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Labor & Employment Bulletin

SMOKE FREE CREATES OBLIGATIONS FOR OHIO EMPLOYERS

On November 7, 2006, Ohio joined fourteen other states that have passed strong smoke-free laws when voters passed Issue 5, the Smoke Free Workplace Act. Passage of Issue 5 enacts Chapter 3794 of the Ohio Revised Code, which prohibits smoking in public places and places of employment. The Act is similar to most of the indoor smoking bans previously enacted by 21 local Ohio governments, except it does not exempt bars or restaurants.

The Act prohibits proprietors and employers from allowing smoking in any enclosed public place or place of employment in the state and the areas immediately adjacent to locations of ingress or egress to the public place or workplace. Place of employment is defined broadly as an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, and specifically includes vehicles. Employers and proprietors are also required to ensure that tobacco smoke does not enter enclosed areas through doors, windows, ventilations systems or other means. Enclosed areas are those areas with a roof and walls or side coverings on all sides or on all sides but one.

A few places are exempt from compliance, providing they meet the Act's specific requirements. These places include: private residences except when operated as a child care or adult care facility for compensation, or during the hours of operation as a business

when employees who are not residents or related to the owner are present; hotel rooms designated as smoking rooms (no more than 20% of the facility); family businesses where all employees are related to the owner and that are not open to the public; certain areas of a nursing home that are separately enclosed and separately ventilated and designated for smoking only by residents; retail tobacco stores already in operation; outdoor patios physically separated from enclosed areas so that smoke can not migrate into an enclosed area; and private clubs, organized as a not for profit entity, that have no employees and that are located in a freestanding structure. Employers and proprietors may also extend a smoking ban to areas otherwise permitted under the law.

Ohio employers must ensure compliance by December 7, 2006. Employers and proprietors must also post "No Smoking" signs or the international "No Smoking" symbol (a burning cigarette enclosed in a red circle with a red bar across it) in conspicuous places in every workplace and public place where smoking is prohibited, including at *each* entrance. The signs must include a telephone number for reporting violations. Ashtrays and other receptacles used for disposing smoking materials must be removed from areas where smoking is prohibited. Retaliation against someone who reports a violation of the Act or exercises a right under the Act is unlawful.

The Ohio Department of Health is charged with enforcement of the new law and must promulgate new regulations regarding implementation and enforcement by June 7, 2007. The first violation of the Act will result in a warning letter from the Department of Health. Additional violations will result in fines. Importantly, the lack of intent to violate the Act is not a defense to a violation.

Additional Information

To learn more about the Smoke Free Workplace Act and its implications, please contact one of the members of our Labor and Employment Practice Group:

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