

Limits on Control of Employee Smoking

Working Together

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The recent announcement by CVS pharmacies to eliminate the sale of cigarettes and other tobacco products prompts a review of the employment statutes that pertain to smoking by employees. In brief, employers can limit or prohibit smoking on the job, but not outside the course of employment.

Section 31-40q of the Connecticut General Statutes protects the rights of non-smokers by allowing employers to segregate smokers from non-smokers, to have separate smoking rooms, and to restrict and ventilate smoking rooms so that employees are not exposed to second-hand smoke. Employees can also declare the entire business facility to be a non-smoking area, as many businesses now do.

But a related statute, Section 31-40s, protects the rights of smokers (perhaps reflecting that Connecticut is a tobacco-growing state). This statute prohibits employers from requiring that employees or prospective employees refrain from smoking, even outside the course of employment, as a condition of employment. It also prohibits discrimination against smokers. The only exceptions are for municipal hiring of police officers and fire fighters.

It may seem prudent for a business to find out if a job applicant is a smoker, in the hope of having a more healthy workforce. However, a hiring decision based on status as a smoker is prohibited by state law, so the question would not be proper.

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