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IS SECONDHAND SMOKE IN THE WORKPLACE A TORT?

by

Robert S. Wiener*

INTRODUCTION

Employees across the nation work many hours a week indoors where they are exposed to environmental hazards -- among these is secondhand smoke. Recent EPA research reports that long-term exposure to the smoke of others can cause serious disease.[1] Even in the short term, some susceptible people exhibit a wide range of physical reactions.[2]

What are the rights of nonsmokers who want to work in a smoke-free environment? What are the rights of smokers who want to smoke while they work? What are the responsibilities of employers who employ both smokers and nonsmokers?

Many local governments have passed legislation to restrict smoking in workplaces. These laws may sanction employers who do not enforce the rules. But this paper concentrates on civil tort suits filed by individuals[3] against businesses or other individuals for smoking in a workplace.

What tort theories are available to these plaintiffs? What difficulties will they encounter in pursuing their cases? What defenses are available to defendants? What remedies may result from a judgment in favor of the plaintiff? Does the law make sense? What are the public policy considerations involved? Should a smoker have to stop smoking? Should a nonsmoker have to leave? Does the actual or potential injury to the nonsmoker matter? Is it enough if tobacco smoke is noxious to a nonsmoker? Is the test objective or subjective? What ramifications do these answers have for control of other atmospheric chemicals?

Agency issues arise when a company is sued for the actions of its employees. Under the principle of respondeat superior, a principal is legally responsible for the intentional actions of its agents authorized within the scope of employment. Is smoking on the job such an action? Is the employer liable for the recreational smoking of its employees?

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I. THE CASES

This paper focuses on four reported cases brought by nonsmokers based on secondhand smoke in the workplace.

1. The first case concerns events that transpired at a WLW radio show in Cincinnati, Ohio. It was the day of the Great American Smokeout, a national promotion to encourage smokers to quit smoking. Ahron Leichtman, who claimed to be "a nationally known"[4] opponent of smoking, was invited to discuss the ill effects of primary and secondary smoke on Bill Cunningham's radio talk show. During the show, Cunningham incited Furman, host of another WLW radio talk show, to repeatedly blow cigar smoke in Leichtman's face. Furman complied. Leichtman sued WLW Jacor Communications, Inc., William Cunningham, and Andy Furman.[5] On 23 January 1994, the Ohio Court of Appeals denied Leichtman's claims based on a tortious invasion of his privacy[6] and negligence,[7] but remanded the case for determination on the issue of battery.[8]

2. Pamela S. Pechan worked as an office manager for Dynapro, Inc. in Oak Brook, Illinois. As a result of her passive inhalation of cigarette smoke, Pechan required "injections, medication and an inhaler because of coughing, wheezing, difficulty breathing and sleeping, swelling sinuses, dripping sinuses, swelled face and eyes, hives, throat irritation and dryness, light-headedness, dizziness, watery eyes, burning nose, headaches and stress manifested by a spastic colon."[9] According to the complaint, although Dynapro had a stated nonsmoking policy and was given documented notification of Pechan's problems, it did not enforce its policy through either prohibition or restriction of smoking. Pecan claims that she was forced to resign. The Illinois Court of Appeals affirmed in its 19 October 1993 opinion the trial court's summary dismissal of Pecan's claims of battery and negligence.[10]

3. Bonnie Richardson worked for several years as a receptionist for First Federal Savings & Loan Association of Valdosta, Inc.[11] J.R. Hennly, Jr., an administrative officer, smoked a pipe. Although Richardson worked in the lobby, about 30 feet from Hennly's office, she medically documented allergic reactions to his pipe smoke that caused "nausea, stomach pain, loss of appetite, loss of weight, headaches, and anxiety."[12] Despite the company's purchase and use of air cleaners, Richardson continued to have adverse reactions resulting in two hospitalizations. In the end, Richardson was discharged, allegedly primarily for excessive absenteeism. The Georgia Court of Appeals decided on 15 July 1993 in favor of Richardson's right to a trial as her claims of battery and intentional infliction of emotional distress.

4. A fourth case well worth considering, if only to see how the law on secondhand smoke may have changed since 1979, is William T. McCracken v. O.B. Sloan.[13] McCracken, a Charlotte, North Carolina postal employee, complained of smoke in the post office building. He asked for sick leave due to his allergic reaction to cigarette smoke. At two meetings with postmaster O.B. Sloan to discuss his request, Sloan smoked a cigar.

