

# Nonsmoking and Nonobesity Hiring Policies and Practices: A Comparative Analysis

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## Abstract

**Background:** There is a dearth of literature related to nonobesity-only hiring policies. Addressing this significant gap in our knowledge base would enable a better understanding of the consequences of implementing nonobesity-only hiring policies. **Methods:** This paper analyzed both nonobesity-only and nonsmoking-only hiring policies according to ten criteria. The ten criteria selected were based on earlier literature reviews and frameworks for analyzing nonsmoking hiring policies and practices. **Findings:** The similarities between nonsmoking-only and nonobesity-only hiring policies were in the prevalence and incidence of smoking and obesity, exacerbating social inequalities, privacy and discrimination, addictive properties, increasing healthcare costs and insurance premiums, and loss of productivity. The differences between the two were in hiring policy documentation, legal protection, promoting a healthy institutional image, and health consequences in the workforce. **Conclusions:** The most dramatic difference was that second-hand and third-hand smoke have harmful effects on nonsmoking employees (whereas obesity has no such effect on others) and that legal protection is lacking for individuals who are obese (whereas some legal protection does exist for smokers). As organizations consider implementing restrictive hiring policies and practices, considering the ten criteria offered in this paper can inform the decision-making process.

**Keywords:** employee health, health promotion, hiring policy, personal autonomy, public health, workplace practice

## 1. Introduction

Before a hiring policy can be developed and implemented, analyses of legal, ethical, psychological, and health consequences are critical. A review of the literature related to nonobesity-only hiring policies identified only two publications. One study provided an update of laws related to employment-based discrimination of people with obesity and recommended the implementation of a “Weight Discrimination in Employment Act” modeled after the Age Discrimination in Employment Act (Pomeranz & Puhl, 2013). The second study assessed the extent to which weight-based bias involves illegal discrimination and presented practical implications for employers and policy makers. This article integrated a review of the empirical research (the literature included psychology, law, sociology, economics) with a traditional legal analysis (Roehling, 1999). Although earlier research did focus on legal frameworks and analyses, no study has implemented a multifaceted approach that integrates legal analysis with a synthesis of psychological, health, workplace culture, and ethical dimensions. The absence of this information represents a gap in our knowledge base that undermines and diminishes both policy making and decision making.

Therefore, to address this deficit in the literature, a multifaceted study was conducted to investigate the advantages, disadvantages, and adverse consequences of nonobesity hiring policies from legal, ethical, psychological, and health perspectives. The results of this comprehensive, integrated analysis provide helpful information to business owners, managers, human resources personnel, and industrial/organizational psychologists making decisions about whether to adopt a nonobesity-only hiring policy.

## 2. Methods

The extensive literature about nonsmoking-only hiring policies has identified various criteria for evaluating hiring policies more generally. These criteria are instructive and useful and can be applied to nonobesity-only

hiring policies. Two earlier publications, by Patel and Schmidt (2017) and Taylor and Winslade (2022), presented literature reviews and consolidated frameworks for analyzing hiring policies. For the present paper, ten criteria were selected by combining, integrating, and synthesizing these studies' frameworks for analyzing nonsmoking-only hiring policies. The ten criteria include Hiring-Policy Documentation, Legal Protection, Prevalence and Incidence of Smoking and Obesity, Exacerbating Social Inequalities, Privacy and Discrimination, Addictive Properties, Healthcare Costs/Insurance Premiums, Productivity, Promoting a Healthy Image of the Institution, and Health Consequences in the Workforce.

