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Arizona's new law prohibiting smoking in most public places, including workplaces, becomes effective May 1, 2007. The law imposes new obligations on employers, and this ASAP provides tips for employers in implementing these new rules.

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Arizona Edition

A Littler Mendelson Arizona-specific Newsletter

No Smoking Please: Smoke Free Arizona Act - Action Items for Employers

By Steven G. Biddle and Emily M. Craiger

In the 2006 General Election, Arizona voters passed the Smoke-Free Arizona Act (the "Act"), A.R.S. § 36-601.01. The Act takes effect on May 1, 2007, and contains several requirements affecting Arizona employers. The following is a brief overview of the Act and the action items for Arizona employers faced with implementing the Act.

Overview of the Act

The new Act prohibits smoking within and around all public places and places of employment within the state of Arizona, with very few exceptions. Smoking still is allowed in most private residences, hotel rooms designated as smoking rooms, retail tobacco stores, private veterans and fraternal clubs, on outdoor patios as long as smoke does not enter areas in which smoking is prohibited, and as part of religious ceremonies and theatrical productions if smoking is part of the ceremony or production. Otherwise, smoking is banned in and within 20 feet of any enclosed area. Even outside of 20 feet, the person responsible for the building must ensure that smoke does not enter the enclosed area and that customers and others do not have to breathe the smoke when using entrances.

The Act also creates special requirements for employers. In addition to prohibiting smoking in any enclosed area and within 20 feet of any entrance, employers must: (1) communicate with employees to educate them about the law; (2) clearly and conspicuously post "no smoking" signs at every entrance; (3) remove all ashtrays from any area where smoking is prohibited; and (4) not discriminate or retaliate against any employee for engaging in a protected activity under the

Act, including complaining about a violation of the Act. Penalties for violating the Act start at \$500 for each violation, and can increase to \$5,000 if a pattern of violations is noted.

Specific Action Items for Employers

In implementing the new Act, employers may be faced with issues specific to their own workplaces. For instance, most employers should be concerned with three working environments: (1) outdoor worksites; (2) inside buildings; and (3) in vehicles. Because the Act only prohibits smoking in "enclosed areas," smoking in outdoor workplaces, such as construction sites, is not prohibited unless the smoke enters an enclosed area.

Indoor Workplaces

Of course, smoking is prohibited inside buildings, and employers must enforce this with their employees, customers and vendors. In addition, employers must post "no smoking" signs at every entrance and remove all ashtrays to comply with the law. If employees wish to smoke, employers can create an outdoor patio, as long as smokers are at least 20 feet from any entrance, smoke does not enter the building (including through doors, windows or the ventilation system) and the smoking does not affect people entering or exiting the building.

Required Signage

The regulations implementing the Act provide some specifications for the signs that must be posted. Business proprietors have the option of ordering signage free of charge from the Arizona Department of Health Services or creating their own "no smoking" signs.

However, all “no smoking” signs must include the following: (1) the international “no smoking” symbol or the words “NO SMOKING”; (2) a citation to A.R.S. § 36-601.01; and (3) the telephone number for making complaints (1-877-4-AZNOSMOKE or 1-877-429-6676). Signs posted at entrances of enclosed public places and nonvehicle places of employment must be at least 4” x 6”, while signs posted in vehicles used for employment must be at least 2” x 3”.

Smoking in Vehicles

Under the Act, vehicles can be considered places of employment when they are “owned and operated by the employer during work hours when the vehicle is occupied by more than one person.” Thus, a “no smoking” sign must be posted in all company-owned vehicles and smoking is not permitted in a company-owned vehicle when it is being used for business purposes and more than one person occupies it. Although the Act and the regulations provide no greater guidance than this, they appear to imply: (1) employers are permitted to prohibit smoking in all company-owned vehicles at all times; (2) employees using their own vehicles during work can smoke in them, regardless of how many people are in the vehicle, unless the employer prohibits smoking when other employees are passengers; (3) an employee riding alone in a company-owned vehicle can smoke in it, if the employer permits smoking in its vehicles; and (4) an employee may smoke in a company-owned vehicle, even with passengers, when the employee is not working, such as if the employee is permitted to take home a vehicle for nights or weekends, unless the employer completely prohibits smoking in company-owned vehicles.

Employee Communication

Finally, employers must educate employees about the requirements of the new Act. The Act does not specify how this communication must occur, but the regulations require employers to “communicate the prohibition on smoking in places of employment to all existing employees by the effective date” (May 1, 2007) and “communicate the prohibition of smoking in places of employment to an applicant for employment at the time of the application for employment.” Thus, we suggest: (1) scheduling an initial meeting for all

employees to explain the new law and how the company will be implementing it; (2) creating and implementing a written policy to be given to all employees and maintained in the employee handbook; and (3) preparing a handout to be attached to the application form to ensure all applicants receive the policy or including a paragraph on the application itself explaining the prohibition on smoking and the company’s policies regarding smoking. Additionally, although not specified in the Act, the agency enforcing the Act, the Arizona Department of Health Services, states on its website that employers also should provide information to employees about where they can get help to quit smoking, such as from the Arizona Smokers’ Helpline, 1-800-556-6222, or the AshLine website at www.ashline.org.

If you would like to discuss creating and implementing a Smoke-Free Workplace policy or have any questions, please feel free to contact Steve Biddle at 602.474.3613 or Emily Craiger at 602.474.3609 in Littler’s Phoenix office.

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