



LABOR & EMPLOYMENT DEPARTMENT

# ALERT



## PENNSYLVANIA MINDS VERY MUCH IF YOU SMOKE

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Pennsylvania's new Clean Indoor Air Act becomes effective on September 11, 2008.

Pennsylvania joins 24 other states, Washington, D.C., and Puerto Rico, which currently ban smoking in public places. The Act *prohibits* smoking in any indoor workplace as well as most enclosed public spaces, including:

- educational facilities
- health care related facilities
- mass transportation (trains, subways, buses, taxicabs, and limousines)
- train stations, subway stations, bus stations
- public facilities
- sports or recreational facilities
- theater or performance establishments
- restaurants
- nightclubs
- public meetings

Employers are required to prominently display and maintain "No Smoking" signs at facilities where smoking is prohibited and signage at locations where smoking is permitted. "Smoking Permitted" signs also

must be displayed prominently and maintained at every entrance to a public place where smoking is allowed.

Employers are prohibited from refusing to hire, terminating, or otherwise retaliating against an applicant or employee for exercising a right to a smoke-free environment. While there is no explicit right to sue an employer created by the statute, the courts will need to determine whether an employee can sue an employer for retaliation.

The Act *permits* smoking in:

- private residences or vehicles unless they are being used for child care or adult day care
- up to 25 percent of the rooms in a hotel or other lodging establishment
- designated areas at full-service truck stops
- workplaces of any manufacturer, importer, or wholesaler of tobacco products
- separate, enclosed rooms or designated smoking rooms in a residential adult care facility, community mental health care facility, drug and alcohol facility, or other residential health care facilities and day treatment programs

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- private clubs that have been in existence for at least 10 years, including volunteer ambulance, fire, and rescue companies. A vote must be taken by the officers of the club.
- nonprofit fundraisers where cigars are featured (sold, auctioned, or given as gifts)
- tobacco promotion events where at least 75 percent of products displayed or distributed are tobacco or tobacco related products
- cigar bars
- bars where annual sales of food sold is equal to or less than 20 percent of combined gross sales and that do not permit individuals under 18 years of age to enter
- part of the gaming floor of casinos
- tobacco shops
- a designated outdoor smoking area within a sports or recreational facility, theater, or performance establishment

Civil and criminal fines can be imposed ranging from \$250 for the first infraction and up to \$1,000 for subsequent violations on those establishments not in compliance, as well as on those individuals smoking in prohibited areas.

If an owner, operator, or manager is cited for violating the law, there is no liability if the owner, operator, or manager can prove that good faith efforts were made to prohibit smoking, or if the violation occurred when the owner, operator, or manager was not present.

Except in the City of Philadelphia, the Pennsylvania Department of Health and designated county boards of health are primarily responsible for enforcing the law and investigating complaints. The Pennsylvania Department of Health will be issuing regulations and will maintain a Web site to take complaints and provide additional information.

The Pennsylvania State Police and other law enforcement agencies also are empowered to issue a summary offense citation to individuals smoking in prohibited areas. The initial citation carries a penalty of up to \$250 plus court costs.

The City of Philadelphia has its own, more restrictive ordinance, which is enforced by the City's Department of Public Health. The City's ordinance requires that employers issue and communicate a written no-smoking policy.

Unionized employers that currently allow smoking may have an obligation to bargain with the union before making changes to the smoking policy since the unilateral implementation of a no-smoking rule could lead to an unfair labor practice charge.

Employers should prepare now by prominently posting the mandated signage and by adopting and communicating a written smoking policy. Unionized employers should consult with labor counsel.

For more information about this topic, contact the author at 215.299.2164 or [sludwig@foxrothschild.com](mailto:sludwig@foxrothschild.com), or any member of the Labor & Employment Department. Visit us on the Web at [www.foxrothschild.com](http://www.foxrothschild.com).



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