Will Your No-Smoking Policy Get Vaporized?

Insights
5.01.15

Wondering what your employee is smoking in the break room, likely in violation of your "no-smoking" policy? Chances are it is an electronic smoking device, such as an e-cigarette or vaporizer. What should you do about it? Anything?

Many people are familiar with the increasingly popular e-cigarettes and vaporizers, forcing employers to now grapple with the question of whether to permit these devices in the workplace. The answer to this question is constantly changing based on new and revised laws and regulations. It can be difficult to stay aware of this ever-changing issue.

Not A Fad

Electronic smoking devices, particularly vaporizers, are skyrocketing in popularity. One example of this continued popularity is shown by Oxford Dictionary's selection of the word "vape" as the 2014 word of the year. With around five million Americans currently "vaping" and a $2.5 billion industry with a 23% rise in sales in 2014, the electronic smoking industry is here to stay.

There is no indication that growth will slow down any time soon, as sales are projected to surpass $3.5 billion this year with $1.5 billion attributed to e-cigarettes and the other $2 billion attributed to vaporizers, according to a Wells Fargo report. Additionally, the number of teens trying electronic smoking devices tripled in one year to account for more than 13% of the population. This evidence of use by younger Americans helps establish the likelihood that these devices will only continue in popularity in the coming years. Companies are scrambling to meet rising demand.

Big Tobacco, initially a holdout, hopped on the bandwagon after they realized that their customers were trending towards electronic devices – Altria, R.J. Reynolds, and Lorillard all have their own line of e-cigarettes. E-cigarettes could be the future of these companies, who are looking to offset declining revenue from tobacco products.

Although profits from e-cigarettes currently pale in comparison to traditional tobacco, these companies are getting a head start on the competition. For example, the most recognizable e-cigarette on the market is perhaps Lorillard's Blu e-cigarette. Blu accounts for nearly 50% of the market share at traditional retailers, which includes convenience stores.

How They Work

At a basic level, e-cigarettes and vaporizers allow users to consume nicotine or other substances

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At a basic level, e-cigarettes and vaporizers allow users to consume nicotine or other substances without smoking tobacco. However, there are noted differences between e-cigarettes and vaporizers. E-cigarettes are smaller cigarette-like electronic devices with batteries that heat a cartridge containing liquid nicotine until it produces an inhalable vapor.

A vaporizer is comparatively larger than an e-cigarette and resembles a large pen. The vaporizer gradually heat the "e-liquid" with warm air, so it tends to last longer than e-cigarettes. Also, the vaporizer is refillable whereas an e-cigarette cartridge must be replaced when spent. To distinguish electronic vapor from smoke, users have coined the term "vaping," instead of smoking.

The cartridges and refillable liquids contain mostly liquid nicotine and flavoring. However, there are also small amounts of propylene glycol or vegetable glycerin. The e-liquids also come in a wide assortment of flavors, including kid-friendly ones like gummy bear, snickerdoodle and watermelon mint. Consumers may also purchase e-cigarettes that taste like traditional tobacco.

The Controversy.
So what is all the fuss over these devices? To put it simply, there is not a lot of established data about the health risks. The technology is new, as the first e-cigarette was marketed in 2002. Manufacturers only introduced e-cigarettes to the United States in 2007.

Since the products are new, it is not surprising that scientific data is limited. Scientific studies generally conclude that e-cigarettes and vaporizers are less harmful to an individual's health than traditional tobacco cigarettes. The problem is that no one knows exactly what "less harmful" means.

Due to these uncertainties, there is significant controversy surrounding these devices. Advocates emphasize the value of e-cigarettes and vaporizers as an effective cessation device. Opponents point to the potential health risks. Studies have found that e-cigarette vapor may contain metal particles, carcinogens like formaldehyde, and enough nicotine to cause measurable secondhand exposure. But the long-term effects of e-cigarette vapor and direct exposure to liquid nicotine are unknown.

