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The Employer as Social Arbiter: Considerations in Limiting Involvement in Off-the-Job Behavior

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This article analyzes the trend of increasing employer involvement in social issues through human resource policies that influence employee behavior off the job and away from the workplace. Many employers are increasingly acting as "social arbiters"—regulators of the private conduct, personal behaviors, and habits of their employees. Relying on historical perspectives from (1) an exchange transaction economic view of the employment relationship, and (2) the origins and nature of the corporate form, a framework is developed to analyze the conditions under which employer involvement in employee personal matters may be appropriate. Our criteria generally guide an employer to act conservatively in invoking mandatory policies that affect employees' personal lives unless there is a clear individual employee performance problem or the personal behavior imposes harm on employees or customers. Two tests should be satisfied for mandatory programs: (1) the policy must have a discernible impact on the employee's performance on the current job based on individually based data, or (2) the behavior poses an immediate danger to or has an established discernible impact on the safety of co-workers or customers. The difficulties that may arise in administering specific polices such as no smoking, drug and medical testing, child care, and fitness policies are discussed.

KEY WORDS: employer involvement in employee personal behaviors, habits, and nonwork matters; employee rights; social responsibility, lifestyle discrimination.

INTRODUCTION

Over the past decade, there has been tremendous growth in employer involvement with issues that have a link to an employee's life and interests away from the job. Drug testing, child and elder care, AIDS testing and education, smoking policies, employee assistance, and health and fitness programs are current examples of increasing organizational influence on personal lifestyles of employees (see Table

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I). Employers often contend that these policies enhance productivity and reduce labor costs (due to reduced absenteeism and insurance costs), and foster the development of a commonality of interest between the employee and employer (cf. Milkovich & Boudreau, 1991; Walker, 1992). Institutional scholars, however, might argue that these new policies do not necessarily serve economic imperatives as much as they aid organizations in appearing to justify these policies to external constituencies (cf. DiMaggio & Powell, 1983; Baron & Bielby, 1984; Baron & Bielby, 1986; Baron, Davis-Blake, & Bielby, 1986). Radical observers would assert that such personnel policies provide a subtle means of controlling the work force (Braverman, 1974; Edwards, 1979; Langton, 1984; Clawson, 1980). Regardless of the perspective taken and the underlying rationale for adoption, as employers attempt to regulate the private conduct, personal behaviors, and habits of their employees, they establish themselves as arbiters of employee lifestyles.

Issues such as drug abuse and child care are workplace issues, to be sure, but they are also issues of great societal debate. Some employee rights scholars believe that balancing employee rights and privacy issues with organizational objectives is likely to increasingly pose critical HR policy dilemmas in the future (cf. Shepard, Duston, & Russell, 1989; Osigweh, 1991), particularly because for many employers there is a natural tendency to always favor organizational interests over those of employees. For example, a recent national study of employment policies found that nearly 40% of the respondents characterized their firms as emphasizing employer

Table I. Social Implications of Human Resource Programs

Program	Social implication
No-smoking policies	Smokers are unattractive employees, because they are less healthy, and may create unhealthy surroundings for co-workers.
Drug-testing policies	Drug users are criminals. Alcohol and over-the-counter abusers are undesirable employees.
Wellness programs	Physically fit employees have greater productive value to the firm and are more likely to be rewarded and promoted.
Company day care centers	The employer knows what's the best arrangement for raising your child; people who let child care problems affect their work are bad employees.
Donation programs	Employees who are societal role models and support charitable organizations that the company condones will get ahead.
Employee assistance programs	Emotional problems should not negatively influence productivity. People with personal problems are less likely to get ahead.
AIDS-testing policies	Employees should take extra care in social relations with homosexuals, intraveneous drugs users, or people who need blood transfusions or risk not being employed.
Genetic testing	Employees or employees with dependents who have inherited disorders may be less desirable to employers since they are high insurance risks.
Policies monitoring social life	Employees who date people who compete against our firm in the economic marketplace do not fit with our company culture and are untrustworthy.

rights over employee rights (Rosen & Schwoerer, 1990). This trend can be juxtaposed with the fact that a growing majority of the U.S. work force is comprised of nonunion workers who vary in their access to effective grievance procedures or in their ability to use legal means for redress.

The growth of human resource policies covering social domains and the increasing potential for conflict between employee and employer interests raises some critical questions. To what extent should personal and social issues be brought into the workplace? Is it appropriate for the employer to become involved in employees' lifestyles simply because it is believed such involvement affects productivity or cost effectiveness? Should the employer act as a judge of social behavior? Is there some employee interest in privacy that is immune from employer influence? The goal of this article is to pose these questions for debate and to provide a framework for analyzing the potential adoption of human resource policies with ramifications for employees' personal lives. We hope that this article can be used a guide for employers considering invoking policies that have an effect on employees' personal lives. If organizations do not develop such a rationale, some observers believe the government and the courts will increasingly intervene (Rosen & Schwoerer, 1990), as they have already done in the area of drug testing and dating relationships (Reibstein, 1988). Organizations that have developed criteria for becoming involved in social issues may have the advantage of being able to better target resources for new human resource initiatives that truly fit with their organizational philosophy and mission.

Historical perspectives and theoretical grounding for our analysis are first provided by a discussion of (1) the exchange transaction view of the employment relationship and (2) historical origins of the nature of the corporate form. A distinction between mandatory and voluntary policies is then developed, and criteria are offered to aid firms in determining when mandatory policies affecting employees' personal lives are appropriate to adopt. A discussion of specific policies affecting off-the-job employee behavior is also held.

