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Sarah Pitts, Editor
Christian Brothers University

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Welcome to the *Academy for Studies in Business Law Journal.* The Academy for Studies in Business Law is an affiliate of the Allied Academies, Inc., a non profit association of scholars whose purpose is to encourage and support the advancement and exchange of knowledge, understanding and teaching throughout the world. The *ASBLJ* is a principal vehicle for achieving the objectives of the organization. The editorial mission of this journal is to publish empirical and theoretical manuscripts which advance understanding of business law, ethics or the regulatory environment.

Readers should note that our mission goes beyond studies involving business law or the effect of legislation on businesses and organizations. We are also interested in articles involving ethics. We would like to publish more manuscripts dealing with the ethical environment, business ethics and the impact of ethics on organizations and businesses. In addition, we invite articles exploring the regulatory environment in which we all exist. These include manuscripts exploring accounting regulations, governmental regulations, and international trade regulations and their effect on businesses and organizations.

The articles contained in this volume have been double blind refereed and represent both submissions to conferences and direct submissions from authors. The acceptance rate, 25%, conforms to the Allied Academies' editorial policy.

Sarah Pitts
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Articles

THE AMERICANS WITH DISABILITIES ACT: AN ASSESSMENT OF ITS IMPACT ON INSTITUTIONS OF HIGHER EDUCATION

LeVon E. Wilson, Western Carolina University

ABSTRACT

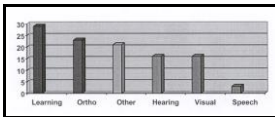
This article explores the impact of the Americans with Disabilities Act on institutions of higher education in the United States. The historical development and purpose of the Act are explored. The concept of "reasonable accommodations" is treated along with factors that may constitute undue hardship on colleges and universities when faced with questions regarding the appropriateness of making accommodations. Some of the cost factors are discussed, including legal challenges made by persons who have been denied accommodations.

INTRODUCTION

Although the Declaration of Independence, over two hundred years ago, guaranteed that Americans have the right to life, to liberty, and to the pursuit of happiness, that right has not been uniformly available to all citizens (Thomas, 1985). Thomas (1985) suggests, "as the adage purports, although all are created equal, some are created more equal than others" (p. 1). Disabled persons have, as a group, received unequal treatment by being victims of both intentional and unintentional discrimination, according to Thomas (1985). Thomas (1985) reports that this attitude toward the handicapped permeated federal, state, and local governments, which systematically segregated or excluded handicapped persons through a variety of means.

The Americans with Disabilities Act (ADA), (42 U.S.C. dd 12101 et seq.) has been called an Emancipation Proclamation and Bill of Rights for people with disabilities (Schneid, 1992). This legislation brought nationwide attention to and protection against discrimination on the basis of disability.

According to the 1995-96 National Postsecondary Student Aid Study (U. S. Department of Education, 2000), roughly six percent of all undergraduates reported having a disability. Among 1995-96 undergraduates with a disability, approximately 29 percent reported having a learning disability, and 23 percent reported an orthopedic impairment (Figure 1). About 16 percent of students with disabilities reported having a hearing impairment, 16 percent reported having a vision impairment, and three percent indicated a speech impairment. In addition, one in five undergraduates with disabilities (21 percent) reported having another "health-related" disability or limitation (U. S. Department of Education, 2000).



Source: U. S. Department of Education, National Center for Education Statistics (2000).

HISTORICAL DEVELOPMENT

Since the beginning of this country, individuals with disabilities have fought against discrimination in education, employment, and many other areas. Throughout the years, many individuals and organizations have attempted to correct the discrimination against disabled individuals through litigation and proposed legislation. In the 1960s and early 1970s, a substantial increase in litigation in the area of disability discrimination was experienced along with a national organizing effort by many different groups to highlight the plight of disabled individuals (Schneid, 1992). As an outgrowth of the Civil Rights Act of 1964 (42 U.S.C. dd 2000e et seq.) providing rights and protections in the areas of race, color, religion, and national origin, many commentators and organizations noted that individuals with disabilities were also in need of civil rights and of similar protections against discrimination (Schneid, 1992).

On the heels of the Civil Rights Act, numerous attempts were made in Congress to amend the Act to include handicap or disability discrimination without success. Although Congress was not successful in amending the Civil rights Act to include discrimination against disabled persons, several other nondiscrimination laws were enacted to protect disabled individuals. From 1983 to the enactment of the ADA in 1990, Congress enacted several laws that prohibited discrimination against disabled persons, but only within the perimeters of the federal government, federal contractors, and recipients of federal financial assistance (Schneid, 1992; Spechler, 1996). These laws included Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. d 794), which was a prelude to the enactment of the ADA. These pre-ADA laws did not provide the expected impact in reducing discrimination against individuals with disabilities. These laws did, however, serve as the foundational basis upon which Congress designed and built the ADA.

The ADA is the civil rights guarantee for persons with disabilities in the United States. It provides protection from discrimination for individuals on the basis of disability. The ADA extends civil rights protection for people with disabilities to employment in the public and private sectors, transportation, public accommodations, services provided by state and local government, and telecommunication relay services (The Americans with Disabilities Act, 2000).

A person with a disability is anyone with a physical or mental impairment that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. In addition to individuals who have visible disabilities-people who are blind, deaf, or use a wheelchair-the definition includes people with a whole range of invisible disabilities. These include psychological problems, learning disabilities, or some chronic health impairment, such as epilepsy, diabetes, arthritis, cancer, cardiac problems, HIV/AIDS, and others (The Americans with Disabilities Act, 2000).

The ADA upholds and extends the standards for compliance set forth in Section 540 of the Rehabilitation Act of 1973 to employment practices, communications, and all policies, procedures, and practices that impact on the treatment of students with disabilities. Employment issues for all institutions are covered under Title I. For all activities, public institutions are covered under Title II; private institutions are covered under Title III (The Americans with Disabilities Act, 2000).

Because of the public attention given to the passage and implementation of the ADA, renewed attention is being focused on disability access to institutions of higher education. This focus includes the whole scope of the institution's activities, including facilities, programs, and employment (The Americans with Disabilities Act, 2000).

STATUTORY PROVISIONS OF THE ADA

Signed into law on July 26, 1990, the ADA is a wide-ranging statute intended to make American society more accessible to people with disabilities. The Act is divided into five titles. Title I speaks to employment. It requires businesses to provide reasonable accommodations to protect the rights of individuals with disabilities in all aspects of employment. Public services are covered under Title II. This provision prohibits state and local governments from denying services to people with disabilities participation in programs or activities that are available to people without disabilities. Such services would include public transportation systems such as public transit buses. Title III requires places of public accommodation including facilities such as restaurants, hotels, grocery stores, retail stores and others to make all new construction and modifications accessible to individuals with disabilities. Telecommunications companies offering telephone service to the general public must have telephone service available to individuals who use telecommunication devices for the deaf (e.g. TTY devices) according to Title IV of the ADA. Finally, Title V includes a provision prohibiting coercion, threats or retaliation against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

According to Section 12101(b), the purpose of Act is:

1	to provide a clear and comprehensive notional mandate for the elimination of discrimination against individuals with disabilities;
2	to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
3	to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
4	to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. (42 U.S.C. d 12101 (b)).

The ADA's protection applies primarily, but not exclusively, to "disabled" individuals. An individual is "disabled" if he or she meets at least any one of the following tests:

1	The individual has a physical or mental impairment that substantially limits one or more of his or her major life activities.
2	The individual has a record of such impairment.
3	The individual is regarded as having such an impairment.

MAKING REASONABLE ACCOMMODATIONS

The ADA requires that an institution make reasonable accommodations that permit qualified disabled persons to compete and perform fairly with non-disabled persons. (See 42 U.S.C. d 12111.) Accommodations are needed for persons who meet the academic and technical standards requisite to admission or participation in the educational admission or participation in the educational program or activity in spite of their handicap. This would include any effective modification or adjustment in a program or position that makes it possible for the person to participate. The inquiry is almost always fact specific and must be decided on the limitations or needs that a specific person has for a particular program. It does not mean elimination of essential job functions, a lowering of standards or providing a perfect or the best accommodation.

Almost all of the institutions that enrolled students with disabilities (98 percent) had provided at least one support service or accommodation, with most providing alternative examination formats or additional time. Public institutions were more likely than private institutions to have provided a service or accommodation (Lewis & Farris, 1999).

Program access can be provided by, among other methods, reassigning services from inaccessible to accessible locations, providing auxiliary aids (such as note takers, qualified sign language interpreters and readers, taped texts, assistive listening devices, large print, Braille, or ASCII diskette materials), redesigning equipment, modifying policies, altering existing facilities to remove architectural barriers, or constructing new accessible facilities (Providing access, 1997).

Any change in the work or educational environment or the way things are customarily done that enables an individual with a disability to have equal access to employment, educational opportunities, and other programs or services offered by the university, may be viewed as a reasonable accommodation or academic adjustment under the ADA. This may include 1) making existing facilities, services, and programs accessible for employees and students and to the general public; 2) job restructuring, part-time or modified work schedules, assignments, acquisition or modification of equipment or devices, appropriate adjustment or modification of training materials or policies, and providing qualified readers or interpreters for employees with disabilities; and 3) relocating classes, developing alternate testing procedures, or providing educational auxiliary aids and qualified readers or interpreters for students with disabilities (Esteban, 1994).

Accommodations are not required if it can be shown that providing such accommodations would result in undue hardship. Undue hardship includes any action that is unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the university (Esteban, 1994). This principle was tested in Wynne v. Tufts University School of Medicine (1991). This case supports the fact that in cases involving modifications and accommodations, the burden is on the institution to demonstrate that appropriate officials within the institution considered alternative means, their feasibility, cost and effect on the program, and came to a rationally justifiable conclusion that the alternatives would either lower academic standards or require substantial program alterations.

A decision that a request constitutes an undue hardship is made on a case-by-case basis. According to Esteban (1994), factors to be considered by the university in determining whether an accommodation is an undue hardship include:

1	The nature and cost of the accommodation.
2	The overall financial resources of the campus.
3	The type and location of the facility to be modified.
4	The impact of the accommodation on campus operations, including the impact on the ability of other employees to perform their duties and the impact on the campus's ability to conduct business.

The type of request for accommodation will vary depending on the specific needs of a person with a disability. Examples of reasonable accommodations include but are not limited to listening devices, adaptive computer devices and programs, sign language interpreters, readers, scribes, note takers, or relocation of an event to an accessible location (Esteban, 1994).
Accessibility is not just a matter of getting in and around a school facility. A classroom with poor acoustics can make the educational program inaccessible for students who have trouble hearing their teachers, fellow students or audio materials (Kennedy, 2000).

According to Weeks (1993), the most likely reason for a college not to accommodate a qualified person with a disability is that the accommodation would cause undue hardship. Undue hardship can result if an accommodation unduly disrupts business or other employees, as long as the disruption does not result from other people's fears or prejudices toward the individual's disability (Weeks, 1993). Because undue hardship must be evaluated on a case-by-case basis, the outcome may change with different applicants, different jobs, or over time.

FINANCIAL IMPACT ON COLLEGES AND UNIVERSITIES

Lacking in the literature and in this paper are actual figures (e.g. costs of modifications, renovations, improvements, or litigation}, which represent amounts colleges and universities pay annually to either comply with the law or to avoid its consequences. What follows is merely a cursory look at some of the cost factors.

Much of the cost associated with making reasonable accommodations involves planning, upgrading, purchasing, implementing and using assistive computer technologies and library automation systems (Providing access, 1997).

For many colleges struggling with limited budgets, staffing shortages, increasing or declining enrollments, outdated infrastructure and unanswered questions about the scope and direction of computer technology on campus, the issues surrounding access to library automation systems by students with disabilities may often be overlooked when those resources are being reviewed for upgrade or replacement (Providing access, 1997).

Compliance with the ADA is the responsibility of the college or university administrators, who must see that it is implemented properly. Every college or university in the nation is required to identify, evaluate, and provide appropriate services and procedural safeguards for disabled students and employees, if the disorder substantially limits a major life activity. However, schools may not be required to make substantial modifications in programs to allow disabled persons to participate (First & Curcio, 1993).

A college or university is not required to make substantial program modifications, waive essential requirements, or lower standards. For example, an optometry school may require all students to manually operate certain instruments, even if a student's handicap prevents him from doing so. "Accommodations may be excused when they would create an undue financial burden on the college" (Weeks, 1993, p. 69).

The college's physical facilities, when viewed in their entirety, must be readily accessible to people with handicaps, according to Weeks (1993). This does not mean that every facility or every part of a facility must be accessible. "Accessibility may be achieved by reassigning a class to an accessible building, providing an aide to a student, or providing services at alternative accessible sites. Procedures must ensure that all interested students, including those with impaired vision or hearing, can obtain information on accessible services, activities, and facilities" (Weeks, 1993, pp. 69-70).

