



# Ohio Smoke Free Workplace Act

## COMPLYING WITH OHIO'S SMOKING BAN

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# Ohio Smoke Free Workplace Act

- Effective Date of Act: December 7, 2006
- Enforced by Ohio Department of Health (ODH)
- Final ODH rules slated to be effective—May 3, 2007
- Two lawsuit challenging rules (private club exemption) in mid-April, 2007



# ODH Complaint Backlog

- As of late February 2007, ODH had received 32,000 questions & **10,000** reports of violations



# Smoking Prohibitions

- No proprietor of a place of employment (or public place) shall permit smoking in the place of employment
- Prohibition also includes areas directly or indirectly under the control of the proprietor
  - including areas immediately adjacent to locations of ingress or egress



# Where is Smoking Banned?

- A public place
  - an enclosed area to which the public is invited or permitted that is not a private residence



# Where is Smoking Banned?

- “Places of Employment”
  - an enclosed area under the direct or indirect control of an employer that the employer’s employees use for work or any other purpose



# Where is Smoking Banned?

- Places of employment may include, but are not limited to:
  - offices
  - meeting rooms
  - sales
  - production and storage areas
  - restrooms
  - stairways
  - hallways
  - warehouses
  - garages
  - vehicles



# Definitions

- “Direct or indirect control means”:
  - ability to exercise authority over area based on property rights under:
    - deed
    - title, or
    - lease.





# Definitions

- “Enclosed area” = an area with:
  - a roof (or other overhead covering of any kind), and
  - walls (or side coverings of any kind)
    - on all sides or on all sides but one;
    - regardless of the presence of openings for ingress and egress
  - Includes outdoor patios connected to enclosed area



# Definitions

- Enclosed area  $\neq$ 
  - Roofed smoke hut with at least 2 sides completely open, or
  - Outdoor patio
    - physically separated from enclosed area, and
    - has no migration of smoke into enclosed area



# Definitions

- Smoking Device:
  - Device designed to burn tobacco or any other plant for the purpose of inhaling smoke



# Definitions

- Smoking Device:
  - Excludes device designed or primarily used for cooking, heating or illumination
  - Specifically excludes wood-fired ovens, smokers, grills, fireplaces, wood-burning stoves, candles



# Are There Any Exceptions?

Exceptions potentially applicable to an OMA member include:

- Family owned and operated (undefined) places of employment in which **all** employees are related (undefined) to the owner, but only if :



# Family Owned & Operated Exception

- (1) Enclosed areas are not open to the public,
- (2) Enclosed areas are in a free standing structure occupied solely by that employer, and
- (3) Smoke does not migrate into an enclosed area where smoking is prohibited.



# Are There Any Other Exceptions?

- Outdoor patios
  - Physically separated from an enclosed area
  - Not immediately adjacent to entrance
  - No smoke migration permitted
  - Must be open to the air (e.g., thorough, unobstructed circulation of outside air to all parts of the patio)



# Are There Any Other Exceptions?

- Outdoor patios, continued:
  - If patio capable of being enclosed, it is an enclosed area (*i.e.*, non-smoking) when enclosures are in place
  - Presumed open to the air when, at most, 50% of combined surface area is covered, including awnings and umbrellas





# Can I Have a Separate Smoking Room Within My Building?

No!



## **Does the New Law Require Me to Allow Smoking in the Unenclosed Areas on My Property?**

No -

An owner or employer may declare an entire facility or campus nonsmoking—even if otherwise permitted under the law .



# Do I Need to Ban Smoking in My Company-Owned Vehicles?

- Yes, if –
  - It is an enclosed motor vehicle registered with Ohio BMV
- And
  - One or more non-smokers in vehicle and the vehicle is being used for business purposes, or
  - the vehicle is part of motor pool shared by non-smokers
- Pull ashtrays from qualifying vehicles



# What Will Ohio Businesses Need to Do to Comply?

Employers must prohibit smoking:

- In places of employment

And

- In an area directly or indirectly under employer's control immediately adjacent to the entrance/exit
- "Immediately adjacent" is not defined.



# What Will Ohio Businesses Need to Do to Comply?

- Take reasonable steps to ensure that tobacco smoke does not enter prohibited enclosed areas through doors, windows, ventilation systems or other means
  - “Reasonable steps” include requesting that the individual cease smoking
  - No violation if smoke inadvertently enters place of employment from an exempted private residence.



# What Will Ohio Businesses Need to Do to Comply?

- Post “No Smoking” signs in places of employment where smoking is prohibited
  - Including at each entrance/exit to the place of employment
  - Post sign in company vehicle on dashboard—not window
  - Sign must include ODH telephone number for complaints



# What Will Ohio Businesses Need to Do to Comply?

- Remove all ashtrays and smoking receptacles from any area where smoking is prohibited
  - Unless of historical or architectural value
  - If leasing building, make written request to landlord.



# What Will Ohio Businesses Need to Do to Comply?

Employer must not:

- discharge,
- refuse to hire, or
- retaliate against anyone exercising rights under state (e.g., reporting a violation)





# Complaints of Violation of the Ohio Smoke Free Workplace Act?

- Anonymous complaints permitted
  - But cannot be sole basis to support a violation
- If complaint, on its face, would not support a violation, ODH must dismiss



# Complaints of Violation of the Ohio Smoke Free Workplace Act?

- ODH may dismiss any complaint that it believes is:
  - Frivolous,
  - Made in bad faith, or
  - Too old to reasonably be investigated
- Standard for violation is a preponderance of the evidence (over 50%)
- Upon request, employers entitled to review evidence of a deemed violation



# Smoking Police

- Third parties with whom ODH contracts to enforce can't be compensated based on the number of violations found.
  - This will discourage law enforcement from seeking to increase revenue on a speeding ticket model.



# What Are the Employer Penalties For Violating the Smoke Free Workplace Act?

- Violations for permitting smoking or failure to post signage:
  - First violation—warning letter
  - Second violation—\$100
  - Third violation—\$500
  - Fourth violation—\$1000
  - Fifth or subsequent violation—\$2500



# What Are the Employer Penalties For Violating the Smoke Free Workplace Act?

- Violation for Retaliating:
  - First violation—warning letter
  - Second violation—\$1000
  - Third or subsequent violation—\$2500



# What Are the Penalties?

- Each day of violation is a separate offense
- Violations older than 2 years are not considered when determining level of violations, if no intervening violations
- Fines doubled for intentional violations
- ODH has limited authority to waive or reduce fines
- There are no criminal penalties



# Appeal Process

- Detailed, Lengthy ODH Administrative Appeal process available
- After administrative appeal, appeal to Franklin County Common Pleas Court possible



# Best Practice

- **Develop Written Smoking Policy**
  - Identify prohibited smoking areas
  - Identify acceptable smoking areas, if any
  - Identify discipline for violation of policy
  - Provide training on policy





# Best Practice

- Document reasonable attempts to enforce ban, including:
  - Requesting individuals to cease smoking
  - Discipline of employees
  - Note date/year and time on document
  - Identify witnesses



# Best Practice

- Signage Posting
- Easiest form of Violation so:
  - When in doubt, post
  - Post extra sign on employee bulletin board
  - Periodically review entrances/exits for signage
  - Post in ALL employer vehicles
  - Add employer telephone number to signage



# Best Practice

- Place ashtrays at least 10 feet from any entrance/exit
- Be responsive to the ODH during any investigation