FRAMEWORKS FOR UNDERSTANDING THE EMPLOYMENT RELATIONSHIP: A BRIEF REVIEW

As first noted by Adam Smith (1776) and later expanded upon by Karl Marx (1887), the employment relationship is essentially an exchange transaction. An employer is buying labor power (both mental and physical) in exchange for compensation and benefits. Indeed, a key aspect of Marxian economic theory is the breakdown of the working day between "necessary labor" — that working time necessary for the worker's subsistence, and "surplus labor" — that period of the working day that produces economic surplus for the employer. Thus, in a Marxian context the employer must have some control over the employees' time during the working day in order to maximize the percentage of the working day producing surplus labor (Marx, 1887; Gotthiel, 1966).

In modern terminology, the employer seeks to maximize the value of the employees' work time through supervision and human resource policies regulating behavior on the job. Nonwork activities, however, can affect the quality of employee

activity during working hours. Employees must be healthy and alert and able to perform on the job.[2] Thus, the fundamental question is what should be the influence of the employer over the employee's nonwork activities?

As society developed from an agrarian to an industrialized economy, the tendency was to remove or differentiate economic activity from the family-community complex (Smelser, 1972). Under the strict notion of exchange, it can be argued that this separation should be absolute, and that the employee should have total control over his or her personal time, since it is not labor time for which the employer pays. Alternatively, it is also true that employees' off-the-job activities can affect on-the-job performance, suggesting some legitimate area of employer influence over the employee's nonwork behavior.

The debate over striking the balance between legitimate employee interests in a separation of their work and nonwork lives and legitimate employer interests in production on the job has existed since the industrial revolution. Thompson (1963) discussed the Methodist religion as a means of disciplining the new working class and developing a common moral, ideological underpinning for the factory system in England in the late 18th century. Developing shared religious values between workers and the employer served to "industrialize" an agrarian population and fostered the development of a congruence of personal and firm goals. Similarly, Josiah Wedgewood bureaucratized the pottery industry in England at about the same time by using Protestant work ethic rules of conduct to make workers less interested in dancing, gambling, and sports than in work (Langton, 1984).[3] These employer activities were instituted to create an environment that served to exert social and political control over people's ideas, beliefs, and feelings.

Turning to more recent examples, McPherson (1988) discusses the encouragement of the temperance movement by U.S. manufacturers in the pre-Civil War era in order to foster the qualities of thrift, punctuality, and reliability in workers. Another example is found in Jacoby's (1985) description of the trend toward welfare capitalism in the United States during the early part of the twentieth century. Personnel policies such as hygiene and social welfare programs were developed on the assumption that most employees were unable to effectively take care of themselves off the job.

These extreme examples of paternalism can be contrasted with employment-at-will policies such as those adopted during the early 1930s (Stieber, 1983). Under the traditional employment-at-will doctrine, an employee's labor is simply a commodity to be purchased. The employer is totally unconcerned about the employee's personal circumstances and situation away from the workplace. If an employee did not perform adequately, the employee was terminated, regardless of the weightiness of the personal underlying circumstances.

The United States currently exhibits employment relations systems that stretch across both extremes. In order to attempt to become internationally competitive, during the past ten years, layoffs, wage and benefit reductions, extreme downsizing,

[2]Indeed, assuring that the work force is sufficiently healthy to work and reproduce is the essence of "necessary labor" in the Marxian schema.

[3]For another early example of the use of religion to control workers, see Liston Pope (1942), *Millhands and Preachers*. New York: Yale University Press.

and heightened use of short-term performance appraisals to assess "how have you performed for me lately" are increasingly prevalent (cf. Carroll, 1991; Atchison, 1991). These policies coexist with a marked growth in policies regulating nonwork behavior leaning in the direction of a return to extreme employer paternalism of earlier years, which some scholars believe is a long-term trend (cf. Jacoby, 1985).

In short, the issue of managing the conflicts between employees' work and private lives of employees is as old as the system by which people earn a living by working for others. The structural condition that enables such social control of employee behavior to occur is the economic power over the employee's livelihood that results from the nature of the employment relationship in large organizations. This economic power, in turn, comes from private property rights exercised through the corporate form. The next section of the article will analyze the origins of the corporate form and its implications for the employment relationship.

THE ORIGINS OF THE CORPORATE FORM IN SOCIETY: IMPLICATIONS FOR THE EMPLOYMENT RELATIONSHIP[4]

Issues associated with the nature of the corporate form have been a subject of political and judicial scrutiny throughout much of modern economic history. As Berg and Kuhn (1968) write, early views of the corporation expressed concern about the monopolistic aspects of business combinations and of persons combining resources. For this reason, in the 17th and 18th centuries, corporate charters in England were granted only by the state (crown), and were generally issued only for specific business ventures for which large amounts of capital were necessary (i.e., the Hudson Bay Company, the East India Company). If such concentrations of capital were necessary, it was thought that only the state could protect the public interest (Berg & Kuhn, 1968).

By the end of the 18th century in England and the newly formed United States, however, the right of the state to grant permission to incorporate soon took on the appearance of political privilege. The growth in the belief in individualism and the invisible hand eventually shifted the prevailing view to the position that all persons should be able to freely incorporate to pursue their own self-interest, and thereby further the common good (Berg & Kuhn, 1968).

Based on this view, in the United States, states began to grant corporate charters for a broader range of ventures. By the late 1830s, states were granting corporate charters for virtually any business venture simply based on the receipt of a completed form and a paid fee (Donaldson, 1982). Thus, the principle of freedom of association and the right to pursue one's self-interest in combination with others came to tip the balance of legal doctrine away from a focus on the potential abuses of economic power resulting from the combinations of capital.

