeepers must post signs conspicuously in all nonsmoking sleeping rooms stating that smoking is not permitted. Lodging management may adopt more restrictive nonsmoking policies. If management establishes a smoke-free policy for an entire building, it must post this policy at the main entrances.

The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to city or county health departments. Lodging operators who observe violations are responsible for asking people to refrain from smoking in designated nonsmoking areas. Each violation is a petty misdemeanor. The Minnesota Department of Health may impose fines up to \$10,000 by administrative penalty order. In addition, anyone convicted of violating the rule against smoking in a nonsmoking room may be required to reimburse the innkeeper for cleaning costs up to \$100.

#### 5. Nursing Homes

Any nursing home, boarding care facility or other licensed residential facility that allows a smoking-permitted area must provide a comparable nonsmoking area. Smoking-permitted areas in nursing homes and boarding care facilities must comply with ventilation requirements. If smoking is permitted in the facility, prospective patients or residents must be assigned smoking-permitted or nonsmoking rooms depending on their preferences. Otherwise, smoking is prohibited in all rooms except those occupied exclusively by those who smoke or permit others to smoke. Visitors and staff cannot smoke in patient or resident rooms. Medical centers, nursing homes, or domiciliary care facilities operated by the U.S. Department of Veterans Affairs must allow a suitable indoor designated smoking area, which is ventilated as required by law or is in an area detached from the facility, is accessible to patients or residents, and has appropriate heating and air conditioning for those persons receiving care or services who wish to smoke tobacco products. An exception applies to minors in licensed residential treatment centers, including rehabilitation and other care facilities. Minors are not permitted to possess or use tobacco products.

The Minnesota Department of Health may impose fines up to \$10,000 by administrative penalty order. The Department has discretion to suspend or revoke nursing home and boarding care licenses.

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The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to city or county health departments. Lodging operators who observe violations are responsible for asking people to refrain from smoking in designated nonsmoking areas. Each violation is a petty misdemeanor. The Minnesota Department of Health may impose fines up to \$10,000 by administrative penalty order. In addition, anyone convicted of violating the rule against smoking in a nonsmoking room may be required to reimburse the innkeeper for cleaning costs up to \$100.

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The Minnesota Department of Health may impose fines up to \$10,000 by administrative penalty order. The Department has discretion to suspend or revoke nursing home and boarding care licenses.

If the entire restaurant is entirely smoke-free, this policy must be posted at the main entrances. Areas where food is handled and prepared must comply with requirements described under "Food Handling, Processing and Manufacturing Establishments." Lunchrooms or lounges provided for employee breaks must meet all but the ventilation requirements described for lunchrooms and lounges under "Offices, Factories, Warehouses and Similar Workplaces." An exception applies where seating is controlled by a host or hostess. In those settings, nonsmoking and smoking-permitted areas do not have to be posted with signs. Where patrons seat themselves, the areas must be posted appropriately.

Inspectors may issue orders to correct violations, when necessary. Restaurant and bar operators who observe violations are responsible for asking people to refrain from smoking in designated nonsmoking areas. Smoking in a designated nonsmoking area is a petty misdemeanor. The Minnesota Department of Health may fine restaurants up to \$10,000 by administrative penalty order and revoke or suspend their licenses.

## 8. Stores

Smoking is prohibited in all customer-accessible areas of retail stores, except for designated smoking-permitted areas. If a smoking area is created in an area used by customers, the same goods and services must be available in a separate nonsmoking area of the store. The main entrances of a smoking-permitted area must be posted with signs stating: "Smoking is prohibited except in designated areas" or a similar statement. If no smoking is allowed in the building, the main entrances must be posted with signs stating, "No smoking in this entire facility" or a similar statement. If management establishes a smoke-free policy for the entire building, it must post no-smoking signs at main entrances. Lunchrooms or lounges provided for employee breaks must meet all but the ventilation requirements described for lunchrooms and lounges under "Offices, Factories, Warehouses and Similar Workplaces." Restaurants located within a retail store must comply with state requirements described under "Restaurants." Retail operators who observe violations are responsible for asking people to refrain from smoking in designated nonsmoking areas. Smoking in a designated nonsmoking area is a petty misdemeanor. The Minnesota Department of Health may impose penalties up to \$10,000 by administrative penalty order and revoke or suspend licenses.

