



EMPLOYER BULLETIN: SMOKING BAN IN THE WORKPLACE EFFECTIVE MAY 1, 2010

On December 10, 2009, Michigan became the 38th state to ban smoking in public spaces. The ban will become effective on May 1, 2010 and will cover bars, restaurants and other workplaces. However, exceptions from this law were made for cigar bars, tobacco specialty retail stores, and existing gambling areas of casinos.

WHAT DOES THE LAW DO?

The law provides that individuals are prohibited from smoking in public places or at a meeting of a public body. A "public place" includes a "place of employment" which is defined as any enclosed indoor area that contains one or more work areas for one or more persons employed by a public or private employer. Thus, even dedicated smoking areas are included. Food service establishments, motor vehicles, home residences used as offices (unless other employees, besides the residence owner, work at the location) are not included in the definition of "place of employment."

WHAT ARE COVERED EMPLOYER'S OBLIGATIONS?

The agency or person who owns/operates the public place must make a reasonable effort to prohibit individuals from smoking on the premises. Employers covered by the new law are required to:

- Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol at the entrances to and in every building or other area where smoking is prohibited under the law;
- Remove all ashtrays and other smoking paraphernalia from anywhere smoking is prohibited under the law;
- Inform individuals smoking in violation of the law that they are in violation of state law and subject to penalties; and
- Ask an individual who is smoking in violation of this law, to refrain from smoking; and if the individual refuses, the individual should be asked to leave the premises.

Further, a covered employer may not take any retaliatory or adverse action against an employee or applicant on the basis of the individual's exercise of or attempt to exercise his/her rights under the law.

ARE THERE ANY PENALTIES OR DEFENSES IF THE ACT IS VIOLATED?

Any violation may be subject to a civil fine of not more than \$100.00 for the first violation and not more than \$500 for the second or subsequent violation. Additionally, injunctive relief may be obtained which could include an order compelling compliance with the new law.

If a covered employer fails to comply with the law, it may invoke, as an affirmative defense to a prosecution of a civil or other administrative action, that it made a good faith effort to prohibit smoking by complying with its obligations under the new law. To take advantage of the affirmative defense, the covered employer must file a sworn affidavit setting forth its efforts to prohibit smoking and its actions of compliance.

WHAT SHOULD EMPLOYERS BE DOING?

In order to ensure employees are complying with the new law, covered employers should post the required "no smoking" signs. A written policy, explaining the no smoking ban, the fines associated with a violation and that any employee found in violation of the law may be subject to discipline, should be issued. It is also important that supervisors understand their obligations and how they should respond if an employee violates the new law.

We are experienced, proactive and aggressive legal counsel providing superior service in all areas of employment law. If you would like further information regarding the issues raised in this newsletter or any other employment related issues, please contact Heather G. Ptasznik at (313) 259-8586, John T. Below at (313) 259-8597, or Matthew S. Derby at (313) 259-8653. For more information about Kotz Sangster, please visit us at www.kotzsangster.com. This newsletter is provided as general information service and should not be construed as and does not contain legal advice on any specific matter, nor does this message create an attorney-client relationship.

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