[4]The focus of this article is employment in the private sector. Public sector employers are somewhat more constrained than private employers because they exercise governmental powers which are subject to constitutional constraints. See Bible and McWhirter (1990).

The mere right to combine, however, would have been much less desirable without the principles of limited legal liability for shareholders and perpetual life. The origins of these principles are generally less clear than the right to incorporate. Handlin and Handlin (1945), after a thorough review of relevant British and American legal doctrines from the 16th through the 19th centuries, conclude that these principles became generally accepted as basic corollaries of the corporate form.[5]

It is clear, however, that the corporation, whatever the rationale for its formation, has always been dependent on the state for its existence and for the characteristics that make it worthwhile to maintain — limited shareholder liability, flexible structure, perpetual life, and legal individuality separate and distinct from its shareholders. Without these, it could not function (Donaldson, 1982). These state-provided privileges, although often taken for granted, offer most corporations far greater economic power in managing the exchange relationship than held by individual workers acting alone.

Thus, throughout much of modern commercial and economic history, government has attempted to reconcile these freedom and monopolistic aspects of the corporate form, tilting toward protecting the public from the monopolistic tendencies of corporations in the 17th and 18th centuries, and tilting more towards protecting the rights of individuals to be free to incorporate in the 19th and 20th centuries. Indeed, the corporation represents a mixture of both freedom and economic power, and could not exist without both. The freedom of association aspect of the corporation encourages persons and other corporations to invest in it and permits the corporation to amass the capital and to attain the size and control of assets necessary to earn a return and to create wealth for shareholders, employees, customers, and in total, with other corporations, the society. As noted, however, this very size and control over assets and power over individuals, often carries with it the capability of wielding economic power and thereby inflicting economic harm on others. Yet this very size and economic power comes from the right to incorporate granted from the government, the representatives of society.[6]

Employer control over employees' private lives is a concern, however, because employers generally have far more economic power than employees. This economic power over employees is generally a direct result of the size of the corporate employer. The employer is generally the sole source of the individual employee's livelihood, whereas seldom does an employer depend on a single employee for the success of its business.[7] Put in a transaction context, the significance of the exchange transaction to the individual employee's existence is typically far greater than the significance of one employee's labor to the firm's existence. The contribution of an employee to the firm's total asset base, although positive, is relatively small. The contribution of the firm to the employee's asset base is generally very large. Thus,

[5]For example, Handlin and Handlin note that limited liability was never an issue in 17th century Britain because it was always assumed that any losses would be reimbursed by the crown.

[6]As Chief Justice Marshall wrote in *Dartmouth College v. Woodward,* 4 Wheaton 518 (1819): "(a) corporation is an artificial being . . . existing only in contemplation of law" (cited in Berg & Kuhn, 1968). Donaldson (1982) believes that use of such corporate privileges must be regulated by the state.

[7]CEO's of privately held corporations, athletic or entertainment "stars," and employees of small "mom-and-pop" enterprises, may be exceptions to this generalization.

excluding gross misconduct such as the selling of major company secrets to competitors, mistreatment of the firm by the employee generally does relatively little harm to the firm. On the other hand, mistreatment of the employee by the firm can do great harm to the employee.

In summary, for the reasons of the potentially negative consequences associated with greater size and economic power on those dependent on the corporation and the fact the corporate form is a creature of and a privilege granted by the government, we argue that society has the right to regulate the behavior of employers vis-à-vis their employees' private lives. Society has the right to put in place safeguards against potential abuses and protect individual freedoms. Taking these factors into account, in the next section we present some useful tests for balancing the interests of employees in being left alone to pursue their own lifestyles with the interests of employers in a productive work force. We do not intend to propose legislation. Our purpose is simply to demonstrate that employer policies that may interfere with the private lives of employees is an appropriate area for societal intervention and to develop some tests for proactive and preemptive employers considering the germaneness of such policies.

CONDITIONS REGARDING WHEN EMPLOYER INVOLVEMENT IN POLICIES ARBITRATING SOCIAL ISSUES MIGHT BE APPROPRIATE

It is useful to distinguish between two kinds of employer policies that affect employees' off-the-job behaviors: those that are mandatory and that affect all employees (such as a requirement that all employees be subject to random drug tests); and those that are voluntary, where the employee can choose to use a program (such as an employee assistance program for troubled employees). Both types of programs will be examined.[8]

Criteria for Analyzing Mandatory Programs

A mandatory policy is defined as an employer policy to which employees must adhere, on sanction of an adverse impact on the employee's employment status. Two criteria (see Table II) are proposed that the employer can use to test the appropriateness of mandatory human resource policies that may have an impact on employee's private lives. If at least one of these tests is satisfied, then the policy should be implemented.

The first test is: "Is the policy based on individually based data documenting a work behavior problem that has a discernible impact on the employee's performance on the current job? The data might come from a personnel record of performance appraisals, supervisor files on employees, and an employee's absenteeism

[8]Although it is possible that employers, peers, or supervisors could exert social and political influence to coerce individuals to use "voluntary" programs, we are assuming (and advocating) that if programs are formally designed as voluntary programs the employer must ensure that managers know, recognize, and inform employees that their use is truly optional.

Table II. Conditions Regarding When Employer Involvement in Policies with Social Ramifications Might be Appropriate[a]

First test:
Does the policy have a discernible impact on the employee's performance on the current job, which is based on data documenting a work behavior problem?
Second test:
Does the employee behavior poses an immediate danger to or have an established discernible impact on the safety of co-workers or customers?

