### CHAPTER 4: Ethics & Social Responsibility

### What Would You Do? Case Assignment

#### AMERICAN EXPRESS New York, NY

Headquarters, New York, New York.1 With medical costs rising 10 to 15 percent per year, one of the members of your Board of Directors mentioned that some companies are now refusing to hire smokers and that the board should discuss this option at the next month’s meeting. Nationwide, about 6,000 companies refuse to hire smokers. Weyco, an employee benefits company in Okemos, Michigan, requires all applicants to take a nicotine test. Weyco’s CFO says, “We’re not saying people can’t smoke. We’re just saying they can’t smoke and work here. As an employee-benefits company, we need to take a leadership role in helping people understand the cost impact of smoking.” The Cleveland Clinic, one of the top hospitals in the United States, doesn’t hire smokers. Paul Terpeluk, the director of corporate and employee health, says that all applicants are tested for nicotine and that 250 people have lost job opportunities because they smoke. The Massachusetts Hospital Association also refuses to hire smokers. The company’s CEO says, “Smoking is a personal choice, and as an employer I have a personal choice within the law about who we hire and who we don’t.”

As indicated by your board member, costs are driving the trend not to hire smokers. According to the U.S. Centers for Disease Control, a smoker costs about $4,000 more a year to employ because of increased health-care costs and lost productivity. Breaking that down, a smoker will have 50 percent higher absenteeism, and, when present, will work 39 fewer minutes per day because of smoke breaks, which leads to 1,817 lost hours of annual productivity. A smoker will have higher accident rates, cause $1,000 a year in property damage (from cigarette burns and smoke damage), and will cost up to $5,000 more a year for annual insurance premiums. John Banzhaf, executive director of an antismoking group in Washington, and a law professor at George Washington University, says, “Smoking is the biggest factor in controllable health-care costs.”

Although few would disagree about the costs, others argue it is wrong not to hire smokers. Jay Whitehead, publisher of a magazine for human resources managers, says, “There is discrimination at many companies—and maybe even most companies—against people who smoke.” Even if applicants aren’t asked whether they smoke, it “doesn't mean that hiring managers turn off their sense of smell.” Paul Sherer, a smoker who was fired less than a week after taking a new job, says, “Not hiring smokers affects millions of people and puts them in the same category as women able to bear children, that is, people who contribute to higher health-care costs. It's unfair.” Law professor Don Garner believes that not hiring smokers is “an overreaction on the part of employers whose interest is cutting costs. If someone has the ability to do the job, he should get it. What you do in your home is your own business. … Not hiring smokers is ‘respiratory apartheid.’”

Well, with the meeting just a month away, you’ve got to prepare for the Board of Directors’ questions. For example, on what basis should the company decide whether to hire smokers? Should the decision be based on what’s in the best interest of the firm, what the law allows, or what affirms and respects individual rights? The Board is interested in making good decisions for the company, but “doing the right thing” is also one of its core values. Next, is this an issue of ethics or social responsibility? Ethical decision making is concerned with doing right and avoiding wrong, whereas social responsibility is a business’s obligation to pursue policies, make decisions, and take actions that benefit society. Finally, given that it so much cheaper not to hire smokers, the board will want to know whether refusing to hire smokers is a form of discrimination.

**If you were in charge at American Express, what would you do?**

### What Really Happened? Solution

In the case, you learned that American Express was considering a policy of not hiring smokers, a practice followed by 6,000 companies nationwide. In fact, this case is not about American Express, but is a composite of facts and details pulled together from many companies. Costs are a primary consideration for companies choosing not to hire smokers. A smoker will cost $4,000 more a year to employ because of 50% higher absenteeism, 39 fewer minutes working per day, and 1,817 lost hours of annual productivity, have higher accident rates, cause $1,000 a year in property damage, and cost up to $5,000 more a year for annual insurance premiums. Many, however, argue, that is unethical or even discriminatory to not hire smokers. Let’s find out what and see what rationales companies are providing as they decide what to do regarding this controversial issue.

