

New Life for Smokers

Smokers of America take heart. Your deliverance is at hand. No longer can you be denied coveted employment opportunities. No longer can you be forced to huddle in alleyways in sub-zero temperatures to indulge your habit. No longer must you bear, without recourse, the indignities heaped upon you by condescending, non-smoking co-workers. How has this come to pass? Who are your saviors? Why, none other than President Bill Clinton and FDA Commissioner David Kessler who last week transformed you from a despised and oppressed rabble into the newest legally protected minority.

Permit me to explain. Last week, President Clinton approved Kessler's finding that nicotine is an addictive drug. As a result, you are now federally recognized drug addicts. No longer are you responsible adult citizens who have foolishly chosen to run the risk of disease and death in the long term for the immediate gratification afforded by smoking. You are now victims of a "psychological substance use disorder." And this means that you are officially disabled and protected by the Americans with Disabilities Act (ADA).

The ADA protects anyone who has or is regarded as having a physical or mental impairment that substantially limits a major life activity. This has been interpreted to include both drug addicts and alcoholics. Before last week, when smoking was just a nasty habit, the Act did not apply to you. But now that you are officially impaired, you are legally entitled to all the rights and privileges currently enjoyed by those undergoing twelve step programs.

Before last week, employers could ask you whether you smoked during an employment interview. They could refuse to hire you even though you were the best qualified applicant in order to save on their health care costs. They could deny you a promotion you had earned simply because you were a smoker. No longer. Now any of these actions would constitute blatant

discrimination against the disabled.

I do not wish to overstate the case. Life is not a bed of roses. The ADA will not guarantee you the right to smoke on the job. In fact, the Act specifically states that it may not be interpreted "to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment" (language whose presence would be unnecessary were smoking not within contemplation of the Act). However, it does guarantee that any employer who decides to restrict or prohibit your ability to smoke on the job cannot do so without "making reasonable accommodations" to your disability. Although there is presently a great deal of legal uncertainty as to what counts as reasonable accommodation, you may feel confident that being driven outside into freezing cold, driving rain, or tropical heat in order to deal with your handicap will not qualify.

You should also be aware that now that you are officially disabled, you are entitled to a workplace free of harassment based on your disability. This means that your employer is legally obligated to ensure that your supervisors and co-workers do not engage in conduct which would create an intimidating, hostile, or offensive working environment for you as a smoker. Last week, you had to put up with the superior attitude of your condescending non-smoking co-workers. If they insisted on badgering you with paternalistic lectures about how smoking is bad for you or gratuitous advice on how to quit, if they greeted your trips outside for cigarette breaks with looks of disgust or pity, or worse, with fake hacking coughs or derisive comments about kissing an ashtray, you had no choice but to grin and bear it. Now, thanks to the President and the FDA Commissioner, you can demand that your employer put a stop to such behavior and sue if he or she does not take "immediate and appropriate corrective action."

So do not be offended the next time David Kessler refers to you as a drug addict. Do not

rebel against being characterized as one bereft of free will, mindlessly enslaved by tobacco and unable to decide for yourself what risks you wish to run. Try to see his statement for what it is, an open invitation to the wonderful world of legally recognized victimhood with all the rights and benefits contained therein. Accept the invitation. If you do, I think you will find the workplace to be a more felicitous, accommodating, and warmer place. Especially on those winter workdays when it is ten below.

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