[a]At least one of the above conditions must be met.

or tardiness records. If such data indicated poor performance, then a direct nexus must be shown between invoking a mandatory policy and improving the individual's on-the-job productivity in the documented deficiencies. Objective evidence must be gathered that directly indicates that a gap between the employee's actual job performance and an acceptable level of performance on the present job would be closed if the employee adopted the behavior regulated by the policy.

The rationale for this test stems in part from the exchange view of the employment relationship. We believe that the employer is purchasing "on-the-job" labor power, and therefore should limit involvement in an employee's personal life unless it is clear that the employee behavior exhibited in the exchange is greatly deficient. Also, because of the greater economic power and size of the corporation and the greater potential for abuse, we believe that companies should avoid involvement in private lives unless there is a clear exchange inequity, as is the case in a very poorly performing employee.

Under our first test, a company could have a policy that any employee whose drinking problem keeps him or her from being able to perform effectively on the current job, as documented by the supervisor's appraisal, is required to enroll in an alcohol abuse assistance program or risk losing the job. Such a program would be based on individual written documentation of a behavior problem in the current job. However, the company could not have a policy banning the employment of alcoholics in general simply because scientific evidence might suggest that such individuals are more likely to show poor productivity at work and have higher health care costs than nonalcoholics, and are less likely than nonalcoholics to realize their long-term career potential. It would be administratively impossible to determine whether or not an employee happened to be the exception to the law of averages. Employees' rights to privacy regarding personal lifestyle should not be violated simply because statistics indicate that a certain group of employees is more likely to exhibit such tendencies than employees outside that group.[9]

[9]The notion that organizations may not discriminate against individuals based on gross averages was supported by the 1978 U.S. Supreme Court ruling in *Los Angeles Department of Water v. Manhart* (435 U.S. 702). It was found that the practice of giving fewer pension benefits to female workers than their male counterparts was discriminatory, despite the fact that women on the average live longer than men.

We recognize that, in theory, a policy banning general employment of a type of employee who exhibits negative off-the-job behavior that may not necessarily result in a short-term performance problem that can be documented ostensibly is a constraint on the employer that could violate its constitutional or other accepted rights to control his/her private property. Yet, such constraints are placed all the time in our society. The use of private property has never been absolute and unconstrained. Moreover, as we have noted, the employer's assertion of private property rights is founded on its state-supported right to incorporate. Given the roots of these private property rights in state action, in cases of conflicting rights, it is appropriate for society to place limits on employers that help balance power between the employee and the employer.

Some companies might wish to adopt a policy that regulates off-the-job behavior on the grounds that over an employee's career, individual productivity will be maximized because of the behavioral changes induced by the policy. But an employee may not achieve his or her maximum productivity for many reasons having nothing to do with the social behavior that the policy is attempting to address. While an employer should have the right to create an environment that *encourages* people to maximize their potential, the employer should not be able to *force* an employee to engage in off-the-job behaviors based on the possibility of enhancing long-term earnings potential, provided the employer is being remunerated with the daily labor power it has purchased. If, for whatever reason, an employee does not reach his or her potential, this should be reflected in the employee's career advancement, salary increases, and application of fundamental human resource policies.

In other words, if a company's human resource system is functioning properly, the long-term career effects of employee off-the-job behavior should be picked up "indirectly" through the existing performance and reward systems. Having solid basic human resource systems in place to manage core functions such as selection, performance and development, and rewards diminishes the need to attempt to address employees' behaviors in an ad hoc way via policies that regulate personal lives. While employers may prefer the ease and predictability of operating under the law of averages, we believe that such an approach risks potentially harmful intrusion into *individual* employee rights, particularly if one takes into account our discussion of the corporate form that noted that the balance of power between an *individual* employer is generally far greater than the power of the *individual* employee. Other mechanisms such as a company's performance appraisal and reward systems are the methods we believe employers should use to promote superior performance.[10] Overall, we argue that trying to improve existing systems designed for the specific purpose of motivating good performance is preferable to adopting a

[10]While it may be argued that employers *collectively* have some interest in using the law of averages, in the United States, there are relatively few decisions regarding terms and conditions of employment at the workplace that are determined by employers collectively. This is in contrast to Europe, where employer associations do negotiate with unions over minimum standards to apply to the employees of all members of the employer associations (Sisson, 1987). Employers in the United States, however, have traditionally expressed a strong preference for individual discretion of terms and conditions of employment. The locus of employer collective action seems to be in the political arena and in some collective bargaining situations.

law of averages approach or attempting to use policies regulating off-the job behavior which were not specifically designed for performance purposes and have an even more suspect performance link.

Although historically there has been a weak relationship between merit pay and performance, this is no reason to attempt to address perceived performance problems by affecting employee lifestyles. In addition, leading compensation scholars (cf. Lawler, 1990) are suggesting that there is an increasing link between pay and performance in the 1990s. In any event, if systems that specifically address employee performance cannot adequately perform this function, it is even more unlikely that attempting to influence employee lifestyles will do so.

Some might argue that there are potential increased health care costs to an employer from an employee who drinks a great deal, because the individuals might have increased health problems and benefits usage. First, it has not been unequivocally documented that health insurance rates necessarily are affected by regulating employees off-the-job habits that are presumably related to employees' health. More fundamentally, however, for employers to use the provision of a benefit to influence off-the-job behavior is simply another manifestation of the use of economic power resulting from size to affect employees' lifestyles.

