Employment Law Alert

Michigan Smoking Ban Becomes Effective In Less Than 2 Weeks

Is Your Workplace Ready?

On December 18, 2009 Governor Granholm signed into law a bill prohibiting smoking in most public places, including places of employment. Michigan will enforce the smoking ban beginning May 1, 2010.

Does the Ban Apply to All Workplaces?

While there are exemptions for specialty tobacco stores, casinos, and cigar bars, the majority of Michigan public and private employers are 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 new law defines "smoking" as "burning . . . a lighted cigar, cigarette, pip or any other matter or substance that contains a tobacco product." The ban does not appear to apply to chewing tobacco.

The Michigan Department of Community Health, who is charged with enforcing the ban, has publically warned employers that, in its interpretation, the ban precludes employers from allowing individuals to smoke in a smoking lounge where no work is performed.

Employers with unionized workplaces must also alert the unions that the new ban trumps any provisions in their collective bargaining agreements.

What Can Happen To a Workplace That Doesn't Comply?

The Michigan Department of Community Health has the authority to enforce the smoking ban by levying fines and pursuing compliance either administratively (issuing a citation) or in court (filing a lawsuit). Individuals may be fined $100 for the first violation and $500 for a second or subsequent violation.

In addition, any person who visits a public place where smoking occurs in violation of the law may file a civil suit within 60 days to ask the court to make the violators enforce the ban. While this does not apply to food service establishments, food service establishments can be ordered by a local health officer to cease operations until they comply with the ban.

Employers may also face a civil lawsuit if they retaliate against employees attempting to enforce the ban in the workplace.

What Do Workplaces Have to Do to Comply?

To comply with the ban, employers must post no smoking signs or symbols at the entrances to and in every building where smoking is prohibited. Employers must also remove all ashtrays and other smoking paraphernalia from all places where smoking is prohibited. Employers must ask persons smoking in violation of the law to refrain from smoking and inform them that they are violating the law and are subject to penalties. This includes any individual smoking in violation of the law, including employees, customers, contractors, visitors, and vendors. If necessary, employers must ask individuals that are smoking in violation of the law to leave their premises.

Employers are permitted to allow employees to smoke outside of their building and may construct a separate "smoking shack" for employees to smoke, so long as it is not enclosed on all four walls. Of
course, employers must also comply with any local smoking ordinances.

**Is There Anything Else Workplaces Should Do to Prepare for the Ban?**

Prior to May 1, employers should update their personnel policies and handbooks to ensure compliance with the ban. Employers should also make sure to train supervisors and managers how to handle employee complaints regarding the ban and not to retaliate against any employee attempting to enforce the ban.

Beginning on May 1, to defend against lawsuits or administrative citations, employers should document each time they enforce the ban in their workplace.

**To discuss more strategies on dealing with the new smoking ban, employers are encouraged to attend our Free No Smoking Webinar tomorrow morning, beginning at 8:30 a.m.**

**To register, visit:**


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