The college or university is not required to make structural changes when other methods are effective in providing access to services. All new construction, however, must be accessible according to detailed guidelines. Also, any renovations must be done in a manner that creates accessibility to the maximum extent feasible (Weeks, 1993).

Some accommodations are more costly than others. For example, making exam accommodations by providing a distraction-reduced environment or providing an extended time period are reasonably simple and generally inexpensive measures. Whereas, providing scribes or readers, computer programs, equipment, and training, or voice synthesizers, electronic readers, Braille imprinters, enlargers, and voice-controlled computers are much more expensive. Training costs may include educating supervisors, instructors, and others who have the responsibility for ensuring that accommodation requests are addressed as to their duties, obligations, and attitudes in regard to the procedures (Esteban, 1994).

Duke University recently settled a disability-right claim with the United States Department of Justice. As part of the settlement, the university agreed to make wide-ranging changes over the next five years to render its buildings and services more accessible to people

with disabilities. Under the agreement, Duke must also pay $25,000 in civil penalties and $7,500 to a former Duke undergraduate, who filed the complaint in 1996 (Hebel, 2000). The ADA requires privately owned places of public accommodation, including colleges and universities, to remove architectural barriers to access when it is easy to do so, and to modify policies and practices to avoid discrimination (Hebel, 2000).

Legal experts said the agreement could spark more such settlements with colleges and universities in the future. Those actions, according to experts, would be likely to occur one institution at a time, rather than en masse, because the process of investigating a campus's compliance with the disabilities law is time-consuming (Hebel, 2000). Duke's effort at making the campus more accessible has been applauded by many. From a cost perspective, Duke University will spend millions of dollars to make the improvements necessary to make the campus fully accessible to persons with mobility impairments.

Guckenberger v. Boston University (1997) involved a legal proceeding that began in July 1996 when 10 students with learning disabilities and attentional disorders filed a class action lawsuit in federal court. The case went to trial in April 1997. The case alleged that the university's College of Arts and Sciences violated federal and state law by imposing what the plaintiffs characterized as a get-tough policy on Learning Disability Support Services. On the central issue in the case regarding course substitutions, the judge stated that the university does have the authority to deny requests from students with learning disabilities to substitute alternative courses for the foreign language and mathematics degree requirements. However she determined that the university's insistence on complete reevaluation for all students with disability diagnoses that were more than three years old - or that had been conducted by an evaluator who was not a physician or licensed clinical psychologist - was illegal. On that basis, some of the students won nominal damages in the case. Of the 10 plaintiffs, two students were awarded $1.00 each, and four others were awarded a total of $29,450.00.

It may seem that the university avoided significant costs in this case, unless you consider the cost of legal services in the case. In a separate opinion, issued simultaneously, the judge awarded $1.2 million in fees to the attorneys who argued against the university's policy - approximately one half of what they had requested (Fitzgerald, 1998). As in this case, legal fees are often the big costs in these types of lawsuits.

So, who pays? The answer is, the college or university pays unless it can show undue burden. While a university may require students to seek state vocational rehabilitation funding or private funding, if these sources are not available, the university must provide the service unless it is unduly burdensome to do so. The university may not charge for these services (United States v. Board of Trustees, 1990).

Can cost be a defense? Probably, the real question, according to Rothstein (1998), is whether a college wants to have its discretionary budget examined by the courts and opposing counsel (along with the media and the public). Yes, cost can be a defense under appropriate circumstances. Because these cases are decided on case-by-case bases, it would be difficult to determine whether such an argument could be made successfully.

CONCLUSIONS

In the future, colleges and universities must respond in nontraditional ways to the needs of disabled students for physical accessibility to campus facilities and cultural accessibility to campus activities, both social and academic. The development of innovative services will require an entrepreneurial approach that should look at the provision of disabled student services from a "marketing" point of view (Murphy & Loving, 1987). Such an approach may require the need for outside funding. The challenge for administrators seeking to follow the marketing approach, according to Murphy and Loving (1987), will be to cultivate funding sources to obtain necessary resources, tap the tremendous potential of technological advances, expand staff training opportunities, and develop administrative policies to accommodate the entrepreneurial approach.

Educating higher education faculty, staff, and students about the rights and responsibilities of individuals with disabilities and seeking legal counsel when necessary are the best means for appropriately accommodating students and employees and avoiding litigation.

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A LEGAL ENVIRONMENT APPLICATION OF OSHA'S AFFECT ON INDUSTRIAL SAFETY

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James T. Rhodes, Christian Brothers University

ABSTRACT

This study examines occupational injury and death rates before and after the creation of OSHA. The analysis suggests that in its first decade, OSHA indeed had no statistically significant effect on observable injury or death rates, a finding which supports earlier studies. Over the longer run, however, a significant improvement in safety is observed. The second section reviews the previous research and literature and the third and fourth sections describe the data, methodology, and results of the present study.

INTRODUCTION

The purpose of this project is to investigate the effects of government regulation on occupational safety. Aggregate time series data will be used in an attempt to model the behavior of occupational injury and death rates during the pre-OSHA period (1948-1970). The model is then used to project injury and death rates into the post-OSHA period (1971- 1991) for comparison with actual rates. As in earlier studies and later documented writings, no significant effects are found for the first decade, and there is some question whether the leap [significant effects] was forward or backward (Asfahl, 1995). Over the long run, however, a substantial increase in safety is observed. It cannot be questioned that OSHA and associated government regulation have had a profound effect on the field of Industrial Safety and Health Management (Asfahl, 1995).

A number of studies undertaken in the late 1970s and early 1980s found that OSHA has had little or no effect on safety. This present study examines occupational injury and death rates before and after the creation of OSHA. The analysis suggests that in its first decade, OSHA indeed had no statistically significant effect on observable injury or death rates, a finding that supports earlier studies.

PREVIOUS RESEARCH AND LITERATURE

The earliest studies of OSHA almost unanimously found the program to be ineffective. In one of the first studies, Smith (1976) extrapolated injury rates in manufacturing industries from 1968-70 into the 1972-73 period. Comparing his forecasts with actual injury rates in the latter years, he found a statistically insignificant reduction in injury rates. Utilizing aggregate

data, Northrup et al (1978) reported, "National Safety Council data on injury rates indicate that such rates continued to increase between 1970 and 1974, but do show a marked decline in injury seriousness and particularly in deaths over that period... [however] we lack the theoretical and empirical framework to determine what the trend in measured incidence rates would have been without regulation." Mendeloff (1979) compared projected changes in injury rates with actual rate changes through 1974-75, and found no significant effects on lost-workday injuries nationally, and a reduction of less than three percent in California. In a widely reported study of pooled time-series and cross-section data, Viscusi (1979) found significant reduction in injury rates for the 1972-75 period. In a more limited analysis, Cooke and Gautschi (1981) found that over 1970-1976, OSHA inspections did reduce lost workday cases, but only for large manufacturing firms (those with 200 or more employees) in the state of Maine; and Viscusi (1986) later cast doubt on the validity of the Cooke and Gautschi findings.

Summarizing the first decade of research on OSHA, Nichols and Zeckhauser (1981) reported, "None of a number of studies of the agency's effectiveness has detected an appreciable reduction in workplace accidents in America." They contend that "Although the studies are by no means conclusive, they tend to reinforce the impression gained from the raw data: OSHA has not affected injury rates significantly in either a statistical or a practical sense." (Nichols and Zeckhauser, 1981)

Two explanations have generally been offered for these findings (Bartel and Thomas, 1985). One is that the OSHA mandates emphasize equipment standards, but fail to address human error. The other explanation has been that OSHA enforcement is ineffective, both because the probability of catching violators is low, and because the financial penalties are relatively inexpensive (Barnum and Gleason, 1976). Thus, it is argued that there exists an insufficient incentive for firms to comply with the relatively expensive risk control standards.

An alternative explanation, however, is that the effects of OSHA were merely unobservable in earlier studies. Because of the time frame involved, the early studies were only able to make a comparatively short run analysis of OSHA's effects. In contrast, the findings of more recent studies have been mixed. In a study similar to Viscusi's, Marlow (1982) performed a cross-section analysis of 1977 data, and found that neither inspections nor re-inspections significantly altered firms' allocation of resources toward safety. McCaffrey (1983) examined nearly 40,000 manufacturing firms over the 1976-78 period, and using a procedure similar to that of Smith (1979) found that inspections had no significant effects on safety, either in the year of the inspection, or the following year. But in a study of injury rates in 22 states over the 1974-78 period, Bartel and Thomas (1985) found a small positive effect on safety, and concluded that "if all firms moved into complete compliance [with OSHA standards] then injury rates would fall by 9.8 percent." Robertson and Keeve (1983) obtained positive results in 20 states for the 1975-76 period and in three plants for the 1973-80 period. Updating his earlier study, Viscusi (1986) found small positive effects on safety, and estimated a reduction in injury rates in the range of 1.5 to 3.6 percent over the 1973-83 period. At about the same time, Noble (1986) summarized the literature as follows: "The evidence is ambiguous, but, taken together the available studies

suggest that, at best, OSHA had a small positive impact on worker health and safety" between 1971 and 1984.

Table 1. Previous Studies of Osha's Effect on Safety

Period	Author(s) Date	Findings
1972-73	Smith (1976)	no significant effects
1970-74	Northup et al (1978)	injury rates rose, severity fell
1973-74	Smith (1979)	no significant effects
1971-74	Mendeloff (1979)	no significant effects
1972-75	Viscusi (1979)	no significant effects
1970-76	Cooke/Gautschi	positive effects in ME
1977	Marlow (1982)	no significant effects
1976-78	McCaffrey (1983)	no significant effects
1973-80	Robertson/Keeve (1983)	positive effects in 3 plants
1974-78	Bartel/Thomas (1985)	small positive effects
1973-83	Viscusi (1986)	small positive effects
1979-85	Gray/Schoz (1989)	significant on accidents
1979-85	Gray/Schoz (1991)	significant effects on injuries
1979-85	Ruser/Smith (1991)	no significant effects

Gray and Scholz examined panel data on 6,842 large manufacturing plants between 1979 and 1985. They found statistically significant effects of OSHA inspections on accidents (Gray and Scholz, 1989) and on injuries (Gray and Scholz, 1991). In an analysis of the same period, however, Ruser and Smith (1991) found "little evidence to suggest that OSHA inspections in the early 1980s were effective in reducing the lost-workday injury rate."

The studies reviewed above are summarized in Table 1. In general, it is not until data from the late 1970s and 1980s is included that the research reveals any effects of OSHA on safety. Gradually, however, evidence of a significant effect appears to be emerging, as more recent data becomes available. It is therefore of interest to examine the data over the long run.

INJURY RATE DATA

In contrast to the previous research, the present study utilizes a time series consisting of 44 annual observations of occupational injury rates before and after the creation of OSHA. The periods under consideration are 1948-1970 (pre-OSHA) and 1971-1991 (post-OSHA). As in most previous studies, illnesses are excluded from consideration, for several reasons. First, the vast majority--roughly 95 percent--of all lost workdays are attributed to injuries (see, for

example, Bureau of National Affairs, 1990); second, the data on illnesses are less reliable than the data on injuries due to problems of isolating causation; and third, OSHA has traditionally emphasized safety over health, so that any effects of OSHA standards are more likely to be evident in injury figures.

One difficulty with intertemporal comparisons of injury rates is the incommensurability of pre-OSHA and post-OSHA data collected by the Bureau of Labor Statistics (BLS). At the time of OSHA's creation, the BLS changed the definitions, coverage, and reporting methods used in its survey of occupational injuries, and in so doing made the new data series incompatible with the old series (Schauer and Ryder, 1972; Inzana, 1973). Thus, as Robertson and Keeve (1983) note, a time series analysis using the BLS data is problematic. In particular, the BLS abandoned its measurement of disabling work injuries after the creation of OSHA (Inzana, 1973). The National Safety Council (NSC) however, retained its measurement of this category into the post-OSHA period. The NSC (1991) defines a disabling injury as "an injury causing death, permanent disability, or any degree of temporary total disability beyond the day of the accident." This is equivalent to the definition traditionally employed by the BLS. Because of its consistent measurement over time, this series is suitable for inter-temporal comparisons. The data were compiled from Williams (1973) and the annual Accident Facts reports published by NSC.

Because desegregated data suffer from occasional changes in standard industrial classification codes, the aggregate number of injuries was used to ensure consistency. The number of injuries was corrected for the number of exposure units by calculating the injury rate per 100 full-time equivalent workers as follows.

$$Injury\ Rate = (N / EH) \times 200{,}000$$

Where N is the number of injuries, EH is the total number of employee hours actually worked during the year, and a full-time employee is assumed to work 40 hours per 50 weeks per year. This is the conversion method currently applied by the BLS to its own data series. The data on employment and hours were taken from the Council of Economic Advisors (1994).

