

New Michigan Law Will Ban Smoking in Indoor Workplaces

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After more than 10 years of legislative debate on the issue, the Michigan Legislature yesterday passed a general ban on smoking in the workplace, with exemptions for the Detroit casinos, cigar bars, tobacco stores, home offices, and vehicles.

Governor Granholm has pledged to sign the new law, which would go into effect on May 1, 2010.

Who is Covered?

All Michigan public and private employers will be subject to the new law, which bans smoking in any "enclosed indoor area" where at least one employee is performing work for the employer.

The law specifically exempts the Detroit casinos, as well as cigar bars, tobacco retail stores, home offices, and vehicles (e.g., truck drivers whose "workplace" is their truck).

What Kind of "Smoking" is Banned?

The law will define "smoking" to mean "burning ... a lighted cigar, cigarette, pipe, or any other matter or substance that contains a tobacco product."

The law does not appear to restrict chewing tobacco—only the *burning* of a tobacco product.

Where in the Workplace is Smoking Banned?

As passed, Michigan's workplace smoking ban does not permit smoking anywhere in an employer's indoor facilities. Consequently, it appears that even dedicated indoor smoking rooms will not be permissible.

Through a series of definitions, the law prohibits smoking in "a public place." A "public place" includes any "place of employment."

"Place of employment" is defined as "an enclosed indoor area" that includes any "work area" where one or more employees perform work for the employer.

Thus, wherever employees work indoors, smoking is prohibited.

What are Employers Required to Do?

While only "individuals" are directly restricted from smoking, and subject to penalties for doing so in violation of the law, employers have new responsibilities under the law to make reasonable efforts to prohibit smoking in the workplace.

Specifically, employers are *required* to do *all* of the following:

- Have clearly posted "no smoking" signs (or the internationally recognized "no smoking symbol") at both the entrance to and throughout any building or work area covered by the smoking ban

- Remove all ash trays and any other smoking paraphernalia from any work area covered by the smoking ban
- Inform any employee or other individual (such as a customer or vendor visiting the workplace) smoking in violation of the law that he or she is violating state law and is subject to penalties for doing so
- Ask any employee or other individual smoking in violation of the law to stop smoking, and, if the employee or individual refuses, ask him or her to leave the work area covered by the smoking ban

Employers are not required to report smoking violations to any police or governmental authority.

While there is no direct obligation for employers to adopt a written “no smoking” policy—indeed, such a policy requirement was considered by the Legislature but rejected—employers should nevertheless consider doing so.

A well-crafted policy should at least:

- Generally explain the new smoking ban, including the civil fines that may be imposed for smoking in violation of the law
- Provide notice that employees who smoke in violation of the law will be subject to discipline, up to and including discharge from employment

Given the direct obligation to confront employees smoking in violation of the law, employers should train all supervisors regarding any newly-adopted “no smoking” policy and perhaps even consider role-playing exercises to best prepare for handling any such confrontations. And while the law does not require employers to discipline employees who smoke in violation of the law, employers may wish to do so, and any written policy adopted should specifically reference the employer's right to impose discipline.

What are the Penalties for Violations of the New Law?

There are no direct penalties authorized against an employer whose employees smoke in violation of the law. As noted above, employers do have specific obligations to meet under the new law, however, and both the Michigan Department of Community Health and local health departments are authorized to seek enforcement of the law by actions under the Public Health Code. Additionally, any person who visits a public place where smoking occurs in violation of the law (which now would include places of employment) can pursue injunctive relief within 60 days.

Individuals who smoke in violation of the law are subject to a \$100 fine for the first violation, and fines of up to \$500 for any subsequent violations, and employers are required to advise violators of these penalties.

The law specifically provides that employers may not take retaliatory “personnel action” against any employee who seeks to enforce his or her rights under the law. Though not clearly defined, presumably this means that employees are protected for bringing complaints to the employer’s

attention about coworkers smoking in violation of the law.

Other Issues

Michigan's workplace smoking ban comes on the scene after many local governments have already passed their own ordinances restricting smoking in the workplace. Michigan's new law will now cover all workplaces (as defined above).

To the extent a local "no smoking" ordinance is more restrictive, employers should ensure that they are in compliance with both state law and the more restrictive aspects of their local ordinances as well (e.g., such as that smoking is not permitted outside within a specified distance of a workplace entrance).

Finally, employers with represented employees and collective bargaining agreements that contain negotiated smoking policies should still consider their bargaining obligations. Labor law generally requires an employer to bargain with a union representing its employees on "no smoking" restrictions. Michigan's new "no smoking" law is silent on how it is to be implemented in workplaces covered by collective bargaining agreements.

For assistance in preparing your workplace for implementation of Michigan's new "no smoking" law, contact Miller Canfield's Labor and Employment Law Department.

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