In the absence of documented evidence that specifically links an individual employee's off-the-job behavior with current work performance, a second test can be applied: "Does the employee behavior that the policy attempts to regulate pose an immediate danger to or have a readily discernible impact on the safety of coworkers or customers?" This second test comes from the fact the corporation, as a societal privilege granted by the state, should ensure that its members and customers are not harmed. Legal and arbitration precedents strongly support the employer's right to regulate any behavior that endangers others and/or creates an unsafe workplace (cf. Redeker, 1983; Maakestad, 1986).

How is this framework applied to specific issues? In order to answer this question, we will apply the framework to mandatory no-smoking, drug-testing, and genetic-testing policies.

No-Smoking Policies

A national survey of major employers found that the vast majority (85%) of the companies surveyed prohibit or partially restrict smoking in the workplace (BNA, 1988; 1991). Employers might argue that they own the building, which is private property, and that they have the right to take actions to improve productivity and lessen skyrocketing health care costs.[11] Although studies have shown that smokers tend to have higher absenteeism rates, lower productivity, and have earlier mor-

[11]A federal appeals court found, for example, that an Oklahoma City firefighter could be fired from his job for smoking during a lunch break, since it violated the department's policy prohibiting smoking both on and off the job in order to promote healthier employee lifestyles (Timmins, 1987). Similarly, Chicago-based USG Interiors Corporation initiated a policy that required all employees and their spouses to quit smoking both on and off the job, or risk being fired (*Time*, 1988). Because workers handle hazardous materials that may be more likely to cause cancer in smokers than nonsmokers, USG believes it has the right to restrict smoking.

tality rates and higher health care costs than nonsmokers (Cascio, 1982; BNA, 1991), the mere fact that smokers, on average, are associated with higher rates of negative employee behaviors than nonsmokers does not mean that any individual smoker will exhibit such tendencies, as our first test maintains. Without clear criteria, the line of demarcation of employer involvement in lifestyle would constantly be moving toward greater governance as new habits are likely to be inevitably surfacing.

While our first criterion would not allow smoking policies, such policies would be permitted under the passive smoke inhalation argument, which meets the second test of endangering the safety of co-workers (cf. Munchus, 1987). Research has shown that the workplace smoker is hurting not only him- or herself, but also nonsmokers who breathe secondhand smoke (cf. *Shimp v. New Jersey Bell Telephone* Co. 1976; Vaughn, 1988; BNA, 1991).[12]

Unfortunately, the current trend appears to be to restrict smoking *off* the job as well, which would not meet our co-worker endangerment criteria. A recent survey found that nearly one out five companies give hiring preference to nonsmokers (BNA, 1991). This development provides cogent rationale for the need to have criteria such as ours. It is likely that some employers have the natural tendency to nearly always underemphasize employee rights over those of the employer.

Drug and Genetic Testing

Drug and genetic testing are two major growth areas in HR policy development. Over a fourth of all companies with over 500 employees have adopted drug-testing programs (BNA, 1989). Yet of those that have adopted programs, only a third consider testing to be effective in combating abuse (Freudenheim, 1988). Perhaps this is because these policies have been haphazardly applied in the name of creating a "drug-free workplace" without considering the tests of either the need to minimize endangerment to others or to manage individual performance problems.

Even in the case of proven drug use, employers are advised to use testing only if they can establish a clear link between off duty behavior and job performance. For example, an arbitrator recently found that the off-duty arrest and subsequent conviction for cocaine possession of an otherwise exemplary veteran employee was insufficient cause for his discharge (Amoco Oil Company and OCAW Local 4-449; FMCS 87-01506, 8/8/88). The basic deficiency in the company's argument was its failure to establish a sufficient relationship between the conviction and the grievant's performance at the refinery during the time he was terminated. Absent a showing of drug use or possession in the workplace, the conviction alone did not support the penalty of discharge (BNA Daily Labor Report, 1988).

Similarly, genetic testing, another area of medical testing, is being used to discriminate against certain employees despite the lack of productivity or health

[12]The matter of workplace smoking may no longer be left to employer discretion in the future. At least fourteen state and dozens of local governments have passed legislation to date that regulate smoking in the private workplace (Vaughn, 1988).

links. One study found 29 cases of genetic discrimination (Stipp, 1990). In one case, an applicant with a gene for a disease that causes liver enlargement was denied a government job despite the fact that the individual was not expected to get sick. In another, a new employer of a father of a two-year-old with a kidney disease would not cover the dependent, even though the disease usually does not cause problems before adulthood. These cases clearly violate the criterion that the law of averages should not be used to discriminate against individuals. Unless having a certain genetic background can be shown to endanger the lives of customers or co-workers or have a clear negative impact on an individual's ability to perform a job (such as in the case of some medical settings), the tests should be avoided.

Voluntary Programs: How Voluntary Are They?

Fitness, day care, employee assistance plans, and charitable donation policies are current examples of supposed "voluntary" programs, where use is left to employee discretion. A voluntary program is one in which use is completely optional and the employee feels no obligation to enroll. Granted, in a "socially constructed world" (Weick, 1979) nothing can be truly voluntary. However, we believe that it is the obligation of the employer to establish an employee relations system that ensures, to the extent possible, that the voluntary programs are truly voluntary. Training supervisors on how to publicize and manage these programs should communicate that use of these programs is completely optional and that nonuse should not affect employee evaluation. It is also essential to make due process mechanisms readily available for employees who feel uncomfortable social coercion to use these optional programs. While such actions cannot prevent social and political disapproval, they certainly can help minimize coercion, that is, the feeling of extreme social pressure to use such programs. To the extent that the employer does not develop such systems, it is setting itself up as a social arbiter.