One of the problems with data analysis relative to safety and health issues is in comparison. A variety of reporting methods has been utilized over the course of the last fifty years, with the majority of discrepancies occurring pre-OSHA. In fact, prior to the Occupational Safety and Health Act of 1970, accident reporting was unstandardized with employers following voluntary policies and methodologies. As a result, time series analyses are not reliable comparisons, and should be interpreted loosely.

To date, there is no reliable statistical data relative to occupational illnesses, because chronic and long latent diseases, although not totally excluded, are largely beyond the scope of the survey system. To this extent, an undercount exists in the illness estimates. There is, as yet, no reliable measure of that undercount. For this reason, the time series analysis within, is held to occupational injury/illness combinations as reported in the Statistical Abstract of the United States, and workplace deaths as reported by the National Safety Council's Accident Facts.

A steady decline in the annual number of injuries per one million hours worked was observed from 1948 until 1968, at which time the trend appears to shift to an increase. The assumption is that the increase is due to better data collection and reporting as a result of pressure from organized labor and mounting concern in Washington over national safety statistics. A sharp decline in injury rates is realized post-OSHA as standard reporting practices are established and standards enforced. The pre-OSHA trend line for injuries predicts a slight but continual annual decline in injuries for the period, 1971 - 1990, based upon trends established during the pre-OSHA years, with a forecasted overall drop from 22.1 injuries per 1 million hours worked in 1971 to 2.1 in 1990.

The pre-OSHA trend in occupational death rates falls significantly faster, however, rising slightly between 1962 and 1969. The growth of the workforce and improved technology are possible variables directly impacting the decline, as well as the relative strength of organized labor particularly during the mid to late 1950s. The pre-OSHA model of occupational death rates forecasts a continued decline for the period 1971 - 1990. Presumably, the workforce is expected to grow faster than the number of accidental deaths, thereby supporting the continued decline.

Injury rates continually decrease for the period 1971 -1986, outperforming rates forecasted by the time series model. However, the trend curves upward with annual increases in the injury rate beginning with 1987 and continuing through 1990. Statistics indicate the movement of labor resources from the manufacturing industry to the service sector. Specifically, the injury rates declined proportionally with the decline in manufacturing. The information age has given rise to new types of injuries, as is evident in the shifting trend.

Future predictions assume continued movement from manufacturing to service. It follows that fewer employees in hazardous circumstances will lead to fewer workplace injuries and deaths. However, movement into the service sector is expected to increase injuries related to repetitive motion. Injury rates are predicted to reach levels comparable to that not experienced since 1974 -1975. Workplace death rates, however, are expected to reach record lows.

ANALYSIS

Between 1948 and 1958, the injury rate declined by roughly 13 percent, from 3.462 to 3.000 injuries per hundred full-time workers. However, from 1958 to 1970, the rate leveled off and remained essentially unchanged, ending at 3.021 in 1970. Immediately following the creation of OSHA, the observed injury rate climbed to 3.141 in 1971, 3.158 in 1972, and 3.186 in 1973. This increase is consistent with the findings of earlier studies such as Northrup et al (1978), but it is strictly a short run phenomenon. Beginning in 1974, the rate fell rather consistently throughout the post-OSHA period. By 1989, the rate of disabling injuries had reached a low of 1.675 per hundred workers, and in 1991 the rate stood at 1.696, a reduction of nearly 47-percent from the 1973 rate.

A priori, the trend in injury rates is expected to be negative, simply because of improving knowledge of safe procedures over time. Because the production of goods is generally more dangerous than the provision of services, injury rates are expected to be positively correlated with the proportion of workers producing goods. And because a primary concern of unions is the safety of the workplace, unionization is expected to have a negative effect on injuries.

Table 2 gives the regression results for the overall rate of disabling occupational injuries, as well as separate results for nonfatal disabling injuries and occupational death rates (the latter were calculated per 100,000 full-time equivalent workers). In each of the regressions, the variables have the expected signs, and all are statistically significant at the ten percent level or below. This simple model explains about 97 percent of the variation in death rates, and about 80 percent of the variation in injury rates. Of course, since the great majority (approximately 99 percent) of the injuries in any given year are nonfatal, the results for nonfatal injuries are nearly identical with the results for disabling injuries overall.

The strong inverse correlation between injury rates and union density is of particular interest. Union membership remained steady at approximately one-third of all nonagricultural workers through 1958, and began to decline rather continuously thereafter. This may suggest that collective bargaining played an important role in reducing injury rates in the 1950s, whereas the leveling off of injury rates in the 1960s reflected diminishing union strength. The results in Table 2 suggest that each percentage point decline in union density was associated with an increase of approximately 65 disabling injuries and 0.45 occupational deaths per 100,000 full-time workers.

The pre-OSHA model estimated in Table 2 was used to project injury and death rates into the post-OSHA period, for comparison with actual post-OSHA data. (Union density data for the post-OSHA years were compiled from the BLS (1980); Curme, Hirsch, and MacPherson (1990); and Hirsch and MacPherson (1993).

Table 2. Regression Results

Variable [a]	Disabling Injuries [b]	Deaths b	Nonfatal Injuries [b]
Constant	26.77	833.03	25.93
(+)	(1.64)*	(8.47)**	(1.60)*
Trend	-0.012306	-0.4108	-0.011895
(-)	(-1.55)*	(-8.58)**	(-1.50)*
Union Density	-0.06516	-0.45092	-0.06471
(-)	(-4.86)**	(-5.57)**	(-4.85)**
Goods Production	0.06561	0.2157	0.0654
(+)	(2.87)**	(1.56)*	(2.87)**
R2	.822	.976	.818
Adjusted R2	.793	.973	.789

Durbin-Watson	1.93	2.41	1.93

*Significant at the ten percent level.
**Significant at the one percent level.
[a] Expected signs given in parentheses below independent variables.
[b] Student's t-statistics given in parentheses below coefficients.

For much of the early post-OSHA period, the observed injury and death rates are above the forecast rates. It is not until 1978 that the observed rates are consistently below the predicted rates. This may be the result of (1) more accurate reporting under OSHA guidelines, by which an earlier under reporting bias was corrected, as suggested by Ruser and Smith (1991), and (2) the gradual establishment and implementation of improved safety standards throughout various industries. Thus, although aggregate injury and death rates fell by 20 percent between 1971 and 1980, there is no statistically observable difference between the observed rates and forecast rates for the first ten years after the creation of OSHA. This result is consistent with the findings of earlier studies, which reported no significant effects on incidence rates in the first decade of OSHA's existence.

Over the longer run, however, a different picture emerges. From 1978 on, there is a significant and widening gap between observed injury and death rates and their respective forecasts. Indeed, for the most recent five-year period (1987-91), the average injury rate is 36 percent lower than the average forecast, and the average death rate is approximately 21 percent below the mean forecast. Both injury and death rates are thus substantially lower than they would have been in the absence of OSHA.

Indeed, these estimates may be considered conservative. To the extent that pre-OSHA rates were under reported, the forecasts based on these rates are biased downward. Thus the gap between observed and expected rates tends to understate the magnitude of OSHA's effect. The extent of this reporting bias, however, is apparently not great. If the increase in mean rates for the first three years of the post-OSHA period over the mean for last three years of the pre-OSHA period is taken as a measure of the reporting bias, the bias is approximately four percent in the case of injuries. As one would expect, there does not appear to have been any such reporting bias in the case of deaths.

To understand completely the implications of the time series analysis, one must understand the interpretation of those results in the marketplace. Clearly, the analysis establishes a consistent reduction in work-related fatalities and serious injuries and illnesses. OSHA states that according to a recent study, in the 3 years following an OSHA inspection that results in penalties, injuries and illnesses drop on average by 22 percent. Overall injury and illness rates have declined in the industries where OSHA has concentrated its attention, yet have remained unchanged or have actually increased in the industries where OSHA has had less presence.

Nichols and Zeckhauser observe that the decline in incident rates is due largely to fewer reports of serious injuries, which can be influenced by a number of factors. Statistics can present a completely different view when further dissected. Specifically, Nichols and

Zeckhauser observe that nearly 100 percent of the overall decline occurred between 1972 and 1975; from 1975 to 1978, the rate rose a total of 3.3 percent. The lost workday rate, by contrast, climbed 24.2 percent over the six-year period, for an annual average increase of 3.7 percent. From 1975 to 1978, the average rate of increase was 7.5 percent. In the manufacturing sector, the lost-workday rate rose still faster, at an annual rate of 4.9 percent from 1972 to 1978. This compares with an average yearly increase of only 2.4 percent in the decade preceding passage of OSHA. John Mendloff attempted to fashion a model to observe the impact of OSHA on workplace accidents and to predict future incident rates. Though some evidence was found to support statistical correlation, the evidence was, at best, inconclusive and statistically insignificant. To summarize, the overall reductions in incident rates appear to be sporadic in nature and vulnerable to a number of external influences, including pressure from OSHA.

To the extent that current statistical evidence of OSHA's impact is inconclusive, the natural question is, why? Overall, data indicates a reduction in workplace incident rates, ostensibly due to safer work environments. In question is the source of the reduction, given the complex nature of the relationship between government and business. Both sides of this relationship must be understood before attempting prediction of future expectations.

A 1991 study by Wayne B. Gray of the National Bureau of Economic Research found that OSHA regulations had significantly reduced productivity growth in the United States. Many American production-oriented businesses point an accusatory finger at OSHA when faced with process challenges. The reality is that worker safety has been improving for decades. Companies have undertaken massive campaigns of training, coordination, technological investment, and management innovation to realize tremendous safety gains. Businesses have huge incentives to promote safety, such as lost productivity and workers' compensation or liability insurance costs that swamp the prospect of regulatory violations. Businesses complain that outdated or generic standards simply cannot be applied to all scenarios, stating that inspectors are poorly trained and are evaluated by the number of violations found, rather than results achieved through consultation. Moreover, costs to smaller businesses to realize compliance can be economically strangling.

OSHA's supporters defend that despite OSHA's grave shortcomings; the agency's fines and threats of fines are a historically effective way to gain the attention of willful employers. When North Carolina passed legislation in 1992 making municipalities subject to OSHA fines, violations against city employees declined dramatically. Indeed, the Journal of Environmental Health published a poll of 800 workers from a range of risk oriented worksites. The poll was conducted by Fingerhut-Granados, an independent research company and produced the following findings: 62% of the workers think the people they work for would take health and safety issues more seriously if they knew they could expect more regular visits by OSHA inspectors and 48% of workers think their employers would cut corners a little on safety if it meant protecting their profit margin.

The call for reform including a complete change in approach from enforcement of pre-designated standards to management-consultant relationship building has been the focus of attention on both sides of the debate, widening the gap between organized labor and the free

market. OSHA, however, has embraced the plan, accepting it as a natural evolution in parallel with its private counterparts. In essence, OSHA appears ready to fill a need to provide information to employers and employees that will fuel the economics of the trends in safety. Additionally, by provoking real data, industries can benchmark performance, utilizing internal innovation mechanisms to cultivate change. Although everyone, except organized labor, believes OSHA must be reformed, the question remains as to how far the president will go to make the agency less burdensome.

Trend analysis data indicate that the number of workplace injuries, illnesses and death will continue to be an issue well into the future. As the United States moves away from manufacturing toward servicing endeavors, reductions in old problems will give rise to new ones. Already surfacing, are injuries related to repetitive work, targeting our fastest growing labor segment, that of information systems.

Repetitive motion appears to be the next serious health hazard to be dealt with. According to the Labor Department, these injuries are the fastest growing job hazards, with over 300,000 cases diagnosed in 1993, compared to approximately 22,500 in 1982. By 1990, OSHA had issued fines totaling $3 million for more than 800 ergonomic violations with one dollar out of every three spent on workers' compensation for related injuries. OSHA reports that six out of ten new occupational illnesses reported to the Bureau of Labor Statistics in 1992 were disorders associated with repeated trauma.

Perhaps OSHA's most promising plan involves allowing natural economic mechanisms to work by using information as a catalyst. Utilizing multimedia forums to reach a greater, more diversified audience, OSHA plans to broaden the knowledge and accessibility of safety statistics. Theoretically, providing the labor market with more perfect information relative to personal danger will force employers to pay higher wages or reduce hazards to attract employees. Similarly, firms with statistically high accident rates will be rewarded with higher insurance premiums.

CONCLUSION

The time series analysis in this project suggests that by the early 1990s, OSHA had accounted for a significant reduction in both occupational injury and death rates. The results do not necessarily imply that the increase in safety is utility maximizing. To the extent that workers receive a risk premium for dangerous work, the reduction in hazards may be accompanied by slower growth in real wages. Indeed, data from the Council of Economic Advisors (1994) show that average real hourly earnings rose 20 percent between 1959 and 1970, a period in which injury rates were essentially stable; but real hourly earnings fell by 13 percent between 1973 and 1991 as injury rates declined. This may or may not be a tradeoff which workers would voluntarily elect. However, the relationship between unionization and safety does provide some evidence that, at least collectively, wage-earners have sought safer workplaces.

