



Michigan Employers Must Ban Smoking in Indoor Work Places

Employment, Labor & Benefits Practice Group

Foster Swift Employment, Labor & Benefits Quarterly

Spring 2010

Effective May 1, 2010, smoking will be banned in all public places, including places of employment. A place of employment includes any enclosed indoor area where one or more employees perform work, but excludes the Detroit casinos, cigar bars and tobacco retail stores, home offices and motor vehicles.

The new law prohibits smoking anywhere in an employer's indoor facilities, including private, enclosed rooms or offices occupied exclusively by a smoker. "Smoking" under the new law means the burning of a lighted cigar, cigarette, pipe, or any other matter or substance that contains a tobacco product, but does not include chewing tobacco.

Any person who smokes in violation of the law is subject to a \$100 fine for the first violation, and fines of up to \$500 for any subsequent violations. Employers are not required to report smoking violations to any police or government authority, but are required to do at least the following:

- Have clearly posted "no smoking" signs (or the internationally recognized "no smoking symbol") at the entrances to and in every building or work area covered by the smoking ban.
- Remove all ash trays and other smoking paraphernalia from any work area covered by the smoking ban.
- Inform any employee or other individual (such as a customer or vendor visiting the workplace) who is smoking in violation of the law that he or she is violating state law and is subject to penalties for doing so.
- If applicable, refuse to serve an individual smoking in violation of the law.

While there is no direct obligation for employers to adopt a written no smoking policy, it would be prudent for employers to do so. However, unionized employers may be required to bargain with the union concerning no-smoking restrictions.

PRACTICE AREAS

Employee Benefits

Employment Law

Labor Relations



Finally, employers may not take retaliatory or adverse personnel action against any employee or applicant who seeks to enforce his or her rights under the law. Though not clearly defined, presumably this means that employees are protected for bringing complaints to the employer's attention about co-workers smoking in violation of the law.