Federal And State Prohibitions.
State and local governments were among the first to take action against e-cigarettes and vaporizers. New Jersey, Utah, and North Dakota placed bans on the use of the devices in public places and hundreds of cities have followed suit. For example, Los Angeles, New York, Boston, and Chicago all banned the use of e-cigarettes in restaurants, bars, nightclubs, and other public spaces. Several California cities even require vendors to acquire special licenses to sell e-cigarettes.

The federal government is now weighing in on the debate. The FDA wants to keep a closer eye on e-cigarette manufacturers. The agency is concerned that manufacturers are not required to comply with cleanliness or safety standards. Manufacturers are also currently under no obligation to disclose ingredients. In 2014, the FDA released proposed regulations that would deem tobacco products, including electronic smoking devices, subject to the federal Food, Drug, and Cosmetic Act.

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The proposed rule received more than 82,000 comments during the notice and comment period which ended in August of last year, which likely means that it could be some time before the final rules are released. If approved, it would give the FDA the authority to set age restrictions and the power to partake in rigorous scientific review to monitor the ingredients, manufacturing process, and therapeutic claims of e-cigarette companies.

The Pros And Cons

Why is this relevant to you?

Employers must take action and determine their company's stance on the issue before a supervisor walks into the break room to find the crew puffing on e-cigarettes. While the debate between opposition groups and advocates is just heating up, don't wait to act. Weigh the pros and cons of allowing electronic smoking devices in the workplace and determine what is best for your company.

There are many factors that employers must take into consideration. Rightly or wrongly, e-cigarettes are perceived as tobacco. The Surgeon General's office categorizes e-cigarettes as a "tobacco product." Many state and local governments restrict e-cigarette usage in the same way as tobacco. Some insurance companies already impose a surcharge on e-cigarette users' premiums, equating e-cigarettes to tobacco.

Employers with nicotine-free hiring policies, particularly those in the healthcare industry, have started to specifically ban e-cigarette users. Employers with similar policies will not hire anyone who tests positive for nicotine. As a result, these employers are treating users of e-cigarettes and vaporizers the same as users of traditional tobacco products.

Give serious consideration to whether allowing e-cigarette use in your workplace undermines a smoke-free environment. Allowing this practice is likely to cause distractions, may cause questions or concern from customers, and may anger other employees concerned about the secondary impact on their health.

Although the long-term effects of e-cigarettes and vaporizers are currently unknown, the developing consensus is that secondhand vapor contains nicotine or something worse. As a result, secondhand vapor may pose a risk to pregnant women, the elderly, children, and individuals with asthmatic conditions particularly. Finally, consider whether employee use of these devices in the workplace promotes a positive image to the public. Whether or not secondhand vapor is harmful, are these devices consistent with your public image?

Our Advice

We think that the prudent course of action is to treat electronic smoking devices the same as traditional cigarettes and other tobacco products under your no-smoking policy. Taking this step and eliminating the risk is simple: simply amend your employee handbook to include electronic smoking devices, e-cigarettes, and vaporizers, in the definition of smoking. Employees will then have to use e-cigarettes outside or offsite, depending on your particular policy.

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By amending your employee handbook, you reduce risk and eliminate distracting behavior. Nonsmoking employees (almost always the majority) will feel comfortable at work and employees who smoke will only be required to comply with an already familiar procedure. Most importantly, employees will not have to worry about the potential harm caused by e-cigarette use or secondhand vapor.

Although amending the handbook may be the easiest answer, remember to follow the proper procedures when amending your handbook. Ensure that any amendments are in compliance with state law, federal law, and especially the National Labor Relations Act. Finally, ensure that all employees receive a copy of the updated handbook, understand the revisions, and acknowledge in writing that they understand the revisions.

The time to act is now, as getting behind on the issue may increase the expense of handling the issue and lead to unnecessary stress.

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