Nor do the results imply that direct regulation is necessarily the most efficient or cost-effective means of achieving increased safety. Indeed, Lanoie (1994) and others have

argued for an accident tax/safety subsidy system that would rely more on economic incentives and less on direct regulation. Nevertheless, the results obtained here do indicate that occupational injuries and deaths would have been significantly higher in recent years in the absence of government regulation.

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LET'S CLEAR THE AIR! THE TRUTH BEHIND DISCRIMINATING AGAINST SMOKERS IN THE WORKPLACE

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ABSTRACT

The societal perception towards cigarette smoking has dramatically changed. No longer is it considered a glamorous and accepted activity. Currently, it is typically perceived as a nasty and politically incorrect habit. With an abundance of empirical evidence of the negative effects of both tobacco use and secondhand smoke came increased litigation that limited smoking; both in and out of the work environment. Employers are discriminating against smokers through hiring discrimination based on their perception that smokers create additional cost to their business. Some smokers but mainly nonsmokers are seeking legal protection through the courts and winning settlements from their employers. The purpose of this paper is to discuss the legal regulations that have been created and illustrate the subsequent discrimination of smokers in the workplace through secondary sources.

INTRODUCTION

Forty years ago, cigarette smoking was considered glamorous and many people participated in this activity. Currently, the general public perceives smoking as a filthy habit that is both intrusive and annoying. Why have the attitudes of Americans changed so dramatically? We are becoming increasingly aware of the health risks of both smoking and ETS (second hand smoke). With the advent of anti-smoking publicity, there is more pressure to terminate this behavior. The passage of legislation supporting the regulation of smoking has fueled the public to assert their rights as non-smokers. As a result, conflict is inherent between smokers and non-smokers.

One environment where the conflict has arisen is in the workplace. The employer has the responsibility to decide how to best resolve smoking issues. Legally, the employer must provide a safe and healthy environment for his employees. The development of a smoking policy should consider both parties and the legal ramifications resulting from the implementation of this policy. If the employer decides to ban smoking, the smoking employee could seek legal action for discrimination and invasion of privacy. On the other hand, if the employer refuses to initiate any smoking policy, the nonsmoker with asthma may seek legal action for not providing a safe environment.

Presently, employers associate "hidden costs" to hiring a smoker. These costs consist of loss of productivity time, increased absenteeism due to poor health, higher medical needs leading

to more insurance claims which in turn create higher insurance premiums, and more property damage and maintenance. As a result, businesses have started to discriminate during the hiring process. One article titled, "The Job Is Yours--Unless You Smoke" clearly illustrates this kind of discrimination. As the stigmatization of smokers' increases, employers are choosing to adopt more severe and restrictive work environments.

The purpose of this paper is to illustrate how the various legal regulations have generally supported the non-smoker and how the non-smoking population has demanded a more restrictive work environment. As a result, smokers are becoming stigmatized both in and out of the workplace. The "hidden costs" of hiring smokers will be discussed and examples of hiring discrimination will be displayed. The information for this paper came from secondary sources and proceeds as follows. The history of smoking regulation both in and out of the workplace is illustrated and the "hidden costs" of hiring smokers and subsequent discrimination in the hiring process is discussed. Managerial implications will be outlined and the conclusions will be stated in the executive summary.

THE HISTORY OF SMOKING REGULATION

The societal perception of smoking cigarettes was initially viewed as a behavior that should be regulated and leaders began placing restraints on smoking as early as the 1600's. Yet, many citizens refused to terminate their smoking behavior and by the mid-1960's, cigarette smoking was considered an attractive activity that symbolized maturity and poise. Americans first became aware of the health risks of smoking and ETS in 1964; and today, the use of tobacco is perceived as a disgusting habit which should be eliminated. As more empirical information demonstrates the harmful effects to both smokers and nonsmokers, lawmakers have increasingly instituted regulations on smokers. Currently, smokers are stigmatized and discriminated against in both the public arena and in their homes.

Previous Attitudes Towards Smoking

Cigarette smoking was viewed as an irritant long before it became a popular and glamorous activity during the mid-1940's. In 1604, the first attack on smoking behavior was illustrated in a document written by King James 1 of England. This treatise called, "A Counterblaste To Tobacco" discussed the negative aspects of smoking. This document claimed that his subjects were wasting their money, polluting the air and harming their noses, brains and lungs. Nevertheless, the King's people continued to smoke cigarettes. After the publication of this treatise, rulers and sovereigns around the world tried to curb the use of tobacco by issuing, "...such primeval punishment methods as beheadings, whippings, and nose slitting, and yet the habit never abated" (as cited by Baldini, 1995, p. 5). Not even this severe punishment eliminated the powerful forces of nicotine.

In America, both the Massachusetts and Connecticut colonies were the first to start anti-smoking regulation. In the 1630's, the Massachusetts colony placed a "...ban on all tobacco

sales as well as public smoking..." (as cited by Baldini, 1995, p. 6). Also, Connecticut required that smokers have a permit when partaking in this activity. Thereafter, ten colonies followed suit and implemented statutes regulating the sale of cigarettes. During the 1800's, "Smoking was prohibited in Louisiana street cars because the smoke discomforted and inconvenienced non-smoking patrons" (as cited by Zgrodnik, 1995, p. 6).

In 1907, it was reported that there were over 500,000 American boys that were habitual cigarette smokers; thus, could not be educated past the eighth grade. In 1911, Charles Pease started a group called the Non-Smokers Protective League of America. "Dr. Pease was known for arresting smokers on trains and subways" (as cited by Baldini, 1995, p. 2). In 1914, Thomas Edison refused to employ, " ...no person who smoke cigarettes" (as cited by Fry, 1990, p.5). Throughout the early 1900's, several states continued to regulate smoking and by 1921, "More than twenty-five states considered ninety-two different anti-smoking bills and fourteen states enacted such legislation" (as cited by Zgrodnik, 1995, p. 7). It is interesting to note that these regulations were largely ignored by the public and eventually faded away.

By 1927, the regulation of smoking was decreasing and hardly any smoking statutes were enacted from 1927 and 1964. It was during this time that cigarette smoking was perceived as elegant and many Americans started smoking. During World War 1, young soldiers started to smoke and by the mid-forties, "...smoking was socially acceptable and culturally attractive for both men and women, with the cigarette symbolizing social status, personal well being and strength" (as cited by Gilbert and Hannan, 1998, p. 1). It was also during this time that advertising of tobacco became commonplace; thus, resulting in higher sales of tobacco products (as cited by Ezra, 1994, p. 12). In addition, smoking on television by "stars" added to the belief that smoking was part of a sophisticated lifestyle. One example was, "Lucy and Ricky Ricardo smoked cigarettes they kept in a silver case..." (as cited by Tyler, 1998, p. 2). Forty three percent of the population smoked cigarettes in the mid-1960's (as cited by Sablone, 1995, p.5) and no one thought they were endangering their health until the Surgeon General's first warning in 1964.

Smoking Classified as a Health Hazard

In 1964, the Surgeon General of the United States issued a report that created widespread awareness among Americans of the potential risks of smoking. The report noted an increase in the risk of lung cancer, chronic bronchitis, heart disease and emphysema (Baldini, 1995). With this empirical data, Congress started placing restrictions on tobacco. In 1965, Congress required warning labels on cigarette packs (as cited by Viscussi, 1998, p.2). Currently, the warning labels on cigarette packs must include one of the following warnings: " SURGEON GENERAL'S WARNING: 1) Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy, 2) Quitting Smoking Now Greatly Reduces Serious Risks To Your Health, 3) Smoking By Pregnant Women May Result In Fetal Injury, Premature Birth, and Low Birth Weight and 4) Cigarette Smoke Contains Carbon Monoxide" (as cited by Baldini, 1995, p. 13).

This was the beginning of the political campaign to educate the public of the negative effects of cigarette smoking.

In 1971, Congress banned the advertising of cigarettes on radio and television (as cited by Sablone, 1995, p. 6). Thereafter, many scientific studies indicated that there was a causal relationship between smoking and having low-birth weight babies (Baldini, 1995, p.7). Plus, the empirical evidence between cigarette smoking and premature mortality was tremendous. In 1979, another report from the Advisory Committee to the Surgeon General stated that the overall mortality rate for smokers was 1.7 compared to nonsmokers. For example, "A 30 year old smoker consuming two-packs-a-day has a life expectancy of approximately eight years less than a thirty year old nonsmoker" (Baldini, 1995, p. 7). In seven years, two reports would confirm the risks of passive smoking (also called secondhand smoke).

In 1986, two advisory reports fueled the war between smokers and nonsmokers. The Surgeon General's report by C. Everett Koop and the National Academy of Science/National Council's report on ETS (secondhand smoke) linked passive smoke to increased rates of cancer and heart disease of nonsmokers (as cited by Ezra, 1994, p. 5). Moreover, ETS can cause respiratory infections, onset and exacerbation of asthma, earlier onset of menopause plus increase the risk of brain tumors and cervical cancer. Through empirical tests, it was found that "ETS is composed of irritating gases and carcinogenic tar particles, including the additive drug nicotine, forty-three known or suspected carcinogens, and over 400 "toxins". In addition, studies concluded that, "Burning tobacco smoke has been identified as the source of over 4,500 compounds" (as cited by Reitze and Carof, 1998, p. 22). In 1992, the U.S. Environmental Protection Agency stated that ETS is a Class A carcinogen that, "... causes 20% of all lung cancers in the United States" (as cited by Pugsley, 1994, p 6). With the advent of anti-smoking publicity, there became a fierce determination to prohibit smokers from smoking in public areas.

Regulation of Smoking in Public Places

A new law was passed in 1993 titled The Smoke Free Environmental Act of 1993. It was initiated by Henry A Waxman, Chairman of the House Energy and Commerce Subcommittee on Health and Environment. This law banned smoking in all public facilities entered by ten or more people at least one day per week. Property owners would be given the opportunity to construct a ventilated smoking area. Waxman wanted to implement these restrictions in theaters, schools, restaurants, sports arenas, retail stores hotels, manufacturing plants, hospitals and office buildings (as cited by Mitchell, 1995, p.7). Smokers and nonsmokers continue to battle over whose rights are being violated. For example, nonsmokers have sued smokers for inflicting emotional distress resulting from ETS and some feel that nonsmokers should sue smokers for nuisance (as cited by Ezra, 1994, p.7). The issue of protecting the individual's right to smoke verses protecting the nonsmoker's right to a smoke-free environment is complicated.

Even more aggressive is the legislation proposed by Governor Pete Wilson of California in 1995. He set forth legislation requiring that all-large and enclosed state buildings such as

factories, hospitals, offices and restaurants ban smoking altogether. It is also a requirement of the law that the building owner post a "no smoking " sign at the entrance of the building (as cited by Mitchell, 1995, p.7). In 1994, McDonalds announced that they would prohibit smoking in all of its 1,400 restaurants (as cited by Ezra, 1994, p. 9). You cannot smoke after eating your meal in a California restaurant. Nonsmokers in restaurants are becoming more intolerant of smoking. Yet, the American Hotel/Motel Association is concerned that a total prohibition of smoking would have a negative effect on sales. The National Restaurant Association "…predicted that the industry would lose $18.2 billion in business..." and "That number includes less-frequent visits, shorter stays, fewer purchases of drinks before dinner, wine with meals, coffee and other after dinner drinks and dessert" (Keegan, 1994, p. 2). Smokers around the country are hoping that that statewide ban in California does not become law in their state and nonsmokers hope to see new legislation regarding the inability to smoke in restaurants.

In 1995, another restrictive law was created. The Smoke-Free-Air Act, which was enacted in New York, bans smoking in all restaurants seating more than thirty-five people and all places of employment, except in ventilated areas or if occupied by three or less persons. Probably the strongest sentiment, "...of the disapproval of secondhand smoke is the Act's ban on smoking in outdoor seating areas, such as public sports stadiums" (as cited by Mitchell, 1995, p. 8). By the year 1993, "...forty-four states have passed restrictions on smoking in public places" (as cited by Tyler, 1998, p. 2). The passage of legislation has fueled nonsmokers to be more assertive about their rights.

