**Ask an Advisor: North Carolina's Lawful Use of Lawful Products Law**

**Q:** How does the NC Lawful Use of Lawful Products Law effect my employee’s right when working?

**A:** There is no North Carolina law requiring an employer to give its employees a smoke-break or to provide a place for its employees to smoke. There is a North Carolina law making it illegal for an employer to discriminate against an employee for the employee’s lawful use of lawful products, such as tobacco, during non-working hours (N.C.G.S. §95-28.2). However, it is entirely up to an employer to set its own rules for its employees during working hours concerning breaks and if its employees are allowed to smoke in or on its premises during the workday.

North Carolina’s lawful use of lawful products law (N.C.G.S. §95-28.2) prohibits discrimination against an applicant or employee because they lawfully use a lawful product away from work. For example, an employer may prohibit tobacco smoking at work, but may not discharge or refuse to hire an individual who smokes away from work.

There are defenses in the law that allow employers to consider any adverse effects of smoking on job performance, the safety of other employees, bona fide occupational requirements, the fundamental objectives of the organization, or failure to complete a substance abuse program. Employers may provide employees in higher risk or cost categories fewer benefits if the difference is actuarially justified and the same premium is paid on behalf of each employee. Back pay, reinstatement and attorney’s fees are available if a successful lawsuit is filed.

To view this North Carolina law, go to [http://j.mp/LL-22](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_95/GS_95-28.2.html).

If you have additional questions, please contact Catapult’s Advice Team at 919-878-9222

Written by a Catapult Advisor