

LEGALLY SPEAKING

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AWAITED SMOKING REGULATIONS ARRIVE

The proposed smoking regulations which more fully explain Ohio's new No-Smoking law and how it works were just published. These regulations probably will become effective in early April and enforcement will then begin. But, actually, the law became effective December 7, 2006 and is being obeyed by most.

You need to act now to familiarize yourself with these regulations so that they may be implemented completely in the spring. Your work rules, policies and handbooks should also be modified. Even if you were one of the 500 plus companies attending our December seminars on the topic, you still have a few things to take note of – here are some of the bigger items.

- While a proprietor or employer must prohibit smoking not only in their facilities but also in the areas under their control which are “immediately adjacent” to points of ingress and egress – “immediately adjacent” remains undefined and is not measured by any specific number of feet from the door [contrary to what some have been publishing and what had been anticipated]
- Proprietors must take “reasonable steps” to ensure tobacco smoke does not enter a prohibited area under their control through ownership of the property or through rights under a lease – reasonable steps include, at least, requesting of the individual to stop smoking
- Business vehicles remain a prohibited place for smoking unless the vehicle is only occupied by the smoking driver. If the vehicle is registered by Ohio BMV and used by one or more non-smokers or the vehicle is part of a motor pool and shared by non-smokers it is a prohibited area. Signs must be firmly affixed to each passenger door window or dashboard or other visible area. Ashtrays in vehicles do not have to be removed under the general removal of receptacles law if they are not used for disposal of smoking materials, i.e., change holder
- Proprietors do not have to remove ashtrays from regulated areas if they are of historic or architectural value, were affixed to the property prior to December 7, 2006 and are not used for disposal of smoking materials. In addition, a proprietor may provide ashtrays and receptacles for the purpose of individuals disposing of smoking materials prior to entering a place of employment or public place – but they must be far enough away to foreclose smoke entering a prohibited area

- Residents of private homes who employ service workers who perform intermittent work such as plumbing, electrical and remodeling are not considered to be in a place of employment and the residential exception to the smoking ban remains applicable [the plumbers must have lobbied during the comment period to the Ohio Department of Health]
- No-smoking signs remain very specific in their requirements and must be posted at all points of transition from an area where smoking is not regulated to one that is. While it appears that you cannot affix your company's telephone number to the signs in an effort to head off a complainant from calling the ODH, it is advisable to broadly publish your private number in hopes you will be called first and a fine avoided
- An elaborate complaint, citation and hearing procedure is established and it could be likened to unemployment compensation procedures for hearings and appeals. If your business is a corporation you must be represented by an attorney
- Fine schedules for proprietors and employers violating the prohibitions are now defined: 1st violation – warning letter; 2nd – \$100; 3rd – \$500; 4th – \$1,000 and 5th – \$2,500
- Fines for smokers violating the law are: 1st – warning letter; 2nd and subsequent violations – \$100
- Additional fines can be levied for intentional misconduct and continuing violations carry per diem penalties

You may review the proposed final regulations at www.odh.state.oh.us. Ensure compliance now by appointing someone in your organization to be your compliance officer. Don't forget to amend your work rules, policies and handbooks to regulate the conduct of your employees and guests. Visit the Library section of the website of *Dunlevey, Mahan & Furry* for more information – www.dmfdayton.com.