To further develop and enhance the analyses of nonsmoking policies, a comparative analysis based on the ten criteria was conducted. The rationale for this comparison is that many reports about the ethics of nonsmoking-only hiring policies have been published, and perspectives both for and against nonsmoking-only hiring policies have been enthusiastically and vigorously debated (Voigt, 2012; Asch et al., 2013; Schmidt et al., 2013; Huddle et al., 2014; Jones et al., 2014; Patel & Schmidt, 2017; McDaniel & Malone, 2018; Taylor & Winslade, 2022). From a public health perspective, people who smoke and people who are affected by obesity face similar adverse health consequences related to overall life expectancy, healthy life expectancy, years of life lost due to premature mortality, years lived with disability, disability-adjusted life-years, global burden of disease, and mortality (Flegal et al., 2013; Mokdad et al. 2018). Even though the disease burden is comparable, there is a dearth of literature and debate about the ethics of nonobesity-only hiring policies (Campos-Vazquez & Gonzalez. 2020). When based on the same criteria, a comparison of nonobesity-only and nonsmoking-only hiring policies provides a reference perspective and standard comparison.

### 2.1 Weight Status Measurement and Categories

Standard measures of body fat, weight status, and obesity are foundational for establishing a mutual understanding of what is considered unhealthy weight. Direct measures of body fat include skinfold thickness measurements, bioelectrical impedance, densitometry (underwater weighing), and dual energy x-ray absorptiometry (Garrow & Webster, 1985; Freedman et al., 2013; Wohlfahrt-Veje et al., 2014). These measures are appropriate when assessing a limited number of individuals or elite athletes requiring gold-standard measures. However, these measures require special equipment and trained technicians, and they can be expensive.

A population assessment of overweight and obesity that is inexpensive and easy to implement is the body mass index (BMI), which requires only height and weight. Body mass index is calculated as weight in kilograms divided by height in meters squared ( $\text{weight (kg)} / [\text{height (m)}]^2$ ). The BMI is widely used by clinicians, healthcare providers, and the general population as a screening tool for body fatness. Like the direct measures of body fatness, BMI is strongly correlated with various metabolic and disease outcomes (Steinberger et al., 2005; Willett et al., 2006; Flegal & Graubard, 2009; Freedman et al., 2009; Lawlor et al., 2010; Sun et al., 2010). The US Centers for Disease Control and Prevention has established four BMI weight categories, including underweight, healthy weight, overweight, and obesity (Centers for Disease Control and Prevention, 2022). For adults 20 years old and older, BMI is interpreted using these standard weight status categories, which are the same for both men and women, regardless of body type. As an example, the standard weight status categories associated with BMI ranges for a 5' 9" tall adult are shown in Table 1.

Table 1. Body Mass Index (BMI) and Corresponding Weight Status Categories for a 5' 9" Tall Adult

Weight Range	BMI	Weight Status
124 lbs or less	Below 18.5	Underweight
125 lbs to 168 lbs	18.5 to 24.9	Healthy weight
169 lbs to 202 lbs	25.0 to 29.9	Overweight
203 lbs or more	30 or higher	Obesity

### 2.2 Language Considerations

To counter weight-related bias, stigma, and discrimination, person-first language is used throughout this report. Terms such as "people with obesity," "person has obesity," and "people affected by obesity" are preferable to, for example, "the patient was obese," as the latter construct infers that people are nothing more than their condition, stigmatizes them, dehumanizes them, and diminishes their worth (Obesity Action Coalition, 2022).

### 3. Results: Comparison of Nonsmoking-Only and Nonobesity-Only Hiring Policies

#### 3.1 Hiring-Policy Documentation

Nonsmoking-only hiring policies have a long history of documentation and implementation. In 1985, Alaska Airlines implemented one of the first policies not to hire smokers. Since then, many health care institutions and companies from a variety of industries have documented, publicized, and implemented nonsmoking-only hiring policies (Taylor & Winslade, 2022). On February 1, 2020, U-Haul, the premier moving and storage rental company, announced that it would no longer hire smokers in 21 states (Taylor & Winslade, 2022). No national list of organizations with nonsmoking-only hiring policies is available (McDaniel & Malone, 2018).

Nonsmoking-only hiring policies are written, explicit, documented, and officially announced. Smoking is prohibited indoors at any time: Even if employees work late, after usual working hours, they are nonetheless obliged to adhere to the nonsmoking policy.