McCracken sued Sloan.[14] McCracken lost because the court rejected what it saw as his assertion of a right to a "glass cage."

II. TORTS

In these cases, the plaintiff sued on the basis of a variety of common law tort theories.

A. INTENTIONAL

All plaintiffs argued that the defendants had committed intentional torts.

1. Battery

In each case, the nonsmoker claimed that the smoker had committed a battery with secondhand smoke. A battery is an intentional tort.[15] As with all torts, a plaintiff who proves that the defendant has acted in a tortious manner proximately causing actionable injury to the plaintiff is entitled to a remedy. This is because, as Roscoe Pound wrote, "In civilized society men must be able to assume that others will do them no intentional injury --- that others will commit no intentioned aggressions upon them."[16]

a. Act: The act required to prove a battery is sometimes described as an "intentional, offensive touching."[17] Offensive contact may be described as that which is "offensive to a reasonable sense of personal dignity."[18] The Ohio Supreme Court has defined "offensive" to mean "disagreeable or nauseating or painful because of outrage to taste and sensibilities or affronting insultingness."[19] The act requirement is not satisfied if the touching is consented to or authorized. The concept of implied consent to secondhand smoke is discussed below under the "Glass Cage" Defense. Contact satisfying the battery test includes far more than the contact of a fist. A bat or bullet will also do. But can one commit a battery with tobacco smoke? A battery includes "the precipitation[20] upon the body of a person of any material substance."[21] And courts have decided that tobacco smoke is "particulate matter."[22] "Pipe smoke is visible; it is detectable through the senses and may be ingested or inhaled. It is capable of "touching" or making contact with one's person in a number of ways."[23] So the answer is generally yes.[24] However, the Illinois court in Pechan did seem to question the intentional act aspect of smoking. "[T]he act of smoking generally is not done with the intent of touching others with emitted smoke."[25]

In the Leichtman case, Andy Furman committed a battery by intentionally blowing cigar smoke in Leichtman's face.[26] The Richardson court decided that if Hennly, "knowing it would cause her [Richardson] to suffer an injurious reaction, intentionally and deliberately directed his pipe smoke at her in order to injure her or with conscious disregard of the knowledge that it would do so," that would constitute a battery.[27]

Can one be liable for a battery if the actnal smoke blowing was committed by another person? As with other batteries, encouraging another to commit a battery is a tortious act.[28] Therefore, in the Leichtman case, William Cunningham's urging that Andy Furman blow cigar smoke in Ahron Leichtman's face was, in itself, a battery when Furman

repeatedly did so.[29] And Richardson's suit against First Federal was sent to trial even though Federal's employee, Hennly, smoked only in an enclosed office and First Federal had installed air cleaners.[30]

Pechan also sued her employer for battery because "smoke did contact and enter into and upon"[31] her body without her consent. Furthermore, Dynapro permitted its employees to "intentionally emit cigarette smoke into the office atmosphere" even though it knew of Pechan's sensitivities. Dynapro argued that smoking is a lawful act and does not rise to the level of a battery.[32] Although the Illinois court agreed that the plaintiff's battery theory might prevail,[33] it decided against her based on the facts of the case.

b. Proximate Cause: In battery cases, as with all other torts, the plaintiff must prove that the defendant's act was a proximate cause of its injury, that is, the act was an actual cause of the injury and the injury was reasonably foreseeable. It has been argued that with a "smoker battery," if exhaled smoke is substantially certain to contact a nonsmoker, the smoker is liable.[34] However, this argument was rejected by the Leichtman court.[35] And it was not alleged by Pechan "that reasonable persons should have known that their smoke would have contacted Pechan in sufficient quantity to reasonably cause the damages claimed."[36] An interesting question is whether the reasonable foreseeability of harm from secondhand smoke increases as information on the danger of tobacco smoke grows and is widely disseminated.

c. Injury: As long as a tortious battery by the defendant proximately causes injury to the plaintiff, the plaintiff is entitled to a remedy. Even if the injury is trivial, the plaintiff will prevail; however, recovery may be limited to nominal damages of a single dollar.[37]

In the Leichtman case, the court decided that having smoke blown in one's face was injurious, even if trivial.[38] In the Richardson and Pechan cases, the plaintiffs had heightened sensitivities to tobacco smoke and, therefore, significant medical injuries. There was also a sensitive plaintiff in the McCracken case, but the court could "find no evidence that the plaintiff suffered any physical illness from inhaling the cigar smoke."[39]

Injury to ordinary people from mere passive smoke inhalation is not addressed in these cases. Is an increased risk of lung cancer or even the fear of cancer from exposure to secondhand smoke an actionable injury?

