

## Waiting to Exhale—And Be Terminated?

**One of my salespeople smokes. She does a good job, but I think her habit stinks and reflects poorly on her and my business, which I own. She refuses to quit. Can I terminate her for being a smoker?**



Deborah Weinstein  
of The Weinstein  
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responds ...

Where there's smoking, there can be firing. At least in Pennsylvania, with some important exceptions, that's the rule.

Isn't that job discrimination? Don't smokers have rights? Job discrimination is unlawful only if people are treated differently because of their age, sex, race, religion, national origin, disability or other unlawful reason. In Pennsylvania, smoking is not one of these reasons. Here, smokers have no legal protection from employment discrimination that happens because they smoke—even if the smoking is off-duty.

As to smokers' rights, in most other states,

employers may not discriminate against employees who smoke outside of work. By contrast, Pennsylvania employers are free to turn up their noses at smokers and can even make being a nonsmoker a job requirement.

Is there anything else that could make your plan go up in smoke? Does your salesperson have an employment agreement? Does she belong to a union? Is there an employee handbook? Check these documents because they may prohibit you from terminating her for smoking. Find out whether terminating an employee for smoking violates city or county laws.