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## **Nanny-State Quandary**

**by Scott McPherson**

Paternalistic agitators must be in a real quandary. A Massachusetts man is suing his former employer for firing him for smoking. The man lost his job as a lawn-care specialist after testing positive for nicotine.

Isn't this great? After all, anti-smoking types have been haranguing us for years about the dangers of smoking. On the moral-outrage scale, nicotine ranks up there with Attila the Hun in its repulsiveness.

State governments sue tobacco companies for hawking their vile weed. Cities and states have banned smoking in restaurants and bars. Calabasas and San Francisco, California, and Salt Lake City, Utah, have banned smoking in parks and other outdoor public spaces.

Every last corner of our culture vilifies smoking. Then along comes a company that takes all this rhetoric seriously — and even wants to step up the anti-smoking pace.

A story in the November 30 *New Hampshire Union-Leader* reported, “The Scotts Co., a subsidiary of Scotts-Miracle Grow Co. of Marysville, Ohio, instituted a policy early this year forbidding smoking.... In the 20 states that allow it ... the company refuses to hire smokers and tests all new employees for nicotine.”

No one has tried to hide this new policy. “It’s on our Web site,” said Jim King, vice president for corporate communications and investor relations. “It’s on our terms of employment when they are hired.”

But that’s not good enough for the fired worker. He has filed a lawsuit in Superior Court claiming the company has violated his civil and privacy rights. His lawsuit states that “this case challenges the right of an employer to control employees’ personal lives and activities by prohibiting legal private conduct the employer finds to be dangerous, distasteful, or disagreeable.”

The nerve of Scotts Co.! Don’t they know that controlling people’s personal lives and activities by prohibiting private conduct that someone finds to be dangerous, distasteful, or disagreeable is the job of the government?

For decades our personal decisions have been under assault. It's not just smoking the paternalists want to ban. Owning a handgun, driving without a seatbelt, riding a motorcycle without a helmet, "hate speech," home schooling, eating transfatty foods — the list could go on and on — have all been prohibited already or are on the hit list of things deemed too dangerous, distasteful, or disagreeable.

Hence this quandary for the nationwide baby-sitting service. The paternalists welcome any measure that appears anti-tobacco. Yet these are typically the same people who want government to have more and more control over the workplace — it fits so well with their overall agenda. They claim that people have a "right" to their jobs, including health-care benefits, parental leave, paid vacation, and more. They want control over that part of your life, as well. All for your own good, of course.

Meaning the *owners* of private companies really don't get to make those important private, personal decisions about how their companies will be run. *That's* up to the Nanny State.

How to reconcile this dilemma for the control freaks? Any argument against the Scotts Co. will require some form of support for a person's right to smoke cigarettes. And what kind of example would that be setting? But supporting the company would mean loosening government control over how people run their businesses. Imagine the sheer distress involved in deciding how the powers of micro-management might best be utilized!

Perhaps instead they should try a revolutionary approach. Scotts Co. and other private companies are themselves the expression of someone's personal desire. Like the fired employee in question here, the owner of a private company has a desire to control his life — and his company is certainly a part of that life.

In the marketplace we trade with one another — we give up something in exchange for something we want more — and that is the basis of our relationship. If one party becomes dissatisfied with the terms of the trade, he is free to walk away. That's called freedom of association.

The Scotts Co. has decided that the employees with which it prefers to associate must not smoke. It has joined the anti-smoking crusade. Whether we agree with the company's decision or not, it has the right to determine the kind of people who will work for it — even if the standard it uses appears ridiculous or unfair. Those who are uncomfortable with that are free to seek employment elsewhere.

Those who agitate for greater control over our personal lives have painted themselves into a difficult corner, and we should have little sympathy. While they are comfortable having government tell people what to do and not do, they somehow find it intolerable that an employer is setting terms of employment for his own business. They are unable to recognize the difference between paternalism and freedom.

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