2. Infliction of Emotional Distress

Even in the absence of physical illness, nonsmokers may bring tbe intentional tort cause of action of infliction of emotional distress. According to modern common law, if extreme or outrageous intentional conduct by the defendant causes emotional harm, the plaintiff need not show physical injury.[40]

This issue of law was presented to the trial court in the Richardson case. Was Hennly's conduct sufficiently extreme or outrageous as to result in liability for physical injury? Elements to be considered include the defendant's control over the plaintiff, the defendant's awareness of the plaintiff's susceptibility, and the severity of harm suffered by the plaintiff. The Richardson appellate court decided that all of these elements existed. The sole question that remained, the intentionality of Hennly's actions, was for the jury to decide.[41]

Although McCracken filed no complaint based on infliction of emotional distress, the court in his case observed "That person did experience some mental distress as a result of inhaling the cigar smoke."[42] Based on my reading of the opinion, this court would not have seen the postmaster's smoking as either extreme or outrageous conduct, although it was, beyond a doubt, intentional.

3. Invasion of Privacy

Does intentionally blowing tobacco smoke into someone's face constitute the tort of invasion of privacy? The intentional tort of invasion of privacy comprises four separate torts.[43] The only possibly appropriate one here is intrusion on a party's solitude, seclusion, habitation, or affairs that would be highly offensive to a reasonable person.[44]

This claim was raised by Leichtman, but rejected by the court because he "willingly entered the WLW radio studio to make a public radio appearance with Cunningham who is known for his blowtorch rhetoric."[45] Although the result was probably correct in this case, consider whether privacy rights extend outside one's own home and their relevance to secondhand smoke cases.[46]

4. Assault

Assault would be another possible tort claim for violation of one's "interest in freedom from apprehension of a harmful or offensive contact with the person."[47] However, none of the three most recent cases contains a cause of action based on assault.

In William T. McCracken v. O.B. Sloan,[48] Sloan said at least once, "Bill, I know you claim to have an allergy to tobacco smoke and you have presented statements from your doctor stating this, but there is no law against smoking, so I'm going to smoke."[49] This seems to meet the criteria for an assault, but, because there was no evidence of physical harm, the North Carolina Court of Appeals decided that there was no actionable assault.

B. NEGLIGENCE

Injured nonsmokers may also argue the tort of negligence, that is, a breach of a duty of due care.

1. Common Law Negligence

Under common law negligence, the plaintiff would have to prove that a common law duty of due care existed for the defendant to keep the plaintiff's air smoke free and that the duty was breached.

Pechan argued that Dynapro had created a duty of care through its own smoking policy and that it breached that duty through its failure to enforce the policy.[50]

2. Negligence Per Se

Under a theory of negligence per se, the plaintiff's claim is that a statute established the defendant's duty to the plaintiff. For example, a nonsmoker might argue that a health regulation created a duty to provide a smoke-free environment. In the Leichtman case, a Cincinnati Board of Health Regulation[51] made it illegal to smoke in certain public places, but the court determined that the sanctions provided by the statute did not create a common law cause of action for negligence per se.[52]

Pechan argued that Dynapro was statutorily negligent due to its violation of the Illinois Clean Indoor Air Act, but the court decided her case on other grounds.[53]

C. STRICT LIABILITY

Employers may be strictly liable for the tortious acts of their employees under the theory of respondeat superior. However, even if the tort is intentional, the employer will not be liable unless the act is committed within the employee's scope of employment. This is a question of fact usually answered at trial. A number of earlier cases decided that employers were liable for harm done as a result of the smoking of their employees.[54]

The appellate court in Leichtman left it to the trial court to decide if WLW Radio's owner was liable for the tortious acts of its employees. Is blowing cigar smoke into a guest's face within the scope of a radio host's employment? Here the court answered yes.[55]

III. DEFENSES

Aside from the argument that the plaintiff has not proved its case by a preponderance of the evidence, defendants in secondhand smoke cases have offered the following defenses.