## Minnesota Department of Labor and Industry

### Workers' Compensation Act

Minnesota's Workers' Compensation Act provides benefits to injured employees when an injury is related to work activity, regardless of fault or negligence. All Minnesota employers, with very limited exceptions, are subject to the Act. Injured employees must demonstrate that the risk of harm was increased by being at work or by performing job functions, and that the injury took place during the course of employment. Worker's compensation claims can be exceedingly complex and usually require the assistance of legal counsel. A growing body of case law supports the receipt of workers' compensation claims for workers who become ill as the result of exposure to secondhand smoke at the workplace. The merits of each claim must be determined on a case-by-case basis. In general, an injured employee must establish a causal relationship between the workplace exposure to secondhand smoke and the injury, must have notified the employer of the harmful effect from tobacco smoke and requested that this concern be addressed, and, after being notified about the employee's concern, the employer must fail to make a reasonable accommodation to eliminate the source of the injury, such as exposure to secondhand smoke.

### Employee Right to Know Act

This act requires employers to evaluate their workplaces for the presence of hazardous substances and harmful physical agents and to provide training to alert employees about their potential exposure to any such substances or agents. Tobacco products and other products intended for personal consumption by employees in the workplace are specifically exempted from these provisions. Penalties can range from \$1 to \$70,000.

## Prohibited Employer Conduct

Employers may not refuse to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in, or has engaged in, the use or enjoyment of a lawful consumable product, such as tobacco, if the use or enjoyment takes place off-premises during nonworking hours; however, an employer may restrict employees' use of tobacco products during nonworking hours if the restriction relates to a bona fide occupational requirement and is reasonably related to employment activities or responsibilities of a particular employee or group of employees, or is necessary to avoid a conflict of interest or the appearance of a conflict of interest with any responsibilities owed by an employee to the employer. Violators may be subject to a civil action for damages, limited to wages and benefits lost because of a violation. The court may award the prevailing party court costs and reasonable attorney fees.

## Whistleblower Act

An employer may not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, condition, location or privileges of employment because the employee or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law (such as a company smoking violation) to an employer or to any governmental body or law enforcement official. Civil penalties may include all damages recoverable at law, costs and disbursements, reasonable attorney's fees, and any injunctive or equitable relief determined by the court.

## Minnesota Department of Human Rights

### Human Rights Act

The Minnesota Human Rights Act, like the federal Americans with Disabilities Act, may afford legal protections to employees affected by smoke in the workplace, including places of public accommodation, such as restaurants and bars. A disabled person is defined as one who (1) has a physical, sensory, or mental impairment that materially limits one or more of the person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. The Human Rights Act protects qualified disabled persons or those who, with reasonable accommodation, can perform essential functions required of all employees performing the job in question. Disabled persons who wish to be protected from secondhand smoke in the workplace may file a complaint with the Department of Human Rights or bring a lawsuit under the Minnesota Human Rights Act. Any person who commits a prohibited discriminatory act, or aids, abets, incites, compels, or coerces another to do so, is guilty of a misdemeanor. Damages may include back pay, compensation for lost benefits or mental pain and suffering, reinstatement, punitive damages up to \$8,500, and a civil penalty.