*Well, with the meeting just a month away, you’ve got to prepare for the Board of Directors’ questions. For example, on what basis the company should decide whether or whether not to hire smokers? Should the decision be based on what’s in the best interest of the firm, what the law allows, or what affirms and respects individual rights? The Board is interested in making good decisions for the company, but “doing the right thing” is also one of its core values.*

According to professor LaRue Hosmer, a number of different ethical principles can be used to make business decisions: long-term self-interest, personal virtue, religious injunctions, government requirements, utilitarian benefits, individual rights, and distributive justice.45 All of these ethical principles encourage managers and employees to take others’ interests into account when making ethical decisions. At the same time, however, these principles can lead to very different ethical actions. In this case, we’ll use three of Hosmer’s ethical principles, long-term self-interest, government requirements, and individual rights, to explore the ways in which companies can decide whether to hire smokers.

According to the principle of long-term self-interest, you should never take any action that is not in your or your organization’s long-term self-interest. Although this sounds as if the principle promotes selfishness, it doesn’t. What we do to maximize our long-term interests (save more, spend less, exercise every day, watch what we eat) is often very different from what we do to maximize short-term interests (max out our credit cards, be couch potatoes, eat whatever we want).

When it comes to smokers, however, firms have clearly decided that reducing smoking at work, or hiring fewer workers, is in their best interest. For example, according to survey data from the United Kingdom, 73% of employers would choose a non-smoking candidate over a smoker, 70% of employers plan to prevent employees from smoking at the entrances to their businesses, and 76% will fine or otherwise discipline employees who break smoking bans. What’s changed in the last decade is that rather than minimize smoking at work, companies are now much more likely to minimize smokers by not hiring them at all. The key driver, as shared in the opening case, is costs. According to the Centers for Disease Control, smoking costs businesses $157 billion a year in expenses that are directly related to smoking-related illnesses or deaths. The Paty Company, which has a small chain of lumber and building supply stores in Tennessee, North Carolina, and Virgina doesn’t hire smokers. Comparisons with 14 nearby businesses found that Paty has the lowest average insurance claims per employee, just $1,072.75 per year. Furthermore, Paty’s health costs dropped by 25% soon after it stopped employing smokers.

According to the principle of government requirements, the law represents the minimal moral standards of society, so you should never take any action that violates the law. So, under this principle, we ask, “Is it legal to not hire smokers?” The answer is that it depends. Federal law seems to suggest that it is legal to not hire smokers. Unlike race, gender, ethnicity, religion, and sexual preference, smokers are not a protected class. Furthermore, smokers are generally not protected by the Americans with Disability Act (ADA). Chris Kuczynski, assistant legal counsel for the Equal Employment Opportunity Commission’s ADA Policy says, “I am not aware of any court saying smoking or addiction to tobacco is a disability. If you exclude someone because they are a smoker, you are probably not excluding them because of a disability.” While federal laws can allow employers to not hire smokers, approximately 30 states have made it illegal to not hire smokers. So-called lifestyle-discrimination laws prevent employers from using non-work behavior, that is, behavior that occurs outside of work hours such as smoking, to not hire employees. In general, the principle of government rights suggests that firms located in states, such as Michigan, which don’t protect smokers, can legally not hire smokers. However, firms in states with lifestyle discrimination laws, or firms that have offices located across multiple states with different smoking-related laws, should view not hiring smokers as illegal.

The principle of individual rights holds that you should never take an action that infringes on others’ agreed-upon rights. Like the principle of government requirements, the principle of individual rights can lead to different answers. Those answers are guided by whether smoking is viewed as an individual right. We’ll explore that in more detail in the last question.

*Next, is this an issue of ethics or social responsibility? Ethical decision making is concerned with doing right and avoiding wrong, whereas social responsibility is a business’s obligation to pursue policies, make decisions, and take actions that benefit society.*

Ethics is the set of moral principles or values that defines right and wrong for a person or group. Accordingly, ethical decision making is generally viewed as making choices about right and wrong. Likewise, ethical behavior occurs when people follow accepted principles of right and wrong. Furthermore, ethics, ethical behavior, and ethical decision making all examine choices from an individual perspective or from the affect that behaviors or decisions have on other individuals.

