

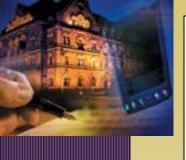
Ohio Smoke Free Workplace Act

COMPLYING WITH OHIO'S SMOKING BAN

OMA Webinar May 3, 2007

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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



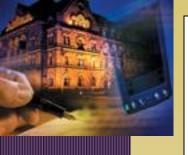
Where is Smoking Banned?

- 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



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



- "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 <u>connected</u> to enclosed area



- Enclosed area ≠
 - 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



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



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 <u>not</u> 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, <u>at most</u>,
 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.

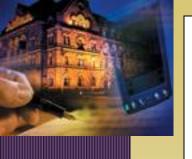


Do I Need to Ban Smoking in My Company-Owned Vehicles?

- 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 nonsmokers
- Pull ashtrays from qualifying vehicles



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.



- 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.



- 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



- 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.



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 <u>must</u> dismiss



Complaints of Violation of the Ohio Smoke Free Workplace Act?

- ODH <u>may</u> 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 <u>or</u> 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



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



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



- 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



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