## Minnesota Department of Employment and Economic Development

### Unemployment Insurance Law

Under both federal and Minnesota law, employers who employ individuals within the state must contribute unemployment taxes to the federal and state reemployment insurance fund. The purpose of the fund is to provide weekly payments to employees who have lost their jobs through no fault of their own and who, although physically able, have not found suitable reemployment. Employees who are discharged for reasons other than misconduct and employees who quit their employment due to a serious illness or injury or for a good reason caused by the employer may qualify for the receipt of unemployment benefits. Nonsmoking employees who leave employment because they are unable to continue working due to the effects of workplace secondhand smoke have been found to be eligible for benefits.

## Related Federal Laws & Regulations

### Environmental Protection Agency (EPA)

Although the EPA has classified tobacco smoke as a Group A carcinogen for which there is no known safe level of exposure, it does not regulate secondhand smoke in the workplace and has no indoor air quality standards for tobacco smoke. The EPA maintains that secondhand smoke is a carcinogen that "causes cancer and other significant health threats to children and adults," and recommends that employers protect nonsmokers from exposure by allowing smoking only in outdoor spaces or in isolated indoor spaces that are separately ventilated to the outdoors and sponsoring employer-paid cessation programs.<sup>36</sup>

### National Institute for Occupational Safety and Health (NIOSH)

Like the EPA, NIOSH has not established indoor air quality standards for secondhand smoke. NIOSH recommends that employers "reduce environmental tobacco smoke to the lowest feasible concentration."

### Occupational Safety and Health Administration (OSHA)

In Minnesota, the Occupational Safety and Health Division of the State's Department of Labor and Industry adopts and enforces federal OSHA standards, as well as local standards. Even though secondhand smoke has been classified as a Group A carcinogen, known to cause cancer in humans, it is the only Group A carcinogen that is not specifically regulated by OSHA. In 1994, OSHA proposed restrictions under its Indoor Air Quality Rules. Under pressure from the tobacco industry, no final regulations were issued. Today, OSHA regulates secondhand smoke in very limited circumstances, such as when manufacturing process contaminants combine with smoke to create a dangerous air supply that fails OSHA standards.

Minnesota Statute §182.653, Subdivision 2, requires each employer to furnish "conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to its employees." Minn. Stat. §182.657 requires the Department of Labor and Industry to "promulgate...such rules as may be deemed necessary to carry out the responsibilities of this chapter."

### Americans with Disabilities Act (ADA)

The ADA prohibits discrimination against an employee with disabilities and requires an employer to provide **reasonable accommodation** to a qualified disabled employee, as long as the accommodation does not cause the employer an **undue hardship**. The law applies to employers with at least fifteen employees, including those who operate places where the public is invited, such as restaurants, hotels, and theaters, and those who receive government services. The ADA defines **disability** as (1) a physical or mental impairment that **substantially limits one or more major life activities**; (2) a record of such impairment; or (3) being regarded as having such impairment. If an employee specifically requests reasonable accommodation or notifies the employer of the seriousness of the problem, the employer is obligated to accommodate the employee.

A person with respiratory problems may succeed in proving that a sensitivity to smoke is disabling, in that it impairs the ability to perform a major life activity (breathing freely), and that a reasonable accommodation would be a smoke-free workplace policy or an appropriate ventilation system. An employer may argue that a proposed accommodation will create an undue hardship, imposing an extraordinary financial or other burden on an employer or interfering substantially with the ability to run an enterprise. Although an effective, reasonable accommodation must be made, the ADA does not require an employer to make the accommodation preferred by the disabled employee or recommended by experts. The Equal Employment Opportunity Commission (EEOC) must investigate all properly filed complaints. If the EEOC does not pursue an action, an individual may file a private lawsuit. ADA penalties include monetary damages, court orders to stop the violation in question, and attorneys' fees.

# An Employer Guide to Tobacco: HELPING EMPLOYEES QUIT

## unit contents

Employers & Cessation . . . . .	24
Cost Savings & Benefits . . . . .	24
Barriers of Quitting . . . . .	25
Benefits of Quitting . . . . .	26
Components of Cessation Programs . . . . .	27
Action Steps . . . . .	28

**This unit addresses** common barriers to quitting tobacco use, the benefits of quitting, and the effectiveness of different cessation approaches.