Litigation Regarding Privacy Issues

Recently, the rights of the smoker verses the rights of the nonsmoker have been called into question. One place where there are disputes is in public housing. The debate is between the tenants who smoke verses the housing authorities' requirement that they refrain from smoking in their home. An example is the policy adopted by the, "...Fort Pierce Housing Commission in Florida and approved by Department of Housing and Urban Development (HUD) officials that makes smokers ineligible for public housing" (as cited by Tyler, 1998, p. 19). The tenants that lived on the premises prior to this policy are not affected but new tenants caught smoking could be evicted. What is all the fuss about? Property owners are concerned over the damage and additional maintenance required of smoking tenants. For example, "Cleanup costs for carpets, window coverings, repainting, etc., are higher. Insurance premiums might even be higher" (Griswold, 2000, p. 1). In addition, since taxpayers are "...subsidizing public housing, these additional maintenance costs and the increased costs of insuring against fire losses increase the taxpayer' financial burden" (as cited by Tyler, 1998, p. 20). Although it may be legal to restrict your private property to just nonsmokers, this issue has not been settled by the courts.

Another dispute between smokers and nonsmokers is the issue of whether smokers should raise their children if a custody dispute arises. Recently, the courts in child custody cases are using smoking as a deciding factor when the child's health is an issue. The dangers of secondhand smoke are amplified in children. The 1986 Surgeon General's report discusses the

issues of "...low birth weight, perinatal mortality, and complications during pregnancy" (as cited by Baldini, 1995, p. 10) among smoking pregnant women. Also, the report concluded that, "...children of mothers who smoke during their pregnancy may experience a small reduction in the rate of their pulmonary growth and development" (as cited by Zgrodnik, 1995, p.5). A recent study, "...reported that infants who lived with one or more smoking adults were 2.2 to 5.3 times as likely to die from SIDS than infants who did not live with smokers" (as cited by Sablone, 1995, p. 9). In addition, the children, "...of parents who smoke have a higher frequency of hospitalizations for pneumonia and bronchitis during their first year than children of nonsmokers. The children of smoking parents have an increased frequency of contracting tracheitis, laryngitis, and bronchitis in their first two years than children of nonsmoking parents" (as cited by Baldini, 1995, 10). Additionally, children of smokers also have a higher rate of middle ear effusions (a sign of chronic ear disease) (as cited by Zgrodnik, 1995, p. 5). Children also have an increased chance of becoming smokers themselves if you believe in the concept that children tend to model their parent's behavior.

In the past decade, the several courts have awarded custody to the nonsmoking parent if the child has allergies, respiratory disease or asthma. Because children lack maturity, the courts have been entrusted to protect the child against the harmful effects of passive smoking. These decisions go against, "...the tender years doctrine which provides that (a) mother except in extraordinary circumstances, should be with her child of tender years" (as cited by Zgrodnik, 1995, p.11). For example, in a Texas court case titled, Pizzitola v. Pizzitola, the court awarded custody to the nonsmoking father over the smoking mother. Evidently, the mother, even though she was the primary caretaker, smoked in front of her four-year-old child and this "...child was extremely allergic to smoke" (as cited by Ezra, 1994, p.27). Additionally, some courts have ordered the smoking parent to not smoke in the presence of the child. For example, a California court prohibited Ann Marie Beni Souza from smoking in front of her five-year-old child and this order remains in effect until the child turns eighteen. According to the order, "If the mother smokes near her child prior to that time, her custody rights will terminate and physical custody will vest in the father" (as cited by Zgrodnik, 1995, p. 13). With the knowledge of the effects of secondhand smoke, some nonsmokers are claiming that smoking parents are child abusers.

Are smoking parents neglectful of their children? One author states that, "...since the child's exposure to ETS can result in serious bodily harm and premature death, parental smoking conduct should, under certain circumstances, qualify as child abuse" (as cited by Ezra, 1994, p. 32). This sentiment is growing among nonsmokers. Where is the fundamental right of the parent to, "...the companionship, care, custody and management of his or her children" (as cited by Zgrodnik, 1995, p. 28). Where are the rights of the smoker to love and adore their children? The present conflict between smokers and nonsmokers rights is best illustrated by the fact that nonsmoking parents are using smoking as an issue before the courts to gain custody rights.

Another illustration of the war between smokers and nonsmokers occurred in California in 1993. Evidently, a mother of four was smoking in the nonsmoking section of a Denny's restaurant when a nonsmoker asked her to extinguish her cigarette. The smoker did so and then left the restaurant. She returned with a 12-gauge shotgun and shot the nonsmoker in the head

while her own children watched. According to her lawyer, the smoker's defense was that they were threatening her and her children, and "...harassing her with her children there and her being petrified and getting a weapon to protect herself" (Fimrite, 1993, p. 2). Another incident occurred that same year when, "...a restaurant employee actually killed an employee who refused to serve him while arguing over Sacramento's recent ban on smoking in public places" (as cited by Mitchell, 1995, p. 9). In addition, another conflict occurred in a Baltimore County restaurant. A woman was exercising her right to smoke by smoking a cigarette in the smoking section. Evidently, another patron of the restaurant asked her to put her cigarette out because it was bothering him. The man was "...smacking her on the forehead like an old-time faith healer and saying, "Heal! Heal!" while another was tying her belt loops to the chair" (as cited by Pugsley, 1994, p. 7). The hostility between smokers and nonsmokers continues to escalate and the resolution of this war remains unseen.

THE HISTORY OF SMOKING REGULATION -WORKPLACE

In 1970, OSHA (Occupational Safety and Health Administration) issued regulations mandating employers to provide a safe and healthful work environment for their employees. OSHA created The Occupational Safety and Health Act which states that, "...an employer shall furnish to each of his (or her) employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious harm to his (or her) employees" (as cited by Zgrodnik, 1995, p. 16). A hazard, "...is recognized if it is a condition that is (a) common knowledge or generally recognized in the particular industry in which it occurs, and (b) detectable (1) by means of the senses or (2) by being widely recognized as a hazard in the industry, with generally known and accepted tests for its existence" (as cited by Reitze and Carof, 1998, p. 14). It is important to note that, "...the U.S. Environmental Protection Agency in cooperation with the Naval Research Laboratory reported that approximately 5,000 nonsmokers die each year from passive inhalation" (as cited by Fry, 1990, p. 2). The concerns of providing a safe and healthful workplace for employees grew and OSHA decided to propose a total ban on smoking in the work environment.

Currently, OSHA has proposed a regulation that could restrict smoking in the workplace. Employers would be given the option of providing ventilated areas under this new proposal. The strict requirements, "...required employers to develop and implement a written indoor air quality compliance plan, implement controls for specific contaminants and their sources, limit degradation of indoor air quality (as defined by ASHRAE 62), inform and train employees, and meet record-keeping requirements" (as cited by Reitze and Carof, 1998, p.15). This smoking restriction would include all work environments with one or more employees (as cited by Baldini, 1995, p. 16). If this proposal becomes federal law, "...Any employer not abiding by the OSHA mandate may be held liable for penalties ranging from $7,000 to $25,000 per violation" (as cited by Mitchell, 1995, p. 3). It is important to note that this proposal has not become the law at the time of this writing since, "...OSHA takes about an average of 10 years to enact new regulations" (as cited by Sablone, 1995, p. 10). Interestingly, this proposal created quite a

public outcry from smokers. Evidently, during the public comment period, the, "...Department of Labor received over 110,000 letters, including a number of death threats" (as cited by Evans, 1999, p. 3). Nevertheless, the law does state that employers must regulate smoking in the workplace.

Employers must decide how far they want to regulate smoking and are often caught in between the war between smokers and nonsmokers. An author named Lyncheski illustrates a descriptive example of the controversy. He stated, "The battle lines are drawn at building entrances all across the U.S. In one camp, smokers hunch their shoulders against the cold and rain, trying to stay warm and keep their cigarettes lit. In the other camp, nonsmokers hold their breath and cast ugly glances as they run the smokers' gauntlet to get inside the building" (Lyncheski, 1997, p. 1). According to Levin, "Balancing the competing and often militant demands of smokers and non-smokers is not simple. A complete ban on smoking in the workplace ignites smoker hostility, while the failure to impose a complete ban inflames non-smokers" (Levin, 1995, p. 1). As an employer, it is crucial to consider the legal ramifications resulting from the implementation of their smoking policy. An article, written by someone desiring to remain anonymous, clearly illustrates the legal concerns of employers. The anonymous author states, "As an employer, you need to balance your legal duty to protect your non-smoking staff from the ill effects of smoking with the need of your other employees to smoke. One may cost you money, the other may lose you staff"(Anonymous, 1998, p. 2). If an employer refuses to implement a smoking policy, they leave themselves open to the trend of increasing litigation brought forth by nonsmokers.

Nonsmokers' Rights in the Workplace

In 1973, Congress enacted a law called the Rehabilitation Act of 1973. This law prohibits discrimination against disabled or handicapped people. The Rehabilitation Act states, "No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any executive agency or by the United States Postal Service" (as cited by Sablone, 1995, p. 17). Under this Act, some nonsmoking employees are claiming that they qualify for protection from secondhand smoke because they are allergic or sensitive to cigarette smoke (as cited by Ezra, 1994, P. 8). In essence, they feel they are disabled and seek protection under the Rehabilitation Act.

During the court case of Vickers v. Veterans Administration, Vickers sued his employer because he was hypersensitive to cigarette smoke; thus, was handicapped. The court held, "...(1) that an employee who worked in a smoke-filled environment and was unusually sensitive to tobacco smoke qualified for protection because he was limited in his capacity to work; and (2) that work constituted a "major life activity" (as cited by Pugsley, 1994, p. 8). Nevertheless, the court found that the employer tried to accommodate the nonsmoker and was consequently not liable. Accommodation from the employer "...may be achieved by improving the ventilation and

filtering systems, obtaining pledges from smokers to refrain from smoking around coworkers (especially those who have adverse physical reactions to tobacco smoke), or allowing the affected nonsmokers to transfer to another work location or shift" (as cited by Fry, 1990, p. 4). The court decided that the Veterans Administration did make adequate accommodations for Vickers.

Additionally, in Gupton v. Commonwealth of Virginia, an employee claimed that she was also handicapped due to her allergy to cigarette smoke and should be able to recover under the Rehabilitation Act of 1973. Evidently, Betty Gupton never returned from a month long leave of absence because she felt that her employer did not create a smoke-free workplace. The court ruled in favor of Virginia because Gupton was unable to prove that she could not perform her duties as a result of her allergy to tobacco. The court's decision was based on, "...in order to prove that she had a disability within the meaning of the Rehabilitation Act, the plaintiff needed to show that her allergy prevented her from holding a position in a general field" (as cited by Sablone, 1995, p. 18). This decision proves that there is a high burden for the employee to prove discrimination on the part of the employer (as cited by Mitchell, 1995, p. 10). Nonsmokers who bring class action suits against their employers claiming they are handicapped under the Rehabilitation Act usually do not win. Yet, if a nonsmoker claims that their employer did not provide a safe and healthful work environment, the employee may receive an award of damages.

Since the Americans with Disabilities Act require that the employer make reasonable accommodations to the known disability of their employee who requests it, nonsmokers are also seeking protection under the ADA. An illustration of this issue was addressed in Harmer v. Virginia Electric & Power Co. The court decided against Harmer because it felt that "...the plaintiff's good performance appraisals were evidence that his performance of the essential functions of his job was comparable to that of other employees, so that his asthma, although qualifying as a disability, was not sufficient to entitle him to protection under the ADA (as cited by Reitze and Carof, 1998, p. 29). The Court of Appeals of the Second Circuit held, "...that a complete ban on smoking is a reasonable modification and not an undue hardship on the employer. However, a total ban on smoking may not be required by the ADA if a court determines that there are other sufficient measures to protect employees that are less burdensome on the employer (as cited by Reitze and Carof, 1998, p. 29). Employees do not have to adopt complete bans on smoking in the workplace, under the ADA, but they have been protected if they do adopt a total ban on smoking (Levin, 1995, p. 1).

Nonsmokers are fighting for a smoke-free work environment. A study completed by Marcus and Emont suggest that "...existing worksite tobacco control policies are not restrictive enough or are being inadequately enforced" (Marcus and Emont, 1994, p. 5). Nonsmokers with asthma and other medical conditions have sued their employers for not providing a safe and healthful work environment and won. One such example is provided in the case of Shimp v. New Jersey Bell Telephone Co. In 1976, Donna Shimp, who was sensitive to secondhand smoke, sought an injunction against her employer to prohibit others from smoking in her workstation. Evidently, the employee, "...suffered various symptoms, including throat, nasal and eye irritation, as well as headaches, nausea and vomiting" (as cited by Sablone, 1995, p. 10).

Shimp won the class action suit since the court's decision was based on her common law right to a safe working environment (Pugsley, 1994). Nonsmokers continue to fight for their right to limit their exposure to toxic substances.