A. WORKERS' COMPENSATION

Workers' Compensation Acts typically provide that recovery under the Act is an employee's sole remedy for compensable injuries.[56] Therefore, if an employee is entitled to recover under a Workers' Compensation Act, the employer is protected from a private tort action.

This is may well be a significant reason why employees such as McCracken do not file suits against their employers.[57] The Pechan court decided that her claims based on

negligence were compensable under the Workers' Compensation Act and, therefore, she was barred from recovery from her employer.[58]

However, Workers' Compensation does not protect employees who smoke from suits by fellow employees. In the Richardson case, the court rejected the argument by J.R. Hennly, Jr., a fellow employee, that Workers' Compensation defended him against a nonsmoker suit.[59]

B. ASSUMPTION OF RISK

The defendant may argue assumption of risk, that is, that the plaintiff knowingly and voluntary assumed the risk of secondhand smoke. For example, a nonsmoker who is aware of the risk of contact with tobacco smoke, but never complains about exposure has assumed that risk. However, in the cases studied, the plaintiffs did complain. Even though Leichtman may have "willingly entered the WLW radio studio," he did not willingly submit himself to tobacco smoke.[60] Moreover, defendants who become aware only now of the risks associated with secondhand smoke, may not be said to have assumed that risk in the past.

C. THE "GLASS CAGE" DEFENSE

Public policy ramifications of secondhand smoke cases were raised in the 1979 McCracken v. Sloan case.[61] There, the North Carolina Court of Appeals advanced a concept of implied consent to secondhand smoke. [I]n a crowded world, a certain amount of personal contact is inevitable and must be accepted. Consent is assumed to all those ordinary contacts which are customary and reasonably necessary to the common intercourse of life. Smelling smoke from a cigar being smoked by a person in his own office would ordinarily be considered such an innocuous and generally permitted contact.... [I]t may be questioned whether any individual can be permitted, by his own fiat, to erect a glass cage around himself, and to announce that all physical contact with his person is at the expense of liability.[62]

The date of the McCracken case should be noted. Fifteen years ago, the data supporting the harmfulness of secondhand smoke were not well-developed. In fact, that court observed, "We express no opinion as to what the result would be if there were evidence of some physical injury..."[63] But even if there is an allergic reaction, do we want our society to protect us from all injury caused by others, even by their perfume of choice?

The Leichtman court did not apply the "glass cage" defense to Andy Furman because the deliberate blowing of smoke into someone's face is not passive smoke.[64] The McCracken case was cited with approval by the Pechan court.[65]

IV. REMEDIES

In addition to legal remedies such as compensatory and punitive damages, equitable remedies may be appropriate in secondhand smoke cases. If smoke is harming a plaintiff,

preliminary and permanent injunctive relief against smoking may be sought; however, if the plaintiff is no longer employed by the defendant, that particular issue is moot.[66] The same may be true of reinstatement because the plaintiff may not wish to return to an unwelcome environment.[67]

V. NON-TORT CLAIMS

Note that certain nonsmokers may have legal recourse based on statutory protection.

A. WORKER'S COMPENSATION

Nonsmoking employees who are harmed by secondhand smoke may file workers' compensation claims. However, these may be rejected if the employer has a defense valid under the applicable Workers' Compensation Act.[68]

B. HANDICAPPED CODES

Legislation to protect the handicapped may protect those with special sensitivity to tobacco smoke. The Georgia Equal Employment for the Handicapped Code (GEEHC)[69] protects the handicapped from discrimination in the workplace. "Handicapped individual" means "any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, and who has a record of such impairment."[70] Because Richardson's sensitivity to tobacco smoke resulted in problems on the job and, ultimately, in the loss of her job with First Federal, the appellate court could not decide, as a matter of law, that she was not a "handicapped individual."[71]

VI. PUBLIC POLICY

The judges in several cases expressed significant reservations about the appropriateness of dealing with secondhand smoke cases in the courts.

