

## Will General Assembly Consider Repeal of Workplace Smokers' Rights Law?

By [Daniel Schwartz](#) on January 6th, 2012

Let's say you're an employer in Connecticut. And you want to keep your health insurance costs down and promote a "healthy workplace". After all, it's a new year and a new year is built for resolutions like quitting smoking.

Beware of Smokers Rights Laws



[No less than The New York Times did an article a few weeks ago](#) about how some smokers are being subjected to health insurance penalties in their workplaces:

More and more employers are demanding that workers who smoke, are overweight or have high cholesterol shoulder a greater share of their health care costs, a shift toward penalizing employees with unhealthy lifestyles rather than rewarding good habits.

Policies that impose financial penalties on employees have doubled in the last two years to 19 percent of 248 major American employers recently surveyed. Next year, [Towers Watson, the benefits consultant that conducted the survey](#), said the practice — among employers with at least 1,000 workers — was expected to double again.

But such an article overlooks a more basic question: Can you, as an employer, mandate that employees not smoke outside the workplace?

Well, [longtime readers of the blog may recall a post I did back in 2008](#) that answered that question with a pretty firm "no".

In fact, in Connecticut, [Conn. Gen. Stat. 31-40s](#) is fairly clear about smokers' "rights" and that employers or agents of the employer cannot make "no smoking" a condition of employment. Specifically, the law states:

No employer or agent of any employer shall require, as a condition of employment, that any employee or prospective employee refrain from smoking or using tobacco products outside the course of his employment, or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment for smoking or using tobacco products outside the course of his employment, provided any nonprofit organization or corporation whose primary purpose is to discourage use of tobacco products by the general public shall be exempt from the provisions of this section.

The only notable exception to this broad restriction is that the limits do not apply to firefighters and police officers, for the most part. (For more on smoking laws, [see this page from the Connecticut Law Library.](#))

With a new legislative session starting in a few weeks, will any Connecticut legislator take this up as an issue?

If the past is any indication, then the answer is no. [Just last year, a Senate bill would have outlawed all smoking in the workplace.](#) (Currently [there are carveouts for employers with less than 5 employees.](#)) But even that bill went down in, ahem, flames.

A cursory search for other like-minded bills turned up empty. But perhaps with the attention that this issue has been receiving in the press, someone will take it up.

In the meantime, employers in Connecticut should be wary about following national “trends”. Until the law changes in Connecticut, employers are limited in their options in dealing with workers who smoke.

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