In contrast, few businesses and companies have documented or written nonobesity-only hiring policies. A notable exception is US active-duty enlistment, which has instituted percent body fat (PBF) standards for military recruits. The standards differ by sex and age; however, in general, the unacceptable standards are PBF >25% for men and PBF >30% for women. Researchers have documented that the rise in obesity in the United States presents challenges for military recruitment (Cawley & Maclean, 2012). Another exception was a hospital in Victoria, Texas that established a policy stipulating that job applicants whose BMI exceeded 35 (245 pounds for someone who is 5' 10" tall) would not be hired (Ramshaw, 2012). The hospital reversed its decision after a major backlash and negative publicity.

It is well known that there are personal biases related to anti-fat prejudice and obesity discrimination (O'Brien et al., 2013; Roehling, 1999). Social media has documented many incidents. As an example, an Oregon church banned "excessive weight" among worship team members. The church admonished members, "No excessive weight. Weight is something that many people have to deal with. Make sure that you are taking care of your temple, exercising, and eating properly" (Blair, 2016). The Netflix program "Love Is Blind" is regarded as "fatphobic" because, in contrast to its stated purpose of casting "people with different body types in its 'social experiment' to make people fall in love without seeing each other" (Schroeder, 2020), the program instead was filled with conventionally attractive people. Consequently, not having any plus-size people as part of the experiment undercuts the premise of the show (Schroeder, 2020). These examples (and social media) notwithstanding, most companies or organizations do not explicitly acknowledge a nonobesity-only hiring policy.

Lawyers advise that hiring policies should avoid addressing weight unless the company can show how it relates to workplace safety and an individual's ability to do a job (eg, military personnel, police officers, firefighters). As a result, nonobesity-only hiring policies are typically concealed, disguised, hidden, and/or capricious. More often than not, such "policies" operate with implicit approval of management (eg, Hooters restaurants). Although there are crucial differences between explicit and implicit hiring practices, both types of practice can adversely affect job applicants.

For the Hiring-Practices Documentation criterion, there is a clear difference between nonsmoking-only and nonobesity-only hiring policies. As described in the following section, obesity is not considered a disability or an immutable characteristic under US anti-discrimination laws. Having greater clarity in nonsmoking-only hiring practices documentation is therefore likely to persist.

#### 3.2 Legal Protection

Twenty-one states permit employers to deny employment based on smoking status (Olsen, 2014; Patel & Schmidt, 2017). On the other hand, 29 states and Washington, DC prohibit discrimination of legal activities (Table 2). Because smoking is a legal activity in the United States, it is therefore illegal for an employer not to hire an applicant who smokes in these 29 states and Washington, DC.

Table 2. States (Including Washington, DC) with Laws that Protect Smokers (Enacted from 1989 to 1992)

California	Colorado	Connecticut
Washington, DC	Illinois	Indiana
Kentucky	Louisiana	Maine
Minnesota	Mississippi	Missouri
Montana	Nevada	New Hampshire
New Jersey	New Mexico	New York
North Carolina	North Dakota	Oklahoma
Oregon	Rhode Island	South Carolina
South Dakota	Tennessee	Virginia
West Virginia	Wisconsin	Wyoming

Obesity is not a protected class under federal statute. Under the Americans with Disabilities Act, as currently litigated, obesity does not meet the standard of a disabling impairment, defined as a physiological condition that affects one or more of the basic bodily systems and limits a major life activity (Pomeranz & Puhl, 2013; Leonard, 2019). However, state disability discrimination law can offer broader coverage than the federal Americans with Disabilities Act does: Because of a lawsuit, on July 11, 2019, the Washington State Supreme Court held that obesity is a protected class under state anti-discrimination law (Burnham, 2019). Consequently, it is illegal for employers in Washington state to refuse to hire qualified potential employees because of obesity (based on the perception of the employer) (Burnham, 2019). In 1976, Michigan passed a law that forbids discrimination based on age and height (Martin, 2017). In addition, five US cities—Urbana, IL; Madison, WI; Santa Cruz, CA; San Francisco, CA; and Binghamton, NY—as well as Washington, DC have enacted similar laws to prevent weight discrimination (Elser, 2012).