The three appellate judges in the Leichtman case wrote in a per curiam decision, Arguably, trivial cases are responsible for an avalanche of lawsuits in the courts. They delay cases that are important to individuals and corporations and that involve important social issues. The result is justice denied to litigants and their counsel who must wait for their day in court.... This case emphasizes the need for some form of alternative dispute resolution operating totally outside the court system as a means to provide an attentive ear to the parties and a resolution of disputes in a nominal case. Some need a forum in which they can express corrosive contempt for another without dragging their antagonist through the expense inherent in a lawsuit.[72]

It is hard to disagree with the plea for alternative means of dispute resolution, but the more interesting questions is that of the role of law in society discussed in the McCracken case. Surely, unpleasant contacts are an unavoidable part of life to all but hermits in our crowded world. Is secondhand smoke, at least for most, simply a trivial additional cost of living to be added to many others? Or should we deal with this matter differently because this risk is avoidable, if only people would stop smoking, at least around nonsmokers?

CONCLUSION

One might think, with the emergence of anti-smoking legislation, that courts will no longer see suits by nonsmokers based on smoking in the workplace. A reduction of smoke would reduce smoke-caused injuries. However, unless smoking bans are enforced, people will continue to smoke at work. The habit is a hard one to break, even if the smoker wants to.

Nonsmokers often do not complain of smoke and are even less likely to bring a lawsuit. Some may not mind the smoke, but even if they do, they consider the career risks from complaining about it, especially if the smoker is their superior. And the extremely limited protection given to whistle blowers in most states gives little legal incentive to act. On the other hand, if evidence grows about the harm of secondhand smoke, nonsmokers may become more assertive in their quest for cleaner air. And with increasing legislation and suits such as the ones discussed in this article, they may take their cases to court.

ENDNOTES

[1] United States Environmental Protection Agency, *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders* (1992). The Environmental Protection Administration, in a pamphlet released on 21 July 1993, estimated that passive smoke inhalation is responsible for 150,000 to 300,000 cases of
pneumonia and bronchitis annually in children under 18 months of age. The EPA also estimated that secondhand smoke is reponsible for the death of 3,000 nonsmokers from lung cancer each year. Melissa Healy, *Don't Smoke at Home, EPA Urges Parents*, LOS ANGELES TIMES, July 22, 1993, at 1.

[2] See Pechan and Richardson cases below.

[3] Class action suits would probably also be possible, but none have been reported thus far.

[4] Leichtman v. WLW Jacor Communications, Inc., 1994 Ohio App. LEXIS 198 (1994).

[5] *Id.*

[6] *Id.* at *9.

[7] *Id.*

[8] *Id.* at *11.

[9] *Pechan v. Dynapro*, 622 N.E.2d 108, 1993 Ill. App. LEXIS 1598, *2, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[10] *Id.* at *42.

[11] *Richardson v. Hennly*, 209 Ga. App. 868, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993).

[12] *Id.*

[13] *McCracken v. O.B. Sloan*, 40 N.C. App. 214, 252 S.E.2d 250 (1979).

[14] Another case worth following is that of Andrea Pornier as reported on National Public Radio's news magazine program, All Things Considered, 24 January 1994.

[15] The definition of the intentional tort of battery is:
An actor is subject to liability to another for battery if (a) he acts intending to cause a harm or offensive contact with the person of the other ..., and (b) a harmful contact with the person of the other directly or indirectly results[; or] (c) an offensive contact with the person of the other directly or indirectly results. RESTATEMENT (SECOND) OF TORTS 25 (1965).

[16] ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 169 (1922 1st ed.).

[17] *Love v. Port Clinton*, 37 Ohio St.3d 98, 99, 524 N.E.2d 166, 167 (1988).

[18] *Id.*

[19] *State v. Phipps*, 58 Ohio St.2d 271, 274, 389 N.E.2d 1128, 1131 (1979).

[20] "[W]e construe the word "precipitation" ... as applying to any situation in which contact is made with another person by issuing or directing some substance at the other, rather than making direct bodily contact." Richardson v. Hennly, 209 Ga. App. 868, 870, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993)

[21] *Hendricks v. Southern Bell Tel &c.*[sic] *Col.*, 193 Ga.App. 264, 265, 387 S.E.2d 593 (1989).

[22] R.C. 3704.01(B) and 5709.20(A); Ohio Adm. Code 3745-17.

[23] *Richardson v. Hennly*, 209 Ga. App. 868, 871, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993).

[24] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *5 (1994).

[25] *Pechan v. Dynapro*, 622 N.E.2d 108, 1993 Ill. App. LEXIS 1598, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[26] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *5 (1994).

[27] *Richardson v. Hennly*, 209 Ga.App. 868, 870-71, 434 S.E.2d 772, 774-75 (1993).