In 1983, another legal case illustrated the rights of nonsmokers to a smoke free environment. In Smith v. Western Electric, the employee had problems breathing and complained to his employer about the tobacco smoke as early as 1975. Then, five years later, the National Institute for Occupational Safety and Health requested that the employer adopt a smoking policy. Evidently, Western Electric did adopt a policy but did not make a reasonable effort to improve the air quality. After Smith filed a petition, the company provided him with a respirator but this was not enough to protect him from the smoke (as cited by Zgrodnik, 1995, p. 17). In addition, the employer offered Smith the ability to work in a smoke-free computer room but the position would pay $500 less per month than his current position (as cited by Sablone, 1995, p. 21).

In 1988, another case discusses an employer's responsibility to provide a safe environment. In McCarthy v. Department of Social and Health Services, Helen McCarthy had worked in a smoke-filled worksite for ten years. She had complained to her supervisor but her employer refused to respond. Eventually, she became so ill that she left her position. She filed for workers compensation but was denied because her medical condition was not an occupational disease (as cited by Sablone, 1995, p. 23). Later, she sued her employer claiming they, "...negligently required her to work in a smoke-filled office, which resulted in her contacting a chronic obstructive pulmonary disease" (as cited by Pugsley, 1994, p. 8). The court held that, "...the employer who knows that ETS is harmful to nonsmokers has a common-law duty to take reasonable precautions to protect its employees" (as cited by Sablone, 1995, p. 23). As empirical studies continue to illustrate the negative effects of secondhand smoke, employers must decide whether they want to face the liability of avoiding a no smoking policy. The employer's exposure to liability will be greatly increased if the employee is a nonsmoker, develops severe health consequences and had requested a non-smoking policy. Adopting a reasonable smoking policy that considers the interests of smokers and nonsmokers may help to minimize exposure to lawsuits from both parties.

Smokers' Rights in the Workplace

Additionally, smokers have been filing claims in accordance with the Americans with Disabilities Act of 1990 (ADA). This Act expands the coverage of the Rehabilitation Act of 1973 (as cited by Maltby and Dushman, 1994, p. 8) and provides comprehensive protection for people with disabilities against all forms of discrimination. A section of the ADA "...forbids employers from discrimination against a qualified disabled individual because of his or her disability with regard to various aspects of employment. A disabled person is either one who has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or who has a record of such an impairment, or who is regarded as having such impairment". According to ADA, there are certain requirements that an employee must meet in

order to be protected. "In order to receive protection from the ADA, a smoker must pass a two-part threshold: he must demonstrate an addiction to nicotine, and he must prove that said addiction is a disability covered under the ADA. If each of these is satisfied, an employer cannot discriminate against the particular employee addicted to nicotine" (as cited by Mitchell, 1995, p. 4). The problem lies in whether smoking does not substantially limit ones life activities. "Smoking-induced respiratory and cardiac diseases clearly would qualify as disabilities under the ADA, but nicotine addiction, in and of itself, would not be a basis for coverage" (as cited by Pugsley, 1994, p. 16). Addiction to tobacco is not automatically covered under the ADA even though both drug addiction and alcoholism are included as a physical and mental impairment. Alcoholism and smoking are both addictive behaviors and both are undertaken voluntarily. Yet, some commentators contend that alcoholism is associated with genetic factors and nicotine addition is shown to be inherited (as cited by Pugsley, 1994, p. 18). Courts might eliminate smoking from coverage under the ADA because people who smoke generally know the inherent risks and choose to continue to smoke.

Smokers have bought suits claiming that smoking is a disability and requesting that smoking not be banned. Since nicotine is addictive, smokers become mentally distressed when they are unable to smoke whether they are at work or at home. An example of an employee seeking damages for not being allowed to smoke is illustrated in Riddle v. Ampex Corp. The employee argued that he was entitled to damages because of the mental stress caused by the smoking ban at his place of work. The outcome of this court case was, "The plaintiff's claim was dismissed, as the court reasoned that similar bans are quite prevalent in today's workplaces" (as cited by Mitchell, 1995, p. 11). Even though smoking bans have become prevalent in today‘s work places, the smoker still has great difficulty adhering to these regulations if they are addicted to nicotine. How many times have you heard of someone driving to the neighborhood convenience store at 3 am because they have run out of cigarettes?

Should cigarette smoking be totally banned from the workplace? According to a recent study, "...only 25% of workers in 1985 worked in establishments that banned smoking in work areas. By 1993, this number increased to 70%" (Evans and Farrelly, 1999, p. 1). According to another study, "...by 1991, 91% percent of adults supported restrictions on smoking at work (69% percent wanted certain areas set aside for smoking, and 25% percent wanted a total ban on smoking in the workplace" (Marcus and Emont, 1994, p. 6). In one study, "...smokers reported less smoking at work...without compensatory smoking" In addition, "...some baseline smokers quit smoking. At 6 months, 9% had quit at one hospital and 8% at the other" (Olive and Ballard, 1996, p. 1). An interesting note is that when the President of Stouffer Hotels and Resorts, William Hulett, implemented a no smoking policy, he ended up quitting smoking himself (as cited by Mitchell, 1995, p. 13). Is the prohibitionist route the best answer to the conflict between smokers and nonsmokers at work? Possibly, the answer lies in weighing both sides of this management issue.

Smokers' Rights Outside of the Workplace

Does the employer have the legal right to scrutinize the activities of an employee when they are not on the clock? More directly, can an employer decide to hire or discharge an employee if they smoke during non-working hours? There is great concern when, "...you start to regulate people's off-the-job behavior, we have real concerns about it, because where does it stop?" (Broom, 1997, p. 1). An interesting court case, The City of North Miami v. Kurtz, reveals just how far employers can regulate an employees' off-duty behavior. Arlene Kurtz applied for a job in North Miami Beach as a clerk. The city had a policy that all prospective employees must sign affidavits stating that they had not smoked cigarettes in the prior year. Since Kurtz could not truthfully sign the affidavit, she challenged their policy in court. The result was, "A lower court first ruled in the city's favor after it accepted the argument that the desire to reduce health costs and the amount of productivity lost to absenteeism justified the smoking policy. The appeals court then disagreed, ruling that the city's interest in saving money is not important enough to outweigh Kurtz's right to privacy" (as cited by Brady, 1995, p. 1). A person's right to privacy is an important part of their concept of both individuality and autonomy.

According to one author, "The trend is one that raises numerous constitutional issues, as critics accuse employers of "lifestyle discrimination" and meddling in employee's private lives" (Kelley, 1999, p. 1). Commentators argue that as a result of the Kurtz case, "...cities will next discriminate against people who legally consume alcohol, fatty foods, or too much caffeine on the ground that such people increase health insurance costs to employers as well" (as cited by Tyler, 1998, p. 14). There is also documentation in the court of law, "…of employers discriminating on the basis of off-duty drinking, motorcycling, cholesterol level, and obesity" (as cited by Maltby and Dushman, 1994, p. 3). Such regulation of off-duty behavior threatens the privacy of all people.

A federal appellate court came to a different conclusion in Grusendorf v. Oklahoma City. Evidently, the fire department of Oklahoma City had a no smoking policy, which extended to off-duty hours. The Oklahoma City Fire Department required that all first year trainees must sign an affidavit stating that they would not smoke during training whether they were on or off duty. The city justified its requirements by claiming that it was trying to reduce worker's compensation costs and also wanted a healthy workforce. Grusendorf decided that he wanted to take three puffs off of a cigarette during his lunch break and was terminated by his employer (as cited by Sablone, 1995, p. 45-46). Thereafter, he made the decision to challenge his employer's smoking policy and brought charges against the city for violating his liberty and privacy rights. The court rejected his argument; thus, the court found that the Constitution does not guarantee the right to smoke (as cited by Zgodnik, 1995, p.23). Additionally, the court held that, "...the nonsmoking rule did not violate due process because, although the off-duty smoking ban may have infringed Grusendorf's liberty interest under the Fourteenth Amendment, it had a rational relationship to the legitimate state purpose of promoting the health and safety of the employees." (as cited by Pugsley, 1994, p. 6). It is surprising that the fire department's interest in healthy trainees was given greater weight than the their right to privacy.

Early in the twentieth century, Ford Motor Company had over 100 investigators who monitored the lives of their employees, even in their own homes, to make sure they did not drink

too much, their houses were clean and they led unblemished sex lives (as cited by Dworkin, 1997, p. 2). Recently, employers have, "...resorted to restrictions based on weight, smoking, cholesterol levels, and "hazardous activities and pursuits," such as skydiving and mountain climbing, in order to benefit from lower insurance rates" (as cited by Jackson, 1996, p. 1). There have been court cases where private matters such as sexual orientation, employee dating, political affiliation, and sexual propriety (including transsexualism, unwed pregnancy, and adultery) have been used as a reason for refusal to hire, discharge or discriminate in both compensation or promotion based on a person's off-duty behavior (as cited by Jackson, 1996, p. 1-2).

One example of an employer discharging an employee over their off-duty behavior is illustrated in the court case of the State v. Wal-mart Stores. Evidently, two employees were fired when it was discovered that they were dating and one of the employees was in the midst of a divorce. Wal-mart has a policy, which states that if an employee wants to date another employee, they must obtain permission from their immediate boss. Permission was usually granted if they did not work in the same store (cited by Dworkin, 1997, p. 16). The state sought reinstatement of back pay and injunctive relief for the two employees. The court found that the relationship fell under the legal definition of "recreational activities" and that is unlawful to discharge the employees. The vice-chairman at the time, Jack Shewmker, stated, "...managers don't mind scrutinizing their employee's social lives because everyone likes hearing about matters of the heart" (as cited by Dworkin, 1997, p. 16). In the last ten years, many employers have discriminated against employees because they do not agree with their off-duty behavior. Will employers return to hiring investigators to monitor our lives outside of the workplace?

The Financial Costs of Employing Smokers

Management is becoming increasingly aware of the financial effects on the company when they employ smokers. The increase in cost is a result of the expected increase in absenteeism, medical cost and insurance premiums. Plus, some employers anticipates that their smoking employees will be less productive, and require accommodations that result in higher building costs. Additionally, businesses expect that smoking will cause property damage, and that there will be an increase in maintenance of their work environment. As a result of these anticipated financial costs of employing smokers, management is discriminating against smokers by not hiring them.

It has been well documented that smoking can cause serious health risks. Since smoking can cause health problems, employers assume that smokers will take more sick days to recover from illnesses. Smokers, "...often suffer from chronic illnesses and are more susceptible than nonsmokers to acute health conditions. They incur more medical costs, require more hospitalizations, and visit physicians more often than nonsmokers" (as cited by Tyler, 1998, p.12). Another statistic reflects that "...smoking-related diseases cost the U.S. health care system approximately $24 billion annually..." (as cited by Pugsley, 1994, p. 1). Do smokers take more sick time than nonsmokers? In a 1992 study, "...researchers noted that (smokers) had a

thirty-four percent higher absenteeism rate when compared to their nonsmoking counterparts" (as cited by Mitchell, 1995, p. 15). Another study concluded that if companies prohibited smoking in the work place, "American business could earn an estimated $8.4 billion, money currently being squandered due to smoking-related absenteeism" (as cited by Baldini, 1995, p. 15). It is a logical assumption that some employers can save money by not hiring smokers.

Both the public and business owners are concerned about the increase in purchasing quality health care insurance. Since employers think that smokers have higher medical needs, which in turn create higher insurance premiums, employers are seeking ways to lower their cost. Since the rates of health insurance plans are already high, employers are even more motivated to find alternatives to paying high health insurance rates. According to one statistic, "Health care costs are increasing at the rate of fifteen percent per year, three times the amount of inflation" (as cited by Maltby and Dushman, 1994, p. 2). Do smokers have increased medical needs? A congressional study stated that, "...it cost nearly $21 billion to provide health care to people with smoking related diseases" (as cited by Zgrodnik, 1995, p. 18). Yet another study, "...estimated that smokers submit $300 more per year in health..." (as cited by Pugsley, 1994, p. 4). In addition, a study by the American Lung Association found that, "…an employee that smoked could cost a company up to $5,000 a year more in health care cost than a non-smoker" (as cited by Lissy, 1995, p. 1). Many businesses have resorted to refusing to hire smokers to lower their already high health insurance plans.

If companies do continue to hire smokers, they may still seek lower insurance costs by charging the employee a certain amount every month. For example, "Texas Instruments began charging insured employees $10 per month for each family member who uses tobacco" (as cited by Pugsley, 1994, p. 4). In addition, employers are receiving reduced rates for employees that do not smoke. For instance, "New York Life reduces annual premiums on commercial disability policies by $150 per nonsmoking employee, and Blue Cross-Blue Shield of Minnesota offers a 22% discount on premiums for insured nonsmokers" (as cited by Pugsley, 1994, p.4). The question is how do employers inquire about the smoking status of their employees without invading their privacy rights?