Although much progress has been made in reducing smoking rates among the public-at-large, the progress, to date, has not impacted all population groups equally. Smoking rates remain substantially higher among blue-collar and service workers, when compared to other adult members of the workforce. This hold true within Minnesota.<sup>27</sup>

Not only do blue-collar and service workers have higher rates of smoking than white-collar workers, they are also more likely to be exposed to tobacco smoke on the job.<sup>37</sup> Blue-collar and service workers are less likely than other workers to have health insurance that includes cessation services and are less likely to know about the range of available services, which services are most effective, or how to get the help and support they need to quit.

At a time when healthcare costs are spiraling out of control, providing workers with access to proven cessation options is both smart and cost-effective. Smoke-free workplace policies, coupled with the provision of cessation services, lower the percentage of smokers in workplaces, as well as the amount of tobacco consumed per continuing smoker, reduce absenteeism, increase productivity, and reduce healthcare costs. In fact, the single most cost-effective health service an employer can provide to employees is tobacco cessation assistance.<sup>3</sup> Employers can play a vital role in helping employees achieve the goal of quitting.

## Employers & Cessation

Many employers are actively involved in promoting a healthy workforce. Advocating for smoke-free workplace policies and the provision of cessation services that meet particular workforce needs can serve as strong complements to existing worksite health promotion programs and initiatives.

When employers partner with unions to shape smoking policies and cessation programs, policy outcomes are more likely to incorporate employee perspectives and priorities and to result in greater acceptance of policy changes and greater utilization of program services.

By working together to adopt smoke-free workplace policies and improve workers' access to effective cessation services, employers and unions can help employees with the critical motivation and support they need to quit successfully, and reduce absenteeism, productivity and healthcare costs.



## Cost Savings & Benefits

Providing tobacco cessation benefits is the single most cost-effective preventive service that employers can provide to employees.<sup>3</sup> Although employers incur initial costs when providing cessation benefits, they can see a quick return on their investments. Cost analyses estimate that about one-third of the cost of an employer-paid cessation program is returned in the first year and that the entire cost is fully recovered in three years.<sup>15,38</sup>

Employer savings include reductions in: the number of health problems among employees, rates of absenteeism and lost productivity, and the cost of life and health insurance coverage.

### quick facts

- Compared to a smoker who quits, the average smoker incurs \$1,041 in additional annual healthcare expenses over a period of five years.<sup>39</sup>
- Smokers are subject to more disciplinary actions and are at greater risk of occupational injuries than are nonsmokers.<sup>40</sup>
- Very few smokers are able to quit cold turkey. Only 3 to 7% of smokers succeed in quitting without some source of help or support.<sup>26</sup>
- Most smokers who succeed in quitting do not succeed on the first try and make multiple attempts before achieving their goals.<sup>41</sup>
- Almost two-thirds of current adult smokers in Minnesota who have made recent quit attempts did not use any assistance in their last attempts to quit. This finding suggests that many Minnesota smokers may lack critical information about successful quit methods and personal cessation options, and need greater support.<sup>42</sup>

## Barriers to Quitting

Quitting tobacco is difficult for individuals because:

- Nicotine is one of the most addictive substances known to humankind.
- The social environments in which smokers spend their time—at home, at work, or at leisure—tend to support smoking.
- For workers whose workplaces permit smoking, workplace exposure to secondhand smoke is both harmful to their health and a major impediment to their personal attempts to quit.
- Workers face numerous challenges that can be barriers to quitting, including work organization issues like increased hours, intensification of work due to downsizing, and changes in technologies and work processes. These issues have been associated with ergonomic hazards, repetitive strain injuries, stress, workplace violence and even fatalities.
- Tobacco use can function as an escape from the stress or the tedium of work. Studies show that former smokers sometimes start to smoke again during particularly stressful times. To quit successfully, smokers and chewers need to learn new ways to cope with stress.
- Time constraints can be serious barriers to quitting, too. Workers who hold multiple jobs, work night shifts, have transportation challenges, or face other, equally challenging obstacles, may be unable to participate in cessation programs unless they are telephone-based or are made available at their worksites during work hours.
- The perceived cost of cessation programs, combined with workers' self-perceptions about their abilities to quit, may also be barriers to quitting.