[28] *Bell v. Miller*, 5 Ohio 250 (1831)

[29] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *7 (1994).

[30] *Richardson v. Hennly*, 209 Ga. App. 868, 872, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993).

[31] *Pechan v. Dynapro*, 622 N.E.2d 108, 1993 Ill. App. LEXIS 1598, *5, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[32] *Id.* at *21.

[33] "[W]e are not holding that one can never be battered by second-hand smoke." Id. at *28.

[34] Ezra, *Smoker Battery: An Antidote to Second-Hand Smoke*, 63 S.Cal.L.Rev. 1061, 1090 (1990).

[35] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *6 (1994).

[36] *Pechan v. Dynapro*, 622 N.E.2d 108, 1993 Ill. App. LEXIS 1598, *28, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[37] *Lacey v. Laird*, 166 Ohio St. 12, 139 N.E.2d 25, paragraph two of the syllabus (1956).

[38] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198 (1994).

[39] *McCracken v. O.B. Sloan*, 40 N.C. App. 214, 217, 252 S.E.2d 250 (1979).

[40] *Richardson v. Hennly*, 209 Ga. App. 868, 871, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993).

[41] *Id.* at 871-72.

[42] *McCracken v. O.B. Sloan*, 40 N.C. App. 214, 217, 252 S.E.2d 250 (1979).

[43] Prosser, *Privacy*, 48 Cal.L.Rev. 383 (1960).

[44] See RESTATEMENT (SECOND) OF TORTS 46.

[45] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *8-9 (1994).

[46] For example, smoking in a public lavatory.

[47] W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 10, at 43 (5th ed. 1984).

[48] 40 N.C. App. 214, 252 S.E.2d 250 (1979).

[49] *Id.* at 214.

[50] *Pechan v. Dynapro*, 622 N.E.2d 108, 1993 Ill. App. LEXIS 1598, *4, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[51] Cincinnati Bd. of Health Reg. No. 00083.

[52] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *9 (1994).

[53] 410 ILCS 80/1 et seq (West 1992).

[54] *Iandiorio v. Kriss & Senko Enterprises, Inc.*, 512 Pa. 392, 517 A.2d 530 (1986) (employee burned by match); *Puffin v. General Electric*, 132 Conn. 279, 43 A.2d 746 (1945) (employee's sweater caught fire from match).

[55] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *7-8 (1994).

[56] See OCGA (Official Code of Georgia Annotated) § 34-9-11 (1994), Title 34. Labor and Industrial Relations, Chapter 9. Workers' Compensation, Article 1.

[57] *McCracken v. O.B. Sloan*, 40 N.C. App. 214, 252 S.E.2d 250 (1979).

[58] *Id.*

[59] *Richardson v. Hennly*, 209 Ga. App. 868, 869-70, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993).

[60] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *9 (1994).

[61] 40 N.C.App. 214, 217, 252 S.E.2d 250, 252 (1979).

[62] *McCracken v. O.B. Sloan*, 40 N.C. App. 214, 217, 252 S.E.2d 250 (1979).

[63] *McCracken v. O.B. Slaan*, 40 N.C. App. 214, 217, 252 S.E.2d 250 (1979).

[64] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *7 (1994).

[65] *Pechan v. Dynapro*, 622 N.E. 2d 108, 1993 Ill. App. LEXIS 1598, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[66] *Pechan v. Dynapro*, 622 N.E.2d 108, 1993 Ill. App. LEXIS 1598, *3, 1980 Ill. Dec. 698, 8 BNA IER CAS 1793 (1993).

[67] Pechan did not seek reinstatement. Id. at *10.

[68] Further research may reveal arbitrators who granted workers' compensation to employees who suffered allegic reactions from cigarette smoke, but compensation was denied in *Witte v. Department of Rehabilitative Services* (Mar. 19, 1991), 88 W.C. 44629.

[69] *Id.* § 34-6A-1 et seq.

[70] OCGA § 34-6A-2 (3).

[71] *Richardson v. Hennly*, 209 Ga. App. 868, 872, 434 S.E.2d 772, 1993 Ga. App. LEXIS 1028, 63 Empl. Prac. Dec. (CCH) P42,628 (1993).

[72] *Leichtman v. WLW Jacor Communications, Inc.*, 1994 Ohio App. LEXIS 198, *9-10 (1994).