Cigarette smoking is by far not the only behavior that creates health risks. "Caffeine, red meat, sugar and a host of other staples of the typical American diet have been linked to serious medical conditions" (as cited by Maltby and Dushman, 1994, p. 3). There are also studies that propose that medical complications can arise if a person takes too many vitamin A tablets, eats a certain type of fish during pregnancy, or does not have enough calcium in their diet. Another author answers the question, will the," ...courts...allow an employer to generally terminate an employee who is more susceptible to colds? I think most courts would say employers can't do that" (Gillian, 1997, p. 2). Will my future job prospects be squelched if my blood pressure is over a certain amount? When will our off-duty behavior return to a private issue? When will our private lives be separate from our time at work?

The issue of lost productivity really boils down to one thing: it takes time to go to the designated smoking area or outside, and smoke a cigarette. The time that it takes to smoke one or two cigarettes equates to time that an employee is not actually working. An illustration of the

time lost can be seen in the following example. According to Kathleen Ratcliffe, director of marketing for the Baltimore Area Convention & Visitors Association, they have a designated smoking area but, "...most salespeople choose to take an elevator down 12 floors to go outside and light up anyway" (as cited by Donoho, 1995, p. 1). In addition, another district sales manager felt that when people return from a smoke break, they are often, "...not ready to pick up where they left off" (as cited by Donoho, 1995, p. 1). It is important to remember that productivity is lost only for the employees of the companies that have instituted a designated smoking area or a total ban on smoking. A survey from the recruitment consultants Office Angels stated that, "...a mere 20 percent of smokers surveyed can still enjoy a cigarette at their desks, and a staggering 50 percent are forced outside in all weathers" (as cited by Hilpern, 1999, p. 1). Thus, in this case, productivity is considered lost for the 50 percent that are outside.

As smokers stand in the rain and sleet, do they consider the social stigma of smoking that surrounds them? Do they feel like an outcast or politically incorrect? An employer commented that a, "...smoking policy which simply drives employees out of the office to smoke looks very unprofessional" and another employer claimed that his smoking area was," behind the bike shed" (as cited by an anonymous author, 1994, p. 3). Smoking outside when it is snowing or behind the bike shed ostracizes smokers and adds fuel to the fire between smokers and nonsmokers.

The issue of fairness is the prominent defense of both sides of the smoking issue. A study by Borland and Owen addressed the idea of "exiled smoking". They claim that "exiled smoking", "...reduces the potential health benefits of bans to smokers by reducing the consumption reduction that bans might otherwise produce. Further, to the extent that smokers take more and/or longer breaks than they otherwise would have, it will produce costs to business, unless those breaks are compensated for with extra work at other times" (as cited by Borland and Cappiello, 1997, p.2). Should company management require that smokers work more to compensate for their smoking behavior? One company, Thurrock council, did try to increase productivity rates by increasing the amount of work for smokers. In 1999, management decided that smoking staff members, "...should work an extra two-and-a-half hours a week" (as cited by Hilpern, 1999, p. 1). The result of this management decision most likely furthered the division between smokers and nonsmokers. Smokers feel "exiled" outside or quarantined in the smoking area while nonsmokers feel that smokers are not working enough in the office.

Another way to look at the issue of productivity is through the eyes of the smoker. Smokers often feel that they are more productive if they are allowed to smoke. If they are forced to not smoke, many smokers lose their concentration and the ability to think clearly. There is empirical evidence that, "...denying smokers' the right to "light up" at work may negatively affect their performance in terms of decreased creativity, concentration, and productivity. Furthermore, smokers in such an environment may waste time trying to sneak in smoking sessions when they should be working" (as cited by Mitchell, 1995, p. 15). Employers should also consider the possible results of the smokers' productivity when implementing a no smoking policy in the workplace.

When an employer decides on a no-smoking policy in the work place, the financial costs of property damage, depreciation and maintenance that result from employing smokers are

eliminated. Cigarette smoking might be banned by the employer just to prevent the risk of fire. According to one source, "...smoking causes more than 100,000 fires per year which result in more than 2,500 deaths and almost $150 million in property damage" (as cited by Ezra, 1994, p. 25). In addition, "Savings also accrue from the reduced strain on a building's heating and cooling systems when they filter fewer smoke particles" (as cited by Mitchell, 1995, p. 15). Another survey reported that companies which had adopted a no-smoking policy found that "...60% (of the companies) reported significant reductions in cleaning and maintenance costs" (as cited by Pugsley, 1994, p. 4). According to the statistics, the financial costs of employing smokers are higher because of increased property damage and maintenance, and a business has a 60% percent chance of lowering their financial burden if they implement a no-smoking policy or avoid hiring smokers.

Today, most states encourage businesses to provide a separate, ventilated area for smokers if they decide on allowing smoking in the workplace. During 1991, "...the National Institute for Occupational Safety and Health (NIOSH) provided that one means of limiting second-hand smoke exposure was for employers to create separate, ventilated areas for smoking" (as cited by Mitchell, 1995, p. 13). The financial burden of building extra rooms to accommodate smokers and the requirement that they be ventilated is immense to some businesses. The financial burden becomes even greater for small business owners who have to manage their expenses carefully. If a small business owner is unable to accommodate smokers by building a designated smoking area, the small business owner may be more inclined to implement a total ban on smoking.

Hiring Discrimination

Increasingly, businesses are sidestepping the problem of creating a smoking area and implementing a no smoking policy. In addition, employers are finding that the financial costs of hiring smokers can be overwhelming. As a result, smokers are becoming increasingly discriminated against during the hiring process. This type of action, however, poses another potential cost to the employer: the cost of lawsuits that smokers initiate for invasion of privacy rights and discrimination.

The "Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment because of a person's race, sex national origin or religion" (as cited by Maltbt and Dushman, 1994, p. 6). Women and Blacks were some of the people who were discriminated against enough that legislation was passed years ago. Today, the prominent debate surrounds the issue of smoking. Since smoking has become such a social stigma, smokers have begun to feel ostracized. These feelings of discrimination are not without reason. According to Stephen Viscusi, president of The Viscusi Group, "I think, more and more, if a boss has a decision between two equally competent job candidates, he'll choose the nonsmoker" (as cited by Donoho, 1995, p. 2). Chris Tame, director of the Freedom Organization for the Right to Enjoy Smoking Tobacco states that the problems was a result of, "...politically-correct and trendy" personnel managers exuding "middle-class paternalism" and further added, "This is a moral and class issue.

More working class people smoke and this is a way to discriminate against them without seeming to be politically incorrect" (Thatcher, 1994, p. 1). Whatever the reason, smokers are being discriminated against in the hiring process.

Presently, "No state has ever taken ... a decisive step toward eliminating smokers from its cubicles and corner offices" (Kelley, 1999, p. 1). Yet, the idea of refusing to employ smokers has been discussed in legislative bodies. For example, when a "...Lockheed Company in Georgia announced that it would no longer hire people who smoke, plant management said that nearly 77 percent of the plant workers with cardiac problems were smokers" (Lissy, 1994, p. 1). Their argument was that since 77 percent of their plant workers had cardiac problems, it had to be a result of smoking. This argument is leaping, at best, because cardiac problems can also be a result of high blood pressure, poor eating habits or obesity. Were these related health issues also considered when they were conducting their survey?

Another company, Health Net, refuses to hire people who smoke cigarettes. According to Don Prial, a spokesman for Health Net, (California's second-largest health maintenance organization), "We are absolutely adamant about smoking" and "We have 1,100 employees and, to our knowledge, smoke does not pass through their lips" (as cited by Brooks, 1993, p. 1). Does alcohol, red meat or caffeine pass their lips? Does Health Net monitor their employees on these other taboos of modern society?

How do employers ascertain that the prospective employer is a smoker? According to the ADA, an employer, "...cannot query a prospective employee in order to expose a disability prior to making an offer of employment" (as cited by Mitchell, 1995, p. 5). Yet, employers can ask a possible employee whether they will require reasonable accommodations should they receive a job offer. Even though "The majority of states with "smokers' rights" statutes prohibit discrimination against employees who smoke or use "lawful products" on their own time" (as cited by Jackson, 1996, p. 3), employers continue to find ways to screen their applicants on their smoking status.

With all of the concentration on instituting a healthy work place, it is sometimes forgotten to consider some simple rules that prevent employee relation's problems. One rule offered is "Don't ask anyone to do something you wouldn't do (or in this case, give up something you wouldn't give up)" (Laabs, 1994, p. 2). An example of this defense is portrayed in the following statement. A judge stated, "The time has not yet fully passed...when women job applicants have been questioned about their plans for procreation in an effort to eliminate those who may be absent on family leave" (as cited by Dworrkin, 1997, p. 37). With the increase in opposition through litigation from smokers and smokers' rights groups, legislation has begun to recognize and support smokers from discrimination. One example is the New York Labor Law which states that, "Unless otherwise provided by law, it shall be unlawful for any employer...to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual...because of...an individual's legal recreational activities outside work hours off of the employer's premises and without use of the employer's equipment or other property" (as cited by Dworkin, 1997, p. 4). Similar state laws are being proposed to lower the discrimination of smokers and to insure the smokers' right to privacy.

In 1990, there were no laws to protect smokers from discrimination. As of 1993, there were 28 states that enacted legislation to protect smokers from discrimination. In most cases, these laws, in general, require employers to eliminate the hiring restriction. The new legislation was, "...promoted by tobacco industry representatives and the American Civil Liberties Union, which views the hiring ban on smokers as a form of discrimination and a violation of privacy." (as cited by Lissy, 1994, p. 1). Yet, just because new discrimination legislation has been enacted does not mean that employers follow the law and do not discriminate against smokers. An example of this is a study by the National Bureau of Economic Research. Their study concluded that, "...smokers' wages were four to eight percent lower than nonsmokers" (as cited by Dworkin, 1997, p. 6). Even though the laws are beginning to support employee freedom instead of employer regulation, there is still discrimination against smokers.

MANAGERIAL IMPLICATIONS

Currently, it is of utmost importance that management becomes versed on the legal issues surrounding smoking prior to implementing a smoking policy. Since it is their legal responsibility to provide a safe and healthful workplace, employers must consider the legal ramifications of instituting a no-smoking policy. If an employer does not implement a smoking policy that safeguards nonsmokers, they may face legal action from employees with asthma and similar medical conditions. If an employer does initiate a smoking policy, especially if it is a total ban on smoking, the company may be liable for invasion of privacy rights and discrimination.

Management can help nonsmokers by creating a smoking policy that shields them form the risks of secondhand smoke. Additionally, employers should consider accommodating smokers by creating ventilated, designated smoking areas. Management can also encourage their smoking employees to quit by offering cessation programs and by facilitating incentive programs that motivate smokers to quit. Finally, employers should carefully consider their no smoking policies for off-duty behavior.

EXECUTIVE SUMMARY

The purpose of this paper is to explore through secondary data the current conflict between smokers and nonsmokers in the working environment. There is tremendous conflict on each side both in and out of the workplace and in the process, smokers are frequently discriminated against and stigmatized.

Many years ago, the issue of discrimination against smokers was practically nonexistent. During World War I, smoking cigarettes became a socially accepted and popular activity, but in 1964, the Surgeon General reported that smoking causes serious health risks. After this empirical data which confirmed that secondhand smoking damaged the bodies of nonsmokers, Congress and the states began enacting laws regulating the use of tobacco. The glamour of smoking was gone and nonsmokers began asserting their rights to a smoke-free environment.

With the knowledge of the dangers of smoking, legislation that limited smoking increased. New laws were passed restricting smoking in public places, and disputes erupted over privacy issues. In the workplace, smokers and nonsmokers sought legal action against their employers claiming they were disabled and/or that their employer was not accommodating their smoking preferences or legal rights. Additionally, smokers sought court action because they felt discriminated against and suffered from invasion of privacy.

Presently, smokers are being discriminated against in the hiring process because management attributes increased financial costs to employing smokers. As the stigmatization of smokers' increases, employers are choosing a more restrictive smoking policy. Yet, employers should consider both smokers and nonsmokers' rights in order to strike a reasonable balance of competing interests, reduce the potential for litigation and foster a harmonious work environment.

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ETHICS IN THE FINANCIAL PROFESSIONS: AN ANALYSIS OF THE CODES OF ETHICS OF FINANCIAL CERTIFICATIONS

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ABSTRACT

This paper considers ethics and professional standards as they apply to the accounting and finance functions. Theoretical concepts of professional codes, of professional practice standards, and of "reasonable person" standards are explained. The basic theoretical framework of the moral philosophies of Teleology, Deontology, and Relativism is presented. Codes of ethics for 14 different certifications in accounting and finance were examined. This analysis revealed that there are certain principles of ethical conduct that are universal or common to all certifications:

1.	*Professional competence*
2.	*Objectivity, neutrality*
3.	*Integrity and honesty*
4.	*Adherence to the law*
5.	*Professional due care*
6.	*Adherence to the Professional Code of Ethics*
7.	*Fairness and responsibility to the public interest*
8.	*Disclosure of material facts*
9.	*Confidentiality*

PROFESSIONAL CODES OF ETHICS

Rules that are supposed to govern the conduct of members of a given profession are referred to as professional codes of ethics. Members of a profession are bound to abide by those rules as a condition of their engaging in that profession. Sometimes these codes are unwritten and are part of the common understanding of members of the profession. Often they are written rules for proper professional conduct developed by an authoritative body so that they may be taught and enforced. The codes often are a mix of purely moral rules (confidentiality) and professional etiquette.