One possible reason that people affected by obesity do not constitute a legally protected class except in very few jurisdictions is because obesity is not considered an immutable characteristic under American anti-discrimination laws. As noted by a member of the board of directors of an Obesity Action Coalition, "...it's not often a written policy, because those ideas about what size a person can be, opens up employers to gender-based discrimination" (Leonard, 2019, p. 2).

For the Legal Protection criterion, there is a difference in favor of people who smoke compared with people affected by obesity.

### 3.3 Prevalence and Incidence of Smoking and Obesity

In the United States, cigarette smoking is the leading cause of preventable disease and death, accounting for more 480,000 deaths every year, or about 1 in 5 deaths. Over the past 5 decades, smoking rates have declined dramatically; still, smoking remains the leading cause of premature disease and death in the United States (McCarthy, 2014).

In 2017–2018, the age-adjusted prevalence of obesity in adults was 42.4%. From 1999–2000 through 2017–2018, the prevalence of both obesity and severe obesity increased among adults. Obesity in adults was defined as a BMI  $\geq 30$ , and severe obesity was defined as a BMI  $\geq 40$  (Hales et al., 2020).

Estimating the deaths attributable to obesity with accuracy and precision is a complex endeavor. The following quotation illustrates this challenge: "Exclusions by baseline health status, smoking, age, or other factors may make relative risks derived from epidemiological cohorts inappropriate for the entire population. Because most deaths occur among older adults, estimates of the number of deaths attributable to obesity are sensitive to estimates of relative risk among the elderly" (Flegal et al., 2004, p. 1489). Nonetheless, with appropriate caveats and cautions (imprecision acknowledged), the available data are consistent and compelling. It has been estimated that obesity is second only to smoking as a preventable cause of death (Flegal et al., 2004). In terms of attributable disability-adjusted life-years, across all US states, the top three health risk factors were tobacco consumption (32 states), high BMI (10 states), and alcohol and drug use (8 states) (Mokdad et al., 2018). Compared with normal, healthy weight (BMI of 18.5 to  $<25$ ), obesity (all levels) was associated with significantly higher all-cause mortality (Flegal et al., 2013). Overweight and obesity were associated with 1 in 5 deaths (18.2%) among adults in the United States (Laidman, 2013; Masters et al., 2013).

With respect to the Prevalence and Incidence criterion, both smoking and obesity are similar, accounting for 1 in 5 deaths. The difference is that smoking rates are declining, whereas obesity rates are increasing.

### *3.4 Exacerbating Social Inequalities*

Since the death of George Floyd on May 25, 2020, organizations have embraced the principles and values of diversity, equity, inclusion, and belonging (Peek et al., 2021; Wyatt, 2021; Cornish et al., 2021). In the workplace, this perspective focuses on hiring, retaining, and promoting people of color, along with fairness and justice. Researchers have claimed that restrictive hiring policies for people who smoke have disproportionate and adverse impacts on people with lower incomes and underrepresented racial and ethnic groups, because these groups have higher rates of smoking (Voigt, 2012; Schmidt et al., 2013). Thus, these policies exacerbate disparities because these groups are more vulnerable to unemployment and job insecurity (Voigt, 2012; Schmidt et al., 2013).

In contrast, other researchers contend that restrictive hiring policies for people who smoke reinforce a desirable societal and cultural norm that will increase the cessation rates among groups most at risk for smoking and disadvantage; therefore, this norm reduces disparities (Asch et al., 2013).

