



---

# MEMORANDUM

---

Date: July 25, 2014

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator *CHH*

Re: **Nicotine-Free Workforce Initiative**

As part of Pima County's ongoing commitment to employee wellness, increased productivity and decreased medical costs, I am proposing that the County expand upon its tobacco-free environment initiative that became effective January 1, 2013, by taking the next logical and proactive step of introducing a tobacco/nicotine-free hiring initiative. Additionally, I am proposing a measurable test for nicotine use for all current employees participating in future tobacco-free medical premium discounts and enactment of a surcharge to all tobacco/nicotine users covered by the County's medical plan. This proposal is based on years of research regarding the negative effects of tobacco and nicotine on the health of individuals and the staggering costs to employers providing health coverage.

#### Cost-Savings and Public Accountability

Numerous studies have demonstrated that employees who use tobacco/nicotine products have a greater negative impact on healthcare costs than employees who abstain from tobacco/nicotine use. The Centers for Disease Control (CDC) estimates that each employee who smokes costs his/her employer approximately \$3,400/year in lost productivity and medical expenses. Based on the 2014-2015 online Health Risk Assessment offered through Aetna, 32 percent of County employees use tobacco/nicotine products.

Because Pima County is self-insured, increases in healthcare costs have a direct negative impact on the financial viability of the self-insurance fund. Tobacco/nicotine-free hiring initiative promotes a healthier workforce and greater accountability to the taxpayers who ultimately pay for County employees' medical care.

#### Legality

Fifty years have passed since the 1964 Surgeon General's report on smoking and health which concluded that "Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."

The Honorable Chair and Members, Pima County Board of Supervisors

Re: **Nicotine-Free Workforce Initiative**

July 25, 2014

Page 2

Federal law specifies that employers aren't allowed to refuse to hire someone based on age, race, disability, gender and other protected classes. A Federal Appeals Court ruled in 1987 that smokers are not a protected class entitled to special legal protections and that courts need no further rationale than the Surgeon General's warning on cigarette cartons: Cigarette smoking is hazardous to your health.

There are approximately 21 states that do not protect the rights of tobacco/nicotine users; of which Arizona is one. Therefore, in Arizona, individuals who choose to smoke or use nicotine products are not in a protected class.

#### Facts and Figures

- 50 years after the 1964 Surgeon General's report first confirmed the link between smoking and lung cancer, tobacco is still the single most preventable cause of disease, disability and death in the United States. (CDC)
- Smoking harms virtually every organ in the body, causing multiple cancers, chronic respiratory diseases and numerous other ailments.
- Cigarette smoking kills more than 480,000 Americans each year, with more than 41,000 of these deaths from exposure to secondhand smoke. (CDC)
- Smokers cost American employers nearly \$200 billion each year between increased medical costs and lost productivity. (CDC)
- Total economic costs attributable to smoking and exposure to secondhand smoke now approach \$300 billion annually. (CDC)
- It's estimated that smokers take an average of four 15-minute breaks a day beyond what employers already offer and also use a greater number of sick days.

#### External Applicants

Tobacco/nicotine-free hiring practices have become a commonplace in the healthcare industry over the past several years and have been gaining momentum in the public sector as well. My proposal is that, effective January 1, 2015; the County only considers employing those external applicants who sign a Tobacco/Nicotine-Free Affidavit indicating they have been tobacco/nicotine-free for the 12 months preceding the date of application and pass a post-offer/pre-employment Cotinine test to screen for nicotine use.

The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **Nicotine-Free Workforce Initiative**  
July 25, 2014  
Page 3

Cotinine is a byproduct of nicotine and can be detected through blood, urine or saliva testing. It is used to screen for both tobacco and nicotine products including cigars, cigarettes, electronic cigarettes, and other products that contain tobacco or nicotine. Use of Nicotine Replacement Therapies (NTR), including gum, lozenges or the patch will result in a failed Cotinine test.

#### Screening Parameters

Additionally, no external applicant will be hired unless the County first receives a passing Cotinine test result. Applicants who fail the test will, upon request, have the option to re-test within 24 hours of the initial screening. Also, external applicants who fail the Cotinine test will be ineligible to compete for positions within Pima County for the 12 months following the failed screening result.

In order to ensure the ongoing health and wellbeing of the Pima County workforce, I further propose that the County require, as a term of employment, ongoing Cotinine testing as part of our Employee Wellness program to verify that employees hired on or after January 1, 2015, remain nicotine/tobacco-free throughout their careers with the County. For employees hired before January 1, 2015, who are interested in leading tobacco-free lifestyles, our Employee Wellness program will continue to assist them with finding tobacco-cessation programs.

#### Tobacco/Nicotine Surcharge and Discounts

Internal applicants will not be affected by the nicotine-free hiring policy. However, beginning in Fiscal Year 2015/16, employees who certify they are tobacco/nicotine free will be subject to a Cotinine test in order to receive the tobacco/nicotine-free discount on their medical premiums. Employees, who do not certify they are tobacco/nicotine-free, or refuse or fail the Cotinine test, will be subject to a 30 percent premium surcharge after July 1, 2015. The surcharge will be increased by 10 percent each fiscal year until a maximum 50 percent surcharge is reached. This aligns with the current Affordable Care Act (ACA) guidelines. Employees will be offered a reasonable alternative to the surcharge if they successfully complete a designated tobacco-cessation program offered through the Employee Wellness program and pass the Cotinine test.

Employees may re-test after 6 months and if they are tobacco/nicotine-free and pass the Cotinine test, they will no longer be subject to the surcharge and will be eligible to receive the tobacco/nicotine-free discount for the remainder of the plan year. Employees who pass the Cotinine test will be re-tested every three years and will be eligible for tobacco/nicotine premium discounts offered within that time frame. The Human Resources Director may require additional testing if deemed necessary.

The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **Nicotine-Free Workforce Initiative**  
July 25, 2014  
Page 4

Employee Wellness will continue to provide resources for employees to quit tobacco/nicotine use. The County medical plan will offer coverage for Nicotine Replacement Therapy (NRT) prescription products to aid in the cessation process. These benefits will comply with the ACA preventive services requirements.

Administrative Procedure 3-4 will continue to apply to current employees. This prohibits the use of tobacco and non-therapy nicotine products at all County facilities, work sites, public buildings, and adjacent properties and in all County vehicles.

### Process

Staff has been directed to modify Merit System Rules (MSRs) and Personnel Policies (PPs) to reflect changes necessary to move forward with the County's tobacco/nicotine-free workforce initiative. The proposed changes to MSRs and PPs will be circulated to Appointing Authorities, legal counsel, employee groups (to include HIBWAC and SEIU) and the Merit System Commission/Law Enforcement Merit System Council (MSRs only) followed by a two-week response period. At the end of the response period, appropriate modifications will be incorporated and all changes to MSRs will be presented to the Merit System Commission/Law Enforcement Merit System Council (MSC/LEMSC) for review. Upon MSC/LEMSC review and acceptance of MSR revisions, I anticipate submitting the proposed MSR and PP changes to the Board by late September, recommending and requesting your final adoption.

Based on the abundance of statistical information on the health benefits and cost savings of striving for a tobacco/nicotine-free County workforce, I will be requesting your endorsement of this initiative as we begin the process of creating and updating directives. Although there may be some controversy initially, as there was with the tobacco-free environment initiative two years ago, I am confident it will be short-lived and that the County and tax-payers will be better for having made this transition.

CHH/dr

c: Allyn Bulzomi, Director, Human Resources Department