

Benefit Brief



SUBJECT: Anti-Smoking Policies

DATE: February 23, 2005

This Benefit Brief discusses the distinction between employment related and benefit related anti-smoking policies.

BACKGROUND

There has been much discussion in the media lately about companies who have implemented anti-smoking policies. These types of policies generally state that the company will not hire any employees who smoke. They often also provide for the termination of those current employees who are smokers. One company, Weyco, Inc., implemented such a policy that was effective January 1, 2005. The company first provided smoking education and assistance with quitting. This employee benefits administrator was permitted to fire those employees who refused to quit smoking because Michigan does not have a state law prohibiting this type of discrimination, and employees are considered to be working "at the will" of the employer.

The company claimed that the reason it implemented this policy was to attempt to control the rising cost of its health insurance. This method is much different from a blanket policy that excludes employees who smoke from being covered under the health insurance policy. Whether or not the employer self-funds the benefits, the Health Insurance Portability and Accountability Act of 1996 prohibits discrimination against employees due to a health factor.

These "Non-discrimination Rules" apply to discrimination against employees in rules for eligibility, benefits, or premium contributions. Smoking is considered a health factor under these rules.

DISCUSSION

The issue of whether an employer can fire or refuse to hire individuals who smoke is an employment related issue and only affects the health plan indirectly. In states, like Pennsylvania, where employees are considered to be working "at the will" of the employer, an anti-smoking policies would be permitted.

Once an individual is employed by the employer, he or she cannot be excluded from the health plan (unless part of an employment-related class that does not receive health coverage). An exclusion of smokers from the health coverage would be a violation of the HIPAA non-discrimination provisions.

If you have any questions or would like more specific advice or information, please call Judy Griffith (jgriffith@benecon.com), Director of Compliance and Special Projects at The Benecon Group. This memo provides general information about the laws and regulations and should not be considered legal advice.