A similar argument can be made for people affected with obesity. Underrepresented racial and ethnic groups can be adversely and disproportionately affected by nonobesity policies. Black and indigenous people have higher rates of obesity (Krueger & Reither, 2015). With respect to racial justice perspectives, people who have low incomes and live in poverty, irrespective of race and ethnicity, are significantly more likely to have an overweight or obese classification (Krueger & Reither, 2015). Even though it has been noted that nonsmoking hiring policies and norms may motivate people to quit smoking, the same claim cannot necessarily be made for people with obesity, because maintaining weight loss is more difficult.

The outcomes for the Exacerbating Social Inequalities criterion seem to be similar and different for nonsmoking and nonobesity hiring policies. As decision makers, administrators, and committees grapple with whether to adopt restrictive hiring policies for people who smoke and people with obesity, the principles and values of diversity, equity, inclusion, and belonging can be a guiding framework for determining which data are most compelling in supporting these principles. Nonetheless, the choices can be complex and problematic.

### *3.5 Privacy and Discrimination*

It has been argued that nonsmoking and nonobesity hiring policies violate individual liberties and are an invasion of personal privacy against people who smoke and people with obesity, respectively, particularly in a democratic society. This line of thinking holds that individuals should have the freedom to pursue any activities outside of work that do not jeopardize their workplace productivity. Individuals have the right to live their own lives, and employers should not regulate a person's lifestyle; such regulation is discrimination against legal off-duty behavior. Therefore, nonsmoking and nonobesity hiring bans violate personal liberties and are discriminatory. Smoking, physical activity patterns, and eating behaviors represent self-expression, free choice, and perhaps even personal identity. As stated by Pearson and Lieber (2009), "Holding employees responsible for the costs of any behavior that increases health care costs would undermine the liberty of choosing for oneself how to live one's life" (p. 849).

For the Privacy and Discrimination criterion, there is a similarity between the policies; restrictive hiring policies can be viewed as discrimination and invasion of privacy against people who smoke and people with obesity.

### *3.6 Addictive Properties*

It is well documented and indisputable that nicotine in cigarettes is addictive (Prochaska & Benowitz, 2019). Nicotine activates the brain's reward pathways, increases levels of the brain chemical dopamine, a neurotransmitter, and results in a feeling of pleasure from smoking. Like other addictions, smoking is difficult to discontinue despite social pressures and health problems (Prochaska & Benowitz, 2019).

Similarly, researchers have advocated that there is a processed-food addiction that contributes to obesity. Ifland et al. (2009, 2012, 2015, 2017) document that processed-food cravings meet the standard criteria of addiction and that understanding addictions to processed foods opens the door to recovery from stubborn diet-related diseases, including obesity. Fundamentally, the argument is that obesity is not a choice and that two-thirds of the adult population have not "chosen" to live with unhealthy weight or obesity; it is a product of living in the modern world. Addiction to processed foods is an emerging area of research, whereas nicotine addiction research is well-developed, established, and accepted.

The conclusion related to the Addictive Properties criterion is that smoking and obesity are similar in that health-compromising behaviors represent diminished choice.

### *3.7 Healthcare Costs/Insurance Premiums*

Berman et al. (2014) reported that the annual excess cost to employ a smoker is \$5,816 (including excess health costs per smoking employee per year, absenteeism, unproductive work hours, and smoking breaks) compared with a nonsmoker (Berman et al. 2014). Comparing employees who smoke and employees with obesity, the study found that employees with obesity may be more costly to employers than employees who smoke (both in lost productivity and in health care spending), with each accounting for annual extra health care spending of more than \$1,000 per employee (Berman et al., 2014).

Even though a wealth of data shows clear association between nonsmoking policies and healthcare cost savings (Taylor & Winslade, 2022), limited data are available for comparing people who smoke versus people with obesity in terms of healthcare costs. However, the limited data are compelling in that hiring a person who smokes or has obesity incurs greater healthcare costs to the employer than hiring nonsmokers and people without obesity.

For the Healthcare Costs and Insurance Premiums criterion, people who smoke or have obesity are similar in creating excess healthcare costs for organizations and employers.

