

Reminder for Massachusetts Employers: New Workplace Smoking Ban Now in Effect

Massachusetts state law now requires most employers to maintain a smokefree workplace, and to post “No Smoking” signs. The new statute, AN ACT IMPROVING PUBLIC HEALTH IN THE COMMONWEALTH, took effect on July 5, 2004, and requires employers with one or more employees to prohibit smoking in all indoor spaces. Designated indoor “no smoking” areas will not meet this obligation. Smoking in outdoor spaces is permitted, so long as smoke will not migrate into an enclosed space.

Under the new law, “No Smoking” signs must be conspicuously posted, so that the signs are clearly visible to employees, customers and visitors.

The new law does not preempt more stringent smoking bans which have been adopted in some Massachusetts cities and towns, so employers need to remain aware of local regulations as well as the statewide restrictions. Fines may be imposed on an employer for violating the state statute (\$100 for a first offense, \$200 for a second violation within two years of the first offense, and \$300 for a third or subsequent violation within two years of the second violation, with each calendar day on which a violation occurs considered a new offense). Fines may also be imposed on individuals who smoke in areas where smoking is prohibited (\$100 for each violation). Complaints may be filed with the DPH, a local board of health or a local inspection department, and retaliation against a person making a complaint or otherwise furnishing information concerning a violation is prohibited.

The new law does not require employers to establish a “no smoking” policy, though some employers may wish to do so, and ordinances and by-laws in some cities and towns do require adoption of smoke-free policies. The Boston Public Health Commission has drafted a sample policy for employers in the City of Boston, which can be viewed at www.bphc.org/bphc/pdfs/modelpolicy.pdf.

There are a limited number of exemptions from the smoking ban, including private residences, membership associations (private clubs not open to the public or to non-members who are not invited guests), retail tobacco stores, “smoking bars,” and tobacco testing facilities. Special allowances are also made for religious ceremonies in which smoking is part of a ritual, and for designated areas in nursing homes and acute care substance abuse treatment centers. To claim the benefit of any one of these exemptions, an employer must meet strict criteria, and the statute (and legal counsel) should be consulted before reliance is placed on any of these safe harbors.

Additional information may be obtained through the DPH web-site, or by calling any member of the Ropes & Gray Labor & Employment Department.

