

WHY SHOULDN'T SMOKERS PAY MORE FOR HEALTH INSURANCE?

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Employers are being stung by soaring health insurance premiums and desperately need to control their costs. Harmful behaviors, such as smoking, which contribute directly to higher medical bills are a natural target.

A study of 20,000 employees showed smokers had more hospital visits per 1,000 (124 vs. 76), had a longer average length of stay (6.5 vs. 5 days) and made six more visits to medical facilities per year than non-smokers. Also, smokers miss 6.16 days of work per year compared to non-smokers' 3.86 days, and four ten-minute smoke breaks equate to one month less work per year.

Several governments and private companies, such as Macy's and PepsiCo, charge higher insurance premiums to smokers, and some refuse to hire smokers. Obamacare recognizes the increased costs of smokers by allowing insurers to charge smokers up to 50% more.

Smoking affects health costs and premium rates, but there is some risk in imposing differentials? The Health Insurance Portability and Accountability Act (HIPAA) prohibits employees in group health plans from being charged more because of a "health factor," which includes health status, medical condition and claims experience, and nicotine addiction is a medical condition. Still, HIPAA allows employers to establish a nonsmoking program as part of a wellness program providing a reduced premium as a "reward" for not smoking.

The wellness program must satisfy the following:

- the "reward" is no more than 20% of the premium;
- it is reasonably designed to promote health and prevent disease;

- employees may qualify for the reward at least once a year; and
- a reasonable alternative is given to employees for whom it is unreasonably difficult to stop smoking, such as attending educational classes.

Another potential problem arises from the Americans with Disabilities Act's (ADA). Although smoking has yet to be identified as a disability, it often does involve attendant health issues that are disabilities and a smoker might be protected as being "regarded as" disabled.

Proponents for smokers also argue, not yet establishing legal traction, that the less affluent, less educated are more likely to smoke and not participate in smoke cessation programs, thus a differential has a disproportionate impact, amounting to racial or national origin discrimination.

Also, a few states prohibit discrimination against smokers, and some states have laws protecting employees who engage in legal off-duty conduct.

Still, there are compelling reasons to implement a differential; but what should an employer do when acting on those reasons?

First, check your state's laws.

Second, if you have a union, a differential would probably be a mandatory subject of bargaining.

Third, establish – often through an insurer - a compliant wellness program.

Fourth, once implemented, check its impact upon employees in protected groups.

Fifth, assess its impact on employee morale, productivity and workplace culture.

The important thing to remember is that effective wellness programs, along with smoking cessation programs, can help employers control and limit health care costs and enhance productivity.

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