By contrast, social responsibility is a business’s obligation to pursue policies, make decisions, and take actions that benefit *society*. So while ethics focuses on what’s right and wrong for individuals, social responsibility focuses on what produces the most benefit to society. These are generally very different perspectives. For example, when we ask for what are organizations socially responsible, we talk about four responsibilities: economics (being profitable), legal (not breaking the law, usually a minimum level of social responsibility), ethics (not violating accepted principles of right and wrong), and discretionary responsibilities (going beyond basic economic, legal, and ethical responsibilities). Note that only one of those four responsibilities focuses on ethics, and even then, the focus is on right and wrong, and not necessarily the impact on individuals.

Why do these difference matter? What difference does it make if we frame not hiring smokers from an ethical or social responsibility perspective? The difference, and it’s a meaningful one, is that framing the issue in terms of social responsibility tends to focus on the benefits to firms and “society,” while ignoring or minimizing the costs or consequences to individuals. For example, the opening cases mentioned that the Massachusetts Hospital Association refuses to hire smokers. CEO Lynn Nicholas explained why, “The MHA ... is a spokesperson for hospitals across the commonwealth, and tobacco use is the leading preventable cause of death in the US. We want to drive the cost of health care down so that is more affordable.” Notice that all of the benefits accrue to society, “leading preventable cause of death in the U.S.,” or “drive the cost of health care down so that it is more affordable.”

Note the difference, however, when we return to an ethical perspective that focuses on individual choices or the impact of policies on individuals. For instance, Ellen Vargyas, chief counsel for the [American Legacy Foundation](http://www.legacyforhealth.org/), an anti-smoking nonprofit group, says “We want to be very supportive of smokers, and the best thing we can do is help them quit, not condition employment on whether they quit. Smokers are not the enemy.” Now, instead of focusing on benefits to society, the focus is on the impact or costs to individuals.

So, is not hiring smokers an issue of ethics or social responsibility? Is it an issue where we put individuals or society first?

*Finally, given that it so much cheaper to not hire smokers, the board will want to know whether it’s ethical to or whether not hiring smokers is a form of discrimination?*

Our first question examined how different ethical principles can lead to very different ethical actions or decisions. The question of whether not hiring smokers is most closely related to the principle of individual rights that holds that you should never take an action that infringes on others’ agreed-upon rights. If you view smoking as an individual right, you’re likely to believe that not hiring smokers is a form of discrimination.

More specifically, “smokism,” discriminating against people because they smoke, is defined as “the prejudice, discrimination or denial of justice and fair treatment by individuals or institutions against people who smoke a tobacco related product.” Not hiring smokers would clearly be smokism. For example, Milind Shah, a senior fellow at the American Civil Liberties Union says, “Employers should only worry about what people do on duty; these sorts of things [like smoking] are none of a company's business.” He goes on to say that if companies simply don’t want to hire unhealthy people, they should also not hire “people who eat junk food, drink beer or have high levels of cholesterol.” Similarly, says Lewis Maltby of the Workrights Institute, “The number of things that we all do privately that have negative impact on our health is endless. If it’s not smoking, it’s beer. If it’s not beer, it’s cheeseburgers. And what about your sex life?”

Another key part of any kind of discrimination is that non-performance relevant criteria are used to make decisions about who to hire, fire, train, or promote in a company. Viewed from this perspective, is there a significant difference between ageism, sexism, racism, and smokism? In each “ism,” non-performance relevant criteria, such as age, sex, race, and whether one smokes, are used to make decisions about people at work. For instance, at Weyco, a company mentioned in the opening case, no one is allowed to smoke, ever, not even outside work. To enforce this policy, employees are randomly tested for nicotine. If nicotine is found in their systems, they are sent home for a month without pay. If nicotine is found a second time, they lose their jobs. Again, this happens regardless of their level of job performance. Weyco even tests spouses. If one’s spouse test positive for nicotine, employees pay an $80 monthly fine until their spouse enrolls in a smoking-cessation class and tests nicotine free.

Is it discriminatory to not hire smokers? Nurse Mandy Carroll, whose parents died from smoking-related illnesses, and who smokes a pack a day herself, believes that hospitals and other organizations should not “discriminate” against her and other smokers. Says Carroll, “Obviously we know the effects of smoking, we see it every day in the hospital. It’s a stupid choice, but it’s a personal choice.”