Our major concern here is the impression left by a refusal to support those causes or projects or activities that the company has designated as "appropriate" and "desirable." If the programs are truly voluntary, they should be administered as such. The programs should be administered by a company unit totally separate and distinct from the employee evaluation system. The monitoring and use should not be available to the employee's supervisor or other line management. Thus, in regard to voluntary programs, our criteria would not be applicable, *unless* the programs were "voluntary" only in name and not in actual administration. There should be no perception of adverse impact on the employee who does not volunteer.

Problems in Administering Some Current Optional Policies

An area that is becoming increasingly common for employer program offerings is family and worklife. While some could argue that it is a positive development that an increasing number of employers are becoming more aware that employee's family problems can adversely affect their productivity, it is imperative that the

decision to use programs in this domain be truly optional. In the case of dependent care assistance, child-rearing and elder care are personal matters, and an employee who opts to use non-employer-sponsored options should not be viewed as being any less committed to the organization. It should be noted that employees who choose to use alternative arrangements should not expect the company to provide equal pay for such services. This approach is similar to the case of private schools, where the government allows the opportunity to use alternative education systems, but does not pay for use of these nonpublic services.

Likewise, an employee who is perceived as having personal problems, but chooses not to use the employee assistance program, should not feel coerced to do so. If an employee's performance can be documented as suffering, that should be addressed through the workplace. The employee who chooses not to address his/her problems must suffer the consequences (i.e., potential job loss, demotion, etc.) of that refusal.

Company-sponsored donation programs for community agencies also have the potential for uncomfortable intrusion. Even if one concedes that the contributions go to worthy organizations, employees may view the choice to give as entirely a private matter. Perhaps there are other charitable causes that the employee wishes to support, but feels he or she cannot because of the perceived risk to his or her on-the-job image. Fostering employee support of the charitable organizations should only be done in a way that clearly is left to the volition of individual employees.

Employee fitness and recreational programs have become increasingly common. However, if some employees do not perceive the use of such programs to be voluntary, there is the risk of employee alienation and isolation, particularly in the case of strong culture, high commitment organizations, which is a climate that many firms are trying to foster today. Employees may perceive that they could be penalized in terms of rewards or promotions if they do not participate in these extracurricular activities. Or they may feel compelled to participate in these fitness activities, because it is the "in" thing to do at the company. The risk of being viewed as not fitting in with the culture may coerce the employee to engage in activities that he or she personally does not enjoy, and consequently, over time, resentment against the employer may build to such a point that the worker either withdraws or quits. The employer may lose valuable employees for intrusion in areas that are extremely removed from individuals' on-the-job behaviors.

SUMMARY AND RESEARCH AGENDA

This article has attempted to develop a conceptual framework for analyzing employer involvement in the nonwork aspects of its employees' lives. Relying on historical perspectives from an exchange transaction economic view of the employment relationship as well as the origins and nature of the corporate form, a framework is developed to analyze the conditions under which employer involvement in personal matters may be appropriate. We argue that the employer should only attempt to influence the labor power it has purchased during on-the-job hours. The

fact that incorporation is a state privilege that enables larger size and economic power would permit the society to exercise some control over employer policy in this area.

We distinguished between mandatory employer policies that affect employees' nonwork lives, and those that are nonmandatory and presented criteria for judging the propriety of mandatory policies. The first test is that a clear productivity link based on individually documented data must be made. Secondly, care must be taken to minimize public or co-worker safety danger. Regarding nonmandatory programs, efforts must be made to communicate these programs as truly being voluntary.

Kossek (1987) notes that the human resources arena is particularly susceptible to faddishness and mimicry. There is a risk that many firms will engage in a copycat syndrome and adopt policies with high external prestige value that may be largely incongruent with their work forces' needs and may violate important principles based on ethics and the law (cf. Drake & Drake, 1988). If organizations do not have sufficient employee relations mechanisms in place that allow for diversity and dissent, such as grievance and dispute mechanisms, fundamental employee rights to hold and express personal views may be largely restricted and reasonable expectations of employee privacy may be abrogated.

An employer needs to make an effort to ensure that it balances its goal of putting in programs that foster a productive and reliable work force with its goal of developing a congruity between employee and employer interests. The employment relationship involves a psychological contract, which implies that there is an unwritten set of implicit behavioral expectations that involve self-dignity and worth and operate at all times between every employee and the organization (Schein, 1980). Every time a new socially based policy is added, new unwritten rules and expectations are also being communicated. Organizations are advised to use our criteria as a touchstone to determine whether its involvement in social issues might too far exceed the bounds of what can be reasonably expected as mandatory behavior. Our intent has not been to argue that the two worlds of work and personal lifestyle must be totally dichotomized. Some would argue that to consider employer and employee rights as mutually exclusive is counterproductive (Rosen & Schwoerer, 1990). Rather, we argue that companies should not take a laissez faire approach to the development of policies with social implications.

Future research examining the notion of the employer as social arbiter might study whether programs such as charitable contribution campaigns make selected employee groups (i.e., noncontributory) less committed to the organization. Under what conditions are such policies demotivating and when are they not? Similarly, it has been argued that drug testing programs lower employee morale and destroy trust, because they intrude upon employees' reasonable expectations of privacy (Cowan, 1987). At what point do the costs of such programs outweigh the benefits? Can an organization even put a realistic pricetag on the cost of decreased employee trust?