### *3.8 Loss of Productivity*

One study classified overall work impairment according to two measures: absenteeism (work time missed) and presenteeism (impairment while at work). The presenteeism costs and absenteeism costs were then added to calculate indirect costs. Overall work impairment was significantly greater for current smokers than for never smokers and former smokers, in terms of presenteeism costs and indirect costs; however, there were no significant differences across groups for absenteeism (Suwa et al., 2017).

Another study examined BMI and work productivity within 12 occupational groups. As noted by the authors, “excess weight may be associated with differing degrees of burden depending on profession and job responsibilities” (Kudel et al., 2014, p. 7). Overall work impairment was measured by combining absenteeism and presenteeism (the self-reported level of impairment while at work). Indirect costs were calculated for each employee by using median weekly income figures. The outcomes were work productivity and indirect costs of missed work time (Kudel et al., 2014).

The findings were that for all 12 occupational groups, there was a significant difference in overall work productivity impairment between healthy/normal BMI and at least one obesity class. Obesity had the greatest negative impact on work productivity in the group categorized as Construction/Installation/Maintenance/Repair/Agriculture (eg, installation, maintenance, and repair occupations, building and grounds cleaning and maintenance occupations, construction and extraction occupations, and farming, fishing, and forestry occupations). The Legal occupational category had the lowest level of work impairment. These results suggest that occupations with more physically demanding work are more severely affected by obesity, compared with more sedentary occupations. Overall, obesity imposed a significant health and economic burden, although the negative impacts differed by occupation (Kudel et al., 2014).

The most appropriate comparison would be to use the same dataset for people who smoke and people with obesity. In the absence of such an analysis, for the Loss of Productivity criterion, smoking and obesity are evaluated as similar.

### *3.9 Promoting an Institution’s “Healthy” Image*

Maintaining an image as a healthy place to work is desirable. Objective measures of “healthiness” may not be available, such that subjective “appearances” may be the only indicator. Nevertheless, employees who smoke can be clever in disguising their habit. For example, people who smoke can surreptitiously take smoke breaks, hide cigarettes, wash cigarette stains from fingers, and be vigilant about smells in clothing, etc. On the other hand, apart from wearing oversized outfits and clothing, people with obesity find it more difficult to easily camouflage their size. It is acknowledged that people who smoke heavily do have obvious signs; they may have stained teeth and fingers and will smell like smoke (if they smoked recently). Nonetheless, it is arguably true that an oversized body frame is harder to conceal.

In terms of visibility, people with obesity hinder an organizational image to a greater extent than people who are successful in hiding their smoking status. For the Promoting an Institution’s Healthy Image criterion, there is a difference between people with obesity and people who smoke, in favor of those who smoke.

### *3.10 Health Consequences in the Workforce*

One approach to ethical decision making is consequences-based ethics: the utilitarian approach. Consequentialism emphasizes ends, purposes, and goals. More specifically, consequentialism's fundamental underpinnings, premise, and justifications are that an action is right or wrong depending on its consequences. The preferred choice produces the greatest good for the greatest number—a practical and utilitarian approach (Svara, 2022). The advantages of this approach are a commitment to producing positive outcomes, outcomes that are ethically acceptable, and flexibility for responding to changing circumstances and situations (Svara, 2022). For hiring decisions related to people who smoke or those with obesity, the consequential approach (ie, harm to others) may be the most relevant and pertinent. From this utilitarian framework, there are clear differences related to having people who smoke versus people with obesity in the workforce.

In a study of 2,589 nurses in 34 hospitals, the relationship between nurses' smoking status and work breaks was examined (Sarna et al., 2009). Nonsmokers were twice as likely to miss their breaks than were people who smoke. These inequities in breaks cause dissension in the workplace and negatively affect patients; therefore, having people who smoke in the workforce can result in work break inequities (Sarna et al., 2009). There are no known comparable data for people with obesity and inequities in work breaks.