### quick facts

#### NICOTINE

Nicotine has a powerful effect on the body that causes changes in mood, alertness and energy. Nicotine helps people cope with difficult emotions, including stress, discomfort, anger, and anxiety. These physical and emotional effects make it hard for many persons to stop using tobacco.

Nicotine's effects on the brain are similar to those of heroin and cocaine. Smokers become addicted to nicotine physically and psychologically and must overcome both of these dependencies, as well as learn alternative coping strategies, to quit successfully and stay smoke-free.

## Benefits of Quitting

For individuals and those around them, the benefits of quitting are many and varied.

### It's never too late to quit

The earlier a smoker quits, the less likely he or she will be to incur a smoking-attributable disease.

- Former smokers live longer than continuing smokers. People who quit before age 50 cut in half their risk of dying within 15 years compared to people who continue to smoke.
- Lung cancer claims more lives than any other cancer. Smoking causes nearly 90% of all lung cancer deaths in the U.S. Since 1987, lung cancer deaths have surpassed breast cancer deaths among women. Quitting decreases the risk of lung cancer and other cancers.
- Quitting reduces the risk of coronary heart disease, hypertension, heart attacks, strokes and chronic obstructive pulmonary disease (COPD). Smokers with gastric and duodenal ulcers who quit greatly improve their recovery from these diseases, compared to those who continue to smoke.
- Helping pregnant women stop smoking has enormous health benefits. Smokers who quit before becoming pregnant or during the first three to four months of pregnancy reduce their risks of having low birthweight babies to levels equal to that of nonsmokers. Smoking increases the chances of miscarriage, premature births and several other complications. Quitting can also help reduce the number of admissions to neonatal intensive care units, infant deaths from perinatal disorders and sudden infant death syndrome (SIDS).

Adapted from NCI, 2004.<sup>43</sup>

### benefits of quitting

#### IMPROVED HEALTH:<sup>41</sup>

After	Physical Benefits
2 weeks-9 months	Lung function and circulation improve; by 9 months, lungs improve capacity to clear and reduce infection
1 year	Risk of heart disease drops to half of that of a smoker
5 years	Risk of stroke is the same as that of a nonsmoker 5-15 years after quitting
10 years	Risk of lung cancer is half that of a smoker
15 years	Risk of heart disease is similar to that of someone who never smoked

#### COST SAVINGS:

If a pack of cigarettes costs \$3 and you smoke one pack per day:

After	You've Saved
1 day	\$3
1 week	\$21
1 month	\$91
1 year	\$1,095
10 years	\$10,950
20 years	\$21,900

# Components of Cessation Programs

Successful employee cessation programs combine multiple approaches to quitting and include three key components:

- Information and educational materials
- Access to Nicotine Replacement Therapy (NRT), like patches or gum
- Counseling options: Individual or group counseling, in-person or by phone

The most effective programs place no limits on the number of times a person can attempt to quit and require no deductibles or co-payments. Even very small co-payments can result in much lower participation rates.

## Important considerations

Creating a supportive workplace environment by adopting a smoke-free policy and providing incentives for quitting increases the likelihood that smokers will ultimately succeed in quitting.<sup>44</sup>

Providing individuals with access to all forms of treatment will achieve the greatest success rates in smoking cessation. Success rates double when counseling and drug therapies are applied together.

Providing smoking cessation services as a fully covered benefit by a health plan is more likely to result in utilization; smoking prevalence within the health plan is more likely to decrease, too.