Additional study is needed on the perceived employee costs of *not* using an optional innovation such as company-sponsored fitness or day care centers. Do employees perceive that they will be less successful in their careers or "punished"

if they choose not to participate in these optional programs? Is there an optimal way to communicate so-called "voluntary" or "optional" programs in a manner that carefully balances the need to allow employees adequate discretion over the making of personal lifestyle decisions, yet gives the message that the company has resources available to help, if employees so desire? Greater knowledge is needed regarding the ways to most effectively communicate policies involving social issues in a fashion that minimizes the risk that employees will view these policies as an intrusion in their personal lives. Strong culture companies might need to be especially cautious in their communication of "optional" social policies. An interpretive perspective might examine the informal "messages" that employees perceive socially based policies are giving them regarding organizational values. Research on organizational ideology might examine the types of corporate missions and values and cultures that are typically associated with the adoption of specific social policies.

A final research area involves the intersection of constitutional law principles and the employment relationship. Drug testing, in particular, raises some constitutional issues. As the use of drugs is illegal, what are the obligations of the employer to local law enforcement authorities with respect to the information it receives from a drug test? If there are such obligations, is the employer infringing on the rights of the employee to be free from unreasonable searches? Is the employer, in effect, acting as a law enforcement arm of the governmental authorities by looking for illegal activities in the workplace? In sum, drug testing has resulted in the employer becoming involved in intimate details of employees' lives. If governmental coercive authority were used to obtain such information, surely it would raise constitutional concerns. Because the private employer has not been perceived as a governmental entity, constitutional law principles have generally not been applied. Yet, it is quite clear that an employer does have coercive power over an employee. (Indeed, the notion of coercion is the basis of the unfair labor practice of the National Labor Relations Act.) An employee's job may be his or her most valuable possession. Should it be adversely affected by employer behavior that might violate constitutional rights we consider important, if no performance problems have occurred on the job and no persons are endangered by the behavior? By attempting to raise questions such as these and providing an analytical framework, this article will hopefully foster further exploration on the proper interaction between social issues and the employment relationship as the scope of employer activity widens.

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REFERENCES

Arvey, R. D., & Jones, A. P. (1985). The use of discipline in organizational settings: A framework for future research. In Staw, B. M., and Clummings L. L. (Eds.) *Research in Organizational Behavior*, 367-408. Greenwich, CT: JAI.

Atchison, T. J. (1991). The employment relationship: un-tied or re-tied? *Academy of Management Executive, 5*, 52-62.

Baron, J. N., & Bielby, W. T. (1984). The organization of work in a segmented economy, *American Sociological Review, 49*, 454-473.

Baron, J. N., & Bielby, W. T. (1986). The proliferation of job titles in organizations. *Administrative Science Quarterly, 31*, 561-586.

Baron, J. N., Davis-Blake, A., & Bielby, W. T. (1986). The structure of opportunity: How promotion ladders vary within and among organizations. *Administrative Science Quarterly, 31*, 248-273.

Berg, I., & Kuhn, J. (1968). Values in a business society: *Issues and Analysis*, New York: Harcourt Brace.

Bible, J. D. & McWhirter, D. A. (1990). *Privacy in the Workplace: A Guide for Human Resource Managers*, Westport, CT.: Quorum.

Braverman, H. (1974). *Labor Monopoly and Capital.* New York: Monthly Press Review.

Braverman, H. (1988). *Bulletin to Management.* Washington, DC: Bureau of National Affairs, Vol. 39, 57.

Braverman, H. (1991, August 29). SHRM-BNA Survey No. 55: Smoking in the Workplace: 1991. *Bulletin to Management*, Vol. 42, 34. Washington, DC: Bureau of National Affairs.

Braverman, H. (1991, September 26). OSHA Focuses on Indoor Air, Secondhand Smoke. *Bulletin to Management*, Vol. 42, 38, Washington, DC: Bureau of National Affairs.

Carroll, P. B. (1991, October). IBM is said to plan tougher reviews of performance of employees in the U.S..

Cascio, W. F. (1982). *Costing Human Resources: The Financial Impact of Behavior in Organizations, 66*, Boston, MA: Kent Publishing Co.

Cascio, W. F. (1989, March 22). Court backs test of some workers to deter drug use," *New York Times*, 1.

Clawson, D. (1980). *Bureaucracy and the Labor Process.* New York: Monthly Review Press.

Craypo, C. (1984). The deindustrialization of the factory town: Plant closings and phasedowns in South Bend, Indiana, 1954-1983. in Kennedy, D. (Ed.), *Labor and reindustrialization: Workers and corporate change*, 27-68. Pennsylvania State University: Dept. of Labor Studies.

Cowan, T. R. (1987). Drugs and the workplace: To drug test or not to test? *Public Personnel Management, 16*, 313-322.

Cowan, T. R. (1988, September 2). *Daily Labor Report.* Washington, DC: Bureau of National Affairs, Vol. 171, A-1.

Decker, K. H. (1987 with 1991 supplement). *Employee Privacy: Law and Practice.* New York: West.

Donaldson, T. (1982). *Corporations and Morality*, Englewood Cliffs, NJ: Prentice-Hall.

DiMaggio, P. J., & Powell, W. W., (1983). The iron cage revisited: Institutional isomorphism and collective rationality. *American Sociological Review, 48*, 147-160.

Drake, B. H., & Drake, E. (1988). Ethical and legal aspects of managing corporate cultures. *California Management Review, Winter*, 107-123.

Edwards, R. (1979). *Contested Terrain*, New York: Basic Books.

Elliott, R. H., & Wilson, T. M. (1987). AIDS in the Workplace: Public Personnel Management and the Law. *Public Personnel Management, 16*, 209-219.