Also of concern are the adverse health consequences of second-hand and third-hand smoke in the nonsmoking workforce; nonsmokers have rights to breathe nonpolluted air. Exposure to smoke from someone who smokes, particularly indoors, is considered second-hand smoke and is an established health hazard (Prokhorov et al., 2016). Research has documented that a complex mixture of chemicals is abundantly present, most notably in households with individuals who smoke indoors, and can contribute to respiratory diseases in nonsmokers and children (Prokhorov et al., 2016). Even after second-hand smoke has cleared, environmental pollutants settle onto every surface, including inside the car, home, clothing, hotel curtains, worksites, and even loose household dust. Third-hand smoke is defined as "the tobacco smoke contamination that remains after the cigarette has been extinguished" (Prokhorov et al., 2016, p. 199). Data are being collected on the deleterious effects of third-hand smoke on exposed individuals (Prokhorov et al. 2016).

When nonsmoking-only hiring policies were first adopted, the agenda may have been to achieve smoke-free workplaces (thus mitigating the effects of second-hand smoke). However, third-hand smoke is still a concern, even if employees were to smoke outside on their breaks, because the smoke would cling to their clothes. Moreover, some businesses and companies have designated indoor smoking areas. In fact, the US Congress recently rescinded a previous policy in favor of a new one (2023) permitting smoking in congressional office spaces (smoking on the floor of the Congress is still prohibited).

There are no comparable reports of concomitant adverse health effects on the environment from people with obesity, nor is there known documentation of health hazards from people with obesity in the workplace, as there is for second-hand and third-hand smoke. The conclusion is that not hiring those who smoke achieves the greatest good for the greatest number of people because of the deleterious effects of smoking on nonsmokers. This distinction reflects a stark contrast in harm to others for policies that restrict people who smoke compared with people with obesity.

Overall, in terms of the Health Consequences in the Workforce criterion, there is a clear difference between nonsmoking and nonobesity hiring policies in favor of people with obesity.

Table 3. Nonsmoking-Only versus Nonobesity-Only Hiring Policies and Practices: Similarities and Differences

Criteria	People who smoke	People with obesity	Comparison
Hiring policy documentation	Explicit: clear, visible, written	Not explicit: covert, hidden, undercover, camouflaged, capricious	Different
Legal protection	Yes: 29 states and Washington, DC have nondiscrimination policies for smokers	None; weight status is not a protected class	Different
Prevalence and incidence of smoking versus obesity	Smoking rates plateaued/decreasing; 1 in 5 affected by smoking	Obesity rates increasing; 1 in 5 affected by obesity	Similar and different
Exacerbating social inequities	Vulnerable to unemployment and job insecurity; anti-smoking norms may spur quitting	Vulnerable to unemployment and job insecurity; maintaining weight loss is difficult	Similar and different
Privacy and discrimination	Violate self-expression and free choice of legal off-duty behavior	Violate self-expression and free choice of legal off-duty behavior	Similar
Addictive properties	Nicotine addiction	Processed-food addiction	Similar
Healthcare costs/insurance premiums	Increase for smokers	Increase for people with obesity	Similar
Loss of productivity	Decreases (absenteeism and presenteeism)	Decreases (absenteeism and presenteeism)	Similar
Promoting a healthy image of the institution	Can be hidden during work hours, concerted effort to avoid detection	Visible and obvious (difficult to camouflage)	Different
Health consequences in the workforce	Adverse health consequences: second-hand and third-hand smoke and break inequities	No comparable second-hand and third-hand smoke or break inequities	Different

#### 4. Discussion

Obesity is a complex, chronic disease. The accumulation of excessive or unhealthy fat tissue causes great harm to health and contributes to Type 2 diabetes, heart disease, liver disease, certain cancers, joint disease, and other adverse health conditions (National Institute for Health and Care Research 2019, ConscienHealth, 2022).