In a trial cessation program for blue-collar workers insured under Taft Hartley Funds, counseling combined with medications proved most effective, resulting in quit rates of approximately 30%.<sup>45</sup>

## Six recognized types of cessation tools

1. **Self-help materials**, such as booklets, quit kits, or videotapes, are attractive to some smokers because of the privacy and flexibility they afford. Good self-help materials help people understand their smoking patterns, set a quit date, identify and resist smoking cues, explore alternatives to smoking, control weight gain, manage stress and prevent relapse.
2. **Group and individual counseling programs** offer smokers support by providing practical counseling, problem-solving and skills training.
3. **Telephone-based counseling programs** offer counseling support that is private and convenient for many smokers. This approach has proven effective with construction workers. Some health and welfare funds contract with private providers to offer telephone-based counseling. Minnesota's QUITPLAN Helpline offers free telephone-based counseling to all Minnesota adults who do not have access to this type of service through their health insurance provider or employer.
4. **Nicotine Replacement Therapy (NRT)** products provide individuals with low doses of nicotine. The nicotine is absorbed more slowly than when someone smokes, lessening the urge to smoke and helping with withdrawal. NRT includes nicotine gum, patches, inhalers, nasal sprays and lozenges. Many of these products are available without a prescription or, to receive benefits through a health plan, a prescription may be required.
5. **Medications** that require a prescription, such as Zyban and Wellbutrin, contain bupropion SR, a type of medication that helps some people with withdrawal symptoms and lessens the urge to smoke.
6. **Special incentives** can motivate workers to try to quit. Even small rewards or recognition for quitting, such as being noted in a union's or employer's newsletter, can help smokers succeed.

## Action Steps

There are many possible ways employers and labor-management groups can take action to help reduce the rate of smoking among workers and workers' exposure to secondhand smoke.

1. **Develop Smoke-Free Workplace Policies.** Employers and union leaders can work together to develop reasonable written smoke-free workplace policies, with the goal of creating safe, healthful, smoke-free work environments for all workers.
2. **Provide Comprehensive Cessation Services.** Comprehensive cessation services should include:
  - Behavioral interventions (telephone, Internet, face-to-face or group counseling programs)
  - Nicotine Replacement Therapy (NRT) products
  - Opportunities for multiple quit attempts; follow-up services to prevent relapses
3. **Support and Provide Incentives for Employees To Encourage Quitting.** Quitting is never easy, but with support from multiple sources, an individual's chances increase greatly. Either monetary or non-monetary incentives can help motivate smokers to quit.
4. **Integrate Information About Tobacco Use, Exposure to Secondhand Smoke and Cessation Into Workplace Occupational Health and Safety Materials and Presentations.**
5. **Invite Guest Speakers.** Doctors, nurses, or other public health professionals can provide tailored presentations about the impact of tobacco use on employee health and explain effective options for quitting at company meetings or training sessions.
6. **Provide Information About Work-Related Tobacco Issues and Cessation Options to Employees.** Utilize existing communication channels to build awareness among employees to help them make informed choices about tobacco use and quitting options.
7. **Link Employer Websites to Internet-based Cessation Sites.** Possible sites include the free cessation service offered by [quitplan.com](http://quitplan.com)<sup>SM</sup>, as well as public health and tobacco control organizations and government programs.
8. **Join or Form Advocacy Coalitions.** Join or form advocacy coalitions with tobacco control or public health organizations around shared goals. Adopt resolutions in support of smoke-free policies, cessation coverage, or cigarette excise taxes. Endorse public campaigns for smoke-free legislation.

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for more information

**WorkSHIFTS** is a collaborative labor outreach initiative of the Tobacco Law Center at William Mitchell College of Law, partnering with Minnesota's labor community.

**WorkSHIFTS'** goal is to provide practical tools and resources that support labor's efforts to address tobacco-related workplace concerns through education, collective bargaining, policy initiatives and the assertion of workers' rights to health and safety.



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