Generally, there exist two important tests of proper business conduct--the professional practice standard and the reasonable person standard. The Professional Practice Standard

implies that a businessperson is charged professionally with various responsibilities and must use proper professional criteria for determining appropriate actions. The standards of proper conduct are determined by custom in the profession. Negligence of professional standards may result in professional malpractice.

The Reasonable Person Standard is a legal model of what a "reasonable person" would do under a given circumstance. It originates in English common law, and it goes beyond the professional standards criterion. A jury or a judge who must evaluate conduct objectively must apply this standard. The law asks a jury to reflect on social standards of reasonableness and to frame the judgment to be reached entirely in those terms. Professional codes and legal standards arise from the framework of moral philosophies.

Ethics

Societies are governed by a system of values by which people live. Those systems of value are referred to as philosophy. Moral philosophy deals with the principles or rules that people use to decide what is right and wrong. Ethics refers to the study of what is right and wrong, good and bad, just and unjust. Business Ethics, then, is the study of right and wrong, good and bad, just and unjust actions within the business environment.

There is a long-standing debate about whether ethics in business may be more permissive than general societal or personal ethics. (See for example: Steiner & Steiner.) There are two basic views in this debate. The first view is referred to as the theory of amorality, which holds that business activity should be amoral, that is, conducted without reference to ethical ideals. Adam Smith's "invisible hand" concept states that "by pursuing his own interest (a merchant) frequently promotes that of the society more effectively than when he really intends to promote it." (Steiner & Steiner, p. 180) The doctrines of laissez-faire economics and of social Darwinism also promote this philosophy.

The other major ethical philosophy of business is the theory of moral unity which holds that business actions should be judged by the general ethical standards of society, not by a special set of more permissive standards.

Today the theory of amorality seems to be less influential in business circles. One contributing factor for the lessening of amorality may be the extensive emphasis of ethics in all modern university and college business curriculums. It has been only in the last two decades that the emphasis grew from perfunctory to extensive.

Ethical practices in business may be judged on four levels:

1	The business system--total economic impact on society;
2	The industry level--certain industries are consistently viewed as more ethical than others, e.g., banking, utilities, drugs;
3	The company level--certain companies are consistently noted for their high ethical standards, e.g., Johnson & Johnson, Merck;
	The individual level--for every publicized unethical business person's behavior there are many others

4	who act ethically in all aspects of their lives.

Moral philosophy can be examined from three general perspectives: Teleology, Deontology, and Ethical Relativism. Teleology refers to moral philosophy in which an act is considered morally right or acceptable if it produces some desired result or consequence. This branch of philosophy is also referred to as consequentialism. Two teleological philosophies which often guide business decisions are egoism and utilitarianism.

Egoism defines the right behavior in terms of the consequences to the individual. The egoist's motto may be stated as "doing that which promotes the greatest good to oneself." An enlightened egoist would take the long-run perspective and allow for the well being of others, but only if it serves his own best interest.

Utilitarianism, like egoism, is concerned with consequences; but, unlike egoists, utilitarianists seek to achieve the greatest good for the greatest number of people. They seek to make decisions which maximize utility by systematically comparing benefits and costs to all affected parties for all possible alternatives and by then selecting the alternative yielding the greatest utility.

Utilitarians use various criteria to determine the morality of an action. Some utilitarian philosophers, referred to as rule utilitarians, believe that general rules designed to promote the greatest utility rather than the examination of each particular action best serve the well being of society. They would, however, change the rules if that became advantageous to society. For example, if one of the rules were that bribery is wrong, then a rule utilitarian would not tolerate bribes unless bribery in general became advantageous to society in which case the rule "bribery is wrong" would be changed.

Another group of utilitarians, referred to as act utilitarians, examines the action itself, rather than the rules governing the action, to determine maximum utility. Rules, such as "bribery is wrong," would only be considered general guidelines by an act utilitarian. If paying a bribe generated a contract which would keep a firm in business and people gainfully employed, an act utilitarian may conclude that bribery is justified.

Deontology refers to moral philosophies which focus on the rights of individuals and on the intentions associated with a particular behavior rather than on the consequences of that behavior. Deontologists believe that equal respect must be given to all persons and that there are some things that we simply should not do. Deontologists contend that people have certain absolute rights: freedom of conscience, of consent, of privacy, of speech, and due process. The deontologist looks for conformity to moral principles. Where teleological philosophy would consider the ends associated with an action, deontology considers the means. Like utilitarians, deontologists can be divided into those who focus on moral rules and those who focus on the nature of the acts themselves.

To rule deontologists conformity to general moral principles determines the ethical result. Emmanuel Kant's "Categorical Imperative" which says "Act as if the maxim of thy action were to become by thy will a universal law of nature" and the "Golden Rule" which says "Do unto

others as you would have them do unto you" are examples of rule deontologists. (Ferrell & Fraederick, pp. 45-46).

To act deontologists actions are the appropriate base on which to judge morality. Equity, fairness, and impartiality are the important criteria; rules only serve as guidelines. Act deontologists consider the particular act or moment in time as taking precedent over any rule.

There is another group of moral philosophers, referred to as ethical relativists, who maintain that there is no "right" way to make an ethical decision and there is no "best" moral philosophy. Relativists use themselves or the people around them as their basis for defining ethical standards. As circumstances or the group composition change, a previously unacceptable behavior may come to be redefined as ethical. Whereas, within the public accounting profession it was considered unethical to advertise, advertising has now gained acceptance among practitioners.

The relativist perspective acknowledges that we live in a pluralistic society in which people have many different views and many different bases from which to justify decisions as right or wrong. The position here is that what may be morally right for one society may be wrong for another, or, even more radical, what may be right for one person may be morally wrong for another person. That is to say, what a person or society believes is right, is in fact right for that person or society.

Generally, then, ethics is a way of thinking about compliance, contributions, and the avoidance of harmful consequences. Professional codes of ethics in the financial domain embody these elements.

Trust, Responsibility and Control in Accounting and Finance

Any individual or group of individuals working in the accounting or finance functions (financial specialists) will be subjected to the broad factors of trust, responsibility and control. These factors are naturally interlinked with one another, and they can be troublesome if they are not properly understood and addressed by the financial specialist and his organization. Trust is a factor in relationships with other individuals or organizations that rely upon the advice or information given by the financial specialist. Trust is inspired by confidence which believes in the ability, character, integrity and truthfulness of the financial specialist.

Responsibility is also a factor in relationships with those who are dependent on the financial specialist. It is about duty, obligation, care and accountability to the dependent party who places trust in the financial specialist.

Control is the third factor in the dependent relationship. To work properly and harmoniously, trust of the dependent party requires responsibility by the financial specialist and, therefore, demands careful and considerate attention in the control and dissemination of financial advice and information. An abuse of control is an abuse of responsibility. A cognizant dependent party will lose confidence and his trust will dissipate, thereby ending the relationship with the financial specialist. Litigation may ensue. Loss of credibility and trust in the financial

specialist is harmful. Far worse is the spillover effect to other financial specialists who are innocent of the abuse.

A harmonious balance in the three factors is, therefore, critical to the ongoing success of any relationship with those needing the services of financial specialists. A means to this desired end is a professional code of ethics. A code of ethics entails broad principles and specific rules which address the factors critical to a harmonious relationship with a dependent party. Practitioners who abide by the rules and standards of a code of ethics contribute directly to the harmony of trust, responsibility, and control factors.

Professionalism in Accounting and Finance

"Profession" is the ultimate recognition our society bestows on a skill or craft which meets specified criteria positively affecting the public welfare. Three recurring criteria in any recognized profession include: education and experience in the profession, examination for licensure and governmental oversight, and a system of self-regulation based on a code of professional ethics. A written code of ethics is, therefore, a critical element necessary for any skill or craft to be elevated to the status of profession. An individual who works in the accounting or finance function may either be professional or non-professional. Professionalism in accounting and finance is recognized through certification. Certification conveys professionalism to the public and brings status, opportunity, and greater financial compensation to the professional. The certification of individuals in accounting and finance functions appears beneficial to society. To evaluate this assumption, the professional codes of ethics of fourteen different certifications in accounting and finance were examined for their content, theme, and impact on the factors of trust, responsibility, and control.

Matrices of Rules and Principles for Professional Certification in Accounting and Finance

Matrix I, reproduced at the end of this article, examines the principles and rules addressed in the professional code of ethics for fourteen different certifications in accounting and finance. Five of the certifications are in accounting and include Certified Public Accountant (CPA), Certified Management Accountant (CMA), Certified Internal Auditor (CIA), Certified Fraud Examiner (CFE), and Certified Government Financial Manager (CGFM). The other nine certifications are in finance and financial services and include: Chartered Financial Analyst (CFA), Certified Financial Planner (CFP), Certified Employee Benefit Specialist (CEBS), Certified in Financial Management (CFM), Certified Fund Specialist (CFS), Chartered Market Technician (CMT), Certified Investment Management Analyst (CIMA), Chartered Financial Consultant (ChFC), and Chartered Life Underwriter (CLU). A study of the matrix shows a total of 30 different rules or principles which were addressed by the combined certifications. Some of the principles were unique or limited to a few certifications while others were common to most or all of the certifications.

Of special note were the differences in terminology used in the various codes to address similar ethical principles. To achieve ease of comparability, a condensed matrix was prepared in which similar terms or themes were combined with one another. Matrix II, reproduced at the end of this article, is the condensed version of Matrix I and includes the following combinations of similar rules and principles:

1	Fairness, fiduciary responsibility, priority of transactions and shareholder impact;
2	Objectivity, neutrality, conflict of interest, acceptance of gifts and independence;
3	Integrity, honesty, and proper attribution of source of information;
4	Disclosure of all materials facts and disclosure of all material facts without editorial comment;
5	Adherence to the Code of Professional Ethics and presentation of the Code to the employer;
6	Professional competence and maintenance of professional competence.

Discussion and Implications of Matrix Principles and Rules

An examination of Matrix II reveals a universal distribution for five ethical principles:

1	Objectivity, neutrality and conflict of interest;
2	Integrity and honesty;
3	Professional due care;
4	Professional competence; and
5	Adherence to the law.

All fourteen professional certifications address these "universal" standards in their respective codes of ethical conduct. There are also four "common" standards that apply to most of the professional certifications:

1	Fairness and responsibility to the public interest;
2	Disclosure of all material facts;
3	Adherence to the Code of Professional Ethics and
4	Confidentiality.

The common standards were addressed in a range from eleven to thirteen of the fourteen different professional certifications. An interpretation of these common and universal standards can be noted by their positive influence to the harmony of the interlinkage of trust, responsibility and control factors. The standards focus on individual responsibility and behavior to others. The purpose in all of this, of course, is to maintain trust and public confidence in the profession for all participants.

There were seven ethical standards that were addressed by several (range 3 - 8) professional certifications:

1	Loyalty
2	Compensation disclosure
3	Proper use of the professional designation
4	Advertising and solicitation
5	Disclosure of conflict of interest
6	Planning and supervisory responsibility, and
7	Support for the development of higher ethical conduct.

There were also four ethical standards that were unique or very limited (range 1 - 2) in their application to professional conduct:

1	Form of practice and name
2	Process for resolution of ethical dilemma
3	Disclosure of basic philosophy, and
4	Strict endorsement of candidates for certification

These eleven standards that were addressed by several or a very limited number of professional certifications are generally tailored to the specific or unique requirements of the certification body and their dependents. They are, therefore, not the universal or common standards of professional conduct that was previously noted.

CONCLUSION

In conclusion, a written code of ethics is mandatory for professionalism. It is subscribed to by licensees, and enforced by a self-governing or governmental body which serves the public interest. The public interest is served because a professional code of ethics has principles or rules of conduct for the licensee that focus on professional responsibility. The codes thereby restrict or limit the actions of the licensee to behavior that is in the best interest of a dependent party. The happy result is trust and credibility for the profession and an ongoing harmonious relationship with the dependent party.

A review of the codes of ethics for fourteen different financial specialist certifications reveals that the certifying entities consider certain rules of conduct to be imperative for the well being of dependent parties as well as for the profession. The codes seem to follow the deontological moral philosophy model. This study is the beginning of a theory of ethics in the financial professions that is to be developed further.

MATRIX I
PRINCIPLES, STANDARDS, RULES FOR PROFESSIONAL CERTIFICATIONS

Principles Standards Rules	