It is acknowledged that various factors contribute to vulnerability to addictions, including the social environment. However, in general, the difference between smoking and obesity is that the former is a behavior, and the latter is classified as a medical condition or disease. The causes of obesity are multifactorial; nonetheless, behavioral factors have been documented as major contributors. An author of an in-depth review of the causes of obesity wrote:

Clearly, the obesity epidemic is the outcome of multifaceted interaction between the environmental factors, genetic susceptibility, and human behaviour. The effect of genetics and disease on weight gain has been illustrated in several studies. However, environmental factors are likely to be the main factors driving the rise in the obesity epidemic. It is certain that obesity is due to imbalance between energy intake and energy expenditure. Excess energy dense food intake and reduced physical activity are the major contributors to obesity (Omer, 2020, p. 93).

Both smoking and obesity have adverse health consequences associated with behavioral causes. Consequently, people who smoke and people who are affected by obesity face job discrimination related to health. On the other hand, being a nonsmoker and absence of obesity are essential employment requirements for certain professions; examples are police officers, firefighters, and rescue workers who require high levels of physical fitness (Patel & Schmidt, 2017).



There were similarities and differences between nonsmoking-only and nonobesity-only hiring policies in the present study (Table 3). The two policies were similar in terms of the prevalence and incidence of smoking and obesity, exacerbation of social inequalities, privacy and discrimination, addictive properties, increased healthcare and insurance premium costs, and loss of productivity. The two policies differed in terms of hiring-policy documentation, legal protection, promoting a healthy institutional image, and health consequences in the workforce. The most dramatic differences were for hiring-policy documentation, legal protection, and health consequences in the workforce related to second-hand and third-hand smoke.

With smoking, there are stigmatization, prejudice, and negative stereotypes. However, it can be argued that weight status may be tied to a person's self-image and esteem more than smoking is, whereas nicotine use can be viewed as an external habit not an essential part of a person's self-esteem. Therefore, losing weight can be a major lifestyle change with both physiological and psychological benefits. Moreover, maintaining clinically significant weight loss without medication or surgery may be more difficult than smoking cessation (The National Institute for Health and Care Research, 2019; Omer, 2020; ConscienHealth, 2022). For future study, an interesting case analysis would be the combined incidence and prevalence of individuals who both smoke and have obesity as they confront the challenges of hiring discrimination.

A gap in the knowledge base is the absence of published evidence evaluating the effectiveness and consequences of policies barring employment of smokers. What are the potential public health consequences of these policies on those affected—those who smoke, their families, the surrounding community, and society at large? A model of policy effects and unintended consequences is needed. Further discussion, analysis, and evaluation are warranted related to the use of nonsmoking-only employment policies as a public health intervention, and the engagement of employers and employees by the public health community will be necessary to effectively promote workplace health (Farmer, 2020; Taylor & Winslade, 2022).

## 5. Conclusions and Implications

The analysis presented here is the first known comparison of nonsmoking-only and nonobesity-only hiring policies. The purpose of this study was to contribute to the knowledge base encompassing nonobesity-only hiring policies and to promote discussion and debate to further facilitate ethical analyses of such hiring policies. One implication and take-home message from the findings of this study is that greater legal protection for people with obesity will undoubtedly change the hiring policy landscape. In the future, if obesity becomes a protected class, then implicit and explicit hiring discrimination against people with obesity can be examined from a new perspective. Moreover, having explicit nonobesity-only hiring policies would produce different consequences.

Despite the similarities and differences between nonsmoking and nonobesity hiring policies, the crux of the ethical dilemma remains: What is the ethical demarcation between personal liberty versus personal responsibility in terms of the collective (ie, workforce and community) (Taylor & Winslade, 2022)? The overall objectives of future studies like this one should be to improve individual health (whether the person has obesity, smokes, or both), protect workforce health, and promote community wellness while preserving individual rights, autonomy, and liberty.

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## Declaration of Interest Statement

The author has no conflicts of interest to declare.

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