

in this issue:

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Pennsylvania has joined a growing number of states that prohibit smoking in most public places, including workplaces. Affected employers must comply with new obligations under this law by September 11, 2008.

East Coast Edition

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Smoke Out: Pennsylvania Passes Clean Indoor Air Act

By Michele H. Malloy and Nina K. Markey

On June 11, 2008, the Pennsylvania Senate approved a statewide ban on smoking in public places, including workplaces. Governor Rendell signed The Clean Indoor Air Act (the "Act") on June 13, 2008. The Act becomes effective September 11, 2008. Below is a brief overview of the Act, the new requirements for employers, and tips for employers to follow in order to comply with the new nonsmoking obligations.

Overview of the Act

The Act prohibits smoking in all public places, including workplaces, within Pennsylvania, with limited exceptions. Under the Act, smoking is permitted in the following places: private residences and private vehicles, so long as the residences and vehicles are not being used at the time for child-care or adult day-care services; hotel rooms and other lodgings where specifically designated; full service truck stops; tobacco shops; manufacturing workplaces of tobacco and tobacco-related products; designated areas of facilities for long-term care; mental health; drug and alcohol or day treatment; drinking establishments; cigar bars; designated areas of gaming floors in licensed facilities; private clubs (with specified restrictions); and designated outdoor areas at sports and recreational facilities.

Required Compliance for Employers

Employers should pay careful attention to the Act's requirements with regard to workplaces. The Act defines *public*

place as any enclosed area, including workplaces. *Workplaces* is defined as an indoor area serving as a place of employment, occupation, business, trade, craft, professional or volunteer activity. Because of these definitions, employers should review their smoking policies as they relate to: (1) outdoor workplaces; (2) indoor workplaces; (3) company vehicles; and (4) required postings.

Outdoor Workplaces

Because the Act prohibits smoking in enclosed public places only, employers are not required to prohibit smoking in outdoor workplaces, such as construction sites and loading docks. Of course, employers may voluntarily declare entire facilities, including outdoor areas, as smoke free.

Indoor Workplaces

The Act prohibits smoking inside buildings, with very limited exceptions. Employers are required to enforce this ban as it relates to employees, customers, vendors and visitors.

Company Vehicles

The Act includes in the definition of public place a vehicle used for mass transportation, including trains, subways, buses, chartered buses, planes, taxicabs and limousines. Employers using such vehicles as part of their business must not permit employees, clients or vendors to smoke in such vehicles. Although the Act does not specify any other vehicles to which the Act applies, the Act could be interpreted to include other vehicles,

such as company cars, in the definition of workplace. An employer that uses vehicles as part of its regular business, such as vehicles used by truck drivers and salespersons, may be required to prohibit smoking in such vehicles.

Required Postings

The Act requires that employers, as owners, operators or managers of workplaces, prominently post and maintain “Smoking” and “No Smoking” signs or the international “No Smoking” symbol in all areas regulated by the Act. Employers are also required to post a “Smoking Permitted” sign at the entrance of every public place where smoking is allowed.

Retaliation Prohibited

The Act specifically states that an employer cannot discharge an employee, refuse to hire an applicant for employment, or otherwise retaliate against an individual because that individual exercises the right to a smoke-free environment under the Act. Although the Act does not specify the remedy available to an individual claiming retaliation under the Act, an employee discharged for exercising rights under this Act may have a claim for wrongful discharge in violation of public policy, which may allow for recovery of monetary damages.

Enforcement and Penalties

The Pennsylvania Department of Health is charged with enforcing the Act, but it may refer a complaint to another appropriate agency, including licensing agencies and law enforcement agencies or county boards of health. The Act provides civil and criminal penalties for persons who smoke in public places where smoking is prohibited, as well as for employers who permit violations of this Act, including failing to post appropriate signs. Civil penalties and criminal penalties range from \$250 to \$1,000.

Recommendations

The Act prohibits smoking in Pennsylvania’s public places, businesses and workplaces, with only a handful of exceptions. New regulations and court

interpretations will likely resolve the scope of the Act’s prohibitions. Until that happens, employers should proceed with caution in determining whether they are exempt from the Act.

Employers should take the following steps to ensure compliance with the Act:

1. Determine if your workplace is covered by the Act;
2. If your workplace is covered by the Act, implement a policy that prohibits smoking in all enclosed areas of your workplace and communicate this policy to employees, customers, visitors and vendors;
3. If your workplace is covered by the Act, post and maintain appropriate “No Smoking” and “Smoking Permitted” signs; and
4. Review your decisions, policies and postings with employment counsel.

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