Ernst, D. R. (1992). Associate Professor of Law, Georgetown University Law Center, Washington, D.C. Personal communication.

Freudenheim, M. (1988, December, 13). Acknowledging substance abuse. *New York Times*, 34.

Gotthiel, F. M. (1966). *Marx Economic Predictions.* Evanston, IL: Northwestern University Press.

Grove, A. (1988). Mind your own business, Boss! *Wall Street Journal*, A14.

Handlin, O., & Handlin, M. F. (May, 1945). Origins of the American business corporation, *Journal of Economic History, 5*(1), 1-23.

Hoerr, J. (1988, March 28). Privacy. *Business Week*, 61-68.

Jacoby, S. (1985). *Employing Bureaucracy.* New York: Columbia University Press.

Jacoby, S. (1984). The development of internal labor markets in American manufacturing firms. In Osterman, P. (Ed.), *Internal Labor Markets*, 23-69, Cambridge, MIT Press.

Kossek, E. E. (1987). Human resources innovation. *Human Resource Management, 26*, 71-92.

Langton, J. (1984). The ecological theory of bureaucracy: The case of Josiah Wedgewood and the British Pottery Industry. *Administrative Science Quarterly, 29,* 330-354.

Lawler, Ed. (1990). *Strategic Pay,* San Francisco: Jossey Bass, 1990.

Maakestad, W. J. (1986). States attorney's stalk corporate murders. *Business and Society Review, 56,* 21-25.

Marmo, M. (1985). *Arbitration and the Off-Duty Conduct of Employees.* Washington, DC: International Personnel Management Association.

Marx, K. (1967, original publication 1887). *Capital,* Vol. 1, 231-302, New York: International Publishers.

Milkovich, G. T., & Boudreau, J. (1991). *Human Resource Management.* Homewood, IL: Irwin.

McPherson, J. M. (1988). *Battle Cry of Freedom: The Civil War Era,* 24. New York: Ballantine Books.

Munchus, G. (1987). Battle of the ban and smoking in the workplace: A human resource policy analysis. In Osigweh, Yg, C. A. B. (Ed.), *Communicating Employee Responsibilities and Rights: A Modern Management Mandate,* 97-111. Westport, CT: Quorum.

O'Reilly, C.A., & Weitz, B. A. (1980). Managing marginal employees: he use of warnings and dismissals. *Administrative Science Quarterly, 25,* 467-484.

Osigweh, C. A. B. (1991). Toward an employee responsibilities and rights paradigm. *Human Relations, 43,* 1277-1309.

Redeker, J. R. (1983). *Discipline: Policies and Procedures.* Washington, DC: Bureau of National Affairs.

Reibstein, L. (1988, March 24). Firms find it tougher to dismiss employees for off-duty conduct. *Wall Street Journal,* B1.

Rodgers, D. T. (1978). *Work Ethic in Industrial America: 1850-1920.* Chicago: University of Chicago Press.

Rosen, B. & Schwoerer, C. (1990). Balanced protection policies. *HR Magazine, February,* 59-64.

Rosen, T. H. (1987). Identification of substance abusers in the workplace. *Public Personnel Management, 16,* 197-207.

Schein, E. H. (1980). *Organizational Psychology.* Third edition. Englewood Cliffs, NJ: Prentice Hall.

Shepard, M., Duston, R., & Russell, K. (1989). *Bureau of National Affairs Report on Employee Rights to Privacy.* Washington, DC: Bureau of National Affairs.

Shimp v. New Jersey Bell Telephone Company, 145 N. J. Super. 516, 368, A.2d 408 (N.J. Super. Ct. Ch. Div. 1976).

Sisson, K. (1987). *The Management of Collective Bargaining: An International Comparison.* Oxford: Basil Blackwell.

Smelser, N. J. (1972). Structural changes associated with development. In Shepard, J. (ed.), *Organizational Issues in Industrial Society.,* Englewood Cliffs, NJ: Prentice Hall.

Smith, A. (1963, original publication 1776). *An Inquiry into the Nature and Causes of the Wealth of Nations.* Homewood IL: Irwin.

Smith, A. (1988, April 18). Smoke Gets in Your Rights. *Time,* 72-73.

Steinhilber, A. (1988). Aids and Employment: Legal and Policy Considerations. *Federal Bar News and Journal, 35,* 377-380.

Stieber, J. (1983). Employment-at-will: An issue for the 1980's. In Dennis, B. (Ed.) *Proceedings of the 36th Annual Meeting of the Industrial Relations Research Association,* 1-13, Madison, WI: Industrial Relations Research Association.

Stipp, D. (1990, July, 7). Genetic testing may mark some people as undesirable to employers, insurers. *Wall Street Journal,* B1-B5.

Templin, N. (1990, May 5). Johnson and Johnson "wellness" program for workers shows healthy bottom line. *Wall Street Journal,* B1-B3.

Timmins, W. M. (1987). Smoking versus nonsmoking at work: A survey of public agency policy and practice. *Public Personnel Management, 16,* 221-234.

Thompson, E. P. (1963). *The Making of the English Working Class,* 350-400. New York: Vintage Books.

Vaughn, D. H. (1988). Smoking in the Workplace: A Management perspective. *Employee Relations Law Journal, 14,* 359-386.

Walker, J. (1992). *Human Resource Strategy.* New York: McGraw-Hill.

Walker, J. (1989, August 9). Workplace drug testing: Evolving law and employer practice. *Labor Relations Week.* Bureau of National Affairs, *3,* 1.

Weick, K. (1979). *The Social Psychology of Organizing.* Reading, MA: Addison-Wesley.