



THE WORKPLACE WORD

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The Employer's Obligations Under the New Smoke-Free Arizona Act and Other Similar State Laws

The new voter-approved smoking ban in Arizona goes into effect on May 1, 2007, and will affect employers throughout Arizona. The ban is applicable to all public places, including workplaces, and applies to all employers with at least one employee. Under the new ban, smoking is prohibited in all public places and places of employment within the state of Arizona. The ban, however, does not apply to retail tobacco shops, veterans and fraternal clubs (unless they are open to the public), hotel/motel rooms that are designated as smoking rooms, and private residences (unless they are being used for licensed child, adult, or health care). The ban also does not apply on Indian reservations.

The ban prohibits smoking in any "enclosed area" (basically any room bounded by walls and windows even if the windows can be opened) and includes "a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means." The ban does not include outdoor patios (any space open on at least one side, ceiling, or wall) provided that smoke does not enter any area where smoking is prohibited. In early April, Arizona's Department of Health Services unveiled no-smoking rules that require a 20 foot smoke-free buffer zone around entrances to businesses or places of employment once the statewide smoking ban takes effect.

So what does this new legislation mean for employers in Arizona? First, it requires all employers to prohibit smoking in the workplace by May 1, as well as within a reasonable distance from all entrances to the workplace, including doors, windows, ducts, ventilation systems, etc. Even if an entrance is not



a “public entrance,” employers may not permit any smoking near that non-public entrance.

In addition to complying with and enforcing the prohibitions on workplace smoking that are set forth above, employers must (1) communicate the smoking prohibition to all of their existing employees and to all prospective employees (upon their application for employment); (2) comply with specific notice and signage requirements, and (3) remove ashtrays from all areas where smoking is prohibited. With respect to signage requirements, employers must post signs at the entrance to any area where smoking is prohibited. Specifically, the sign must either explicitly state “no smoking” or contain the international “no smoking” symbol, identify the area where smoking is prohibited, and tell employees or others where they can register complaints concerning violations.

Finally, employers should also be aware that the law has a non-retaliation provision which states that “no employer may discharge or retaliate against an employee because that employee exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.”

If the Department of Health (“Department”) determines that a violation of this law exists at a public place or place of employment, the Department will issue a notice of violation to “the person who owns, manages, operates, or otherwise controls the public place or place of employment.” Under the law, civil penalties will be imposed “in an amount of not less than \$100, but not more than \$500 for each violation,” and each day that a violation occurs will constitute a separate violation. The Department may also apply for injunctive relief in Superior Court to enforce these provisions. Persons who are caught smoking where smoking is prohibited will be guilty of a petty offense and will be subject to fines as well.

Other States

Although the United States does not have federal smoking control legislation, many states in addition to Arizona have enacted smoke-free ordinances. Among these are California, Colorado, Nevada, and Utah. In fact, today, more than half of Americans live in a city or state with laws requiring smoke-free workplaces, restaurants, or bars.

California has been viewed as the pioneer in providing smoke-free environments and workplaces. In 1994, California banned smoking in almost all workplaces (except tobacconists) including restaurants. The state also banned smoking in bars in 1998.

Utah followed suit and, in 2006, the Utah State legislature passed amendments to its 1995 Utah Indoor Clean Air Act, which prohibited smoking in restaurants. Under the amendments, which went into effect May 1, 2006, smoking is now also prohibited in all enclosed places of public access and publicly owned building and offices. Importantly, this prohibition includes any workplace that is not a place of public access or a publicly owned office if it has one or more employees who are not owners/operators. As of January 1, 2007, the ban prohibits smoking in private clubs and will be further broadened as of January 1, 2009 to include all bars and taverns. First violations of the smoking ban are subject to a civil penalty of \$100, and subsequent infractions will cost violators between \$100 and \$500.

Similarly, a statewide smoking ban went into effect in Colorado on July 1, 2006, making Colorado the 13th state to pass a smoking ban. Under the Colorado ban, smoking is now prohibited in most public places, with the exception of casinos, cigar bars, the smoking lounge at the Denver airport, and private workplaces with three or fewer employees. To date, the law has been subjected to at least three different court challenges. One lawsuit brought by a coalition of bar owners, liquor stores, and others and filed against the statewide ban has already been dismissed by a federal judge who upheld the smoking ban (the case is now up on appeal



before the Tenth Circuit). More recently, however, an Adams County judge ruled that the smoking ban is unconstitutional because of its exemption for cigar bars. Since the enactment of the legislation, the Colorado legislature has discussed and/or proposed multiple amendments or clarifications to the smoking ban. Specifically, several lawmakers have submitted bills that would remove both the casino and cigar bar exemptions.

Nevada has also taken steps to limit smoking in many public places and, on November 7, 2006, enacted their own smoke-free ordinance, the Nevada Clean Indoor Air Act. This Act prohibits smoking in most public places and indoor places of employment throughout Nevada as of December 8, 2006. Specifically, the Act states that smoking tobacco in any form is prohibited within indoor places of employment, including: public and private school buildings and on public and private school grounds; child care facilities with five or more children; all areas of grocery stores, convenience stores, and drug stores; all indoor areas within restaurants, including those in casinos or gaming establishments; bars, taverns, and saloon that serve food; shopping malls and retail establishments; video arcades; government building and public places; and movie theaters. The law permits smoking in such areas as stand alone bars that do not serve food; strip clubs; areas within casinos where loitering by minors is prohibited; retail tobacco stores; and private residences including

those that serve as a workplace unless used as child care, adult day care, or health facility. Like Arizona, Nevada employers must post conspicuous "No Smoking" signs at every entrance and remove all ashtrays and other smoking paraphernalia from their smoke-free facilities. Violators of the law are liable for a civil penalty of \$100 for each violation.

The preceding summaries are only a brief overview of the recent smoke-free legislation that has been passed around the country. For more information regarding no-smoking laws in these and other states, employers should review the statutes and regulations in full or contact an attorney to ensure they are in compliance with the recently enacted restrictions.

Resources to help employees quit

Though not required by the new legislation discussed above, employers may also want to consider making their employees aware of the various resources that may be available to them to help them quit smoking. Employees who smoke cost employers significant amounts of money both in lost productivity as well as in additional medical expenditures. Specifically, employers may want to look into cessation packages that may be offered by their health insurance company or at other programs that may be available through an Employee Assistance Program and share this information with their employees.