

INDIANA'S NEW LAW PROHIBITING SMOKING AFFECTS EMPLOYERS BEGINNING JULY 1

On March 19, 2012, Governor Mitch Daniels signed Indiana's new No Smoking Law, which finally passed after many fits and starts in the General Assembly. The new **No Smoking Law** takes effect on **July 1, 2012** and contains several provisions that directly affect Indiana employers. In general, all Indiana employers that are not exempted by the law (examples: bars, taverns, casinos, fraternal clubs and certain tobacco stores) must:

- Prohibit smoking in a "place of employment." (A "place of employment" is an enclosed area but does not include a private vehicle);
- Prohibit smoking within 8 feet of a public entrance to a "place of employment";
- Inform all employees and prospective employees of the smoking prohibition;
- Remove ash trays and smoking paraphernalia from areas where smoking is prohibited;
- Post conspicuous signs at each public entrance that read "**State Law Prohibits Smoking Within 8 Feet of this Entrance**";
- Ask a person smoking in a "public place" to refrain from smoking. (A "public place" is an enclosed area where the public is invited or permitted);
- Remove the person from the "public place" who fails to refrain from smoking; and
- Not discharge, refuse to hire or in any manner retaliate against any individual who reports a violation or exercises a right or obligation under the new law.

A person who smokes in a non-smoking area commits a Class B infraction and a Class A infraction if they have at least three prior violations. An employer that fails to comply with its obligations also commits a Class B infraction, unless the employer has committed at least three prior violations, in which case it is a Class A infraction.

The penalty for a Class B infraction is a fine of up to \$1,000 and up to \$10,000 for a Class A infraction.

The law specifically permits cities and towns to adopt rules and ordinances that are more restrictive than the state law.

ACTION STEPS FOR INDIANA EMPLOYERS

Between now and July 1, 2012, Indiana employers should consider the following steps to reach compliance with the new No Smoking Law:

- Identify all "places of employment";
- Identify all "public entrances";
- Identify all "public places";
- Develop a communication piece informing employees and prospective employees of the no smoking prohibition;
- Review and amend handbooks and policy statements to comply with the new law;
- Obtain or create the required signage for each public entrance;
- Remove ashtrays and related smoking materials from prohibited areas;
- Inform and train managers and supervisors about the requirement to ask persons violating the law in "public areas" to refrain;
- Develop a protocol for safe and appropriate removal of a person who refuses to refrain in a "public area"; and

- Advise managers and supervisors not to discharge or retaliate against anyone who makes a report or exercises rights under the new law.

Indiana's new No Smoking Law is designated as **House Enrolled Act No. 1149** and creates a new Chapter of the Indiana Code **I.C. 7.1-5-12** and can be accessed [here](#).

Relevant provisions of the new No Smoking Law applicable to most Indiana employers are set out below:

HOUSE ENROLLED ACT NO. 1149

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Sec. 3. As used in this chapter, "smoking" means the:

- (1) carrying or holding of a lighted cigarette, cigar, or pipe or any other lighted tobacco smoking equipment; or
- (2) inhalation or exhalation of smoke from lighted tobacco smoking equipment.

Sec. 4. (a) Except as provided in section 5 of this chapter, smoking is prohibited in the following:

- (1) A public place.
- (2) A place of employment.
- (3) A vehicle owned, leased, or operated by the state if the vehicle is being used for a governmental function.
- (4) The area within eight (8) feet of a public entrance to:
 - (A) a public place; or
 - (B) a place of employment.
- (b) An employer shall inform each of the employer's employees and prospective employees of the smoking prohibition applying to the place of employment.
- (c) An owner, operator, manager, or official in charge of a public place or place of employment shall remove ashtrays or other smoking paraphernalia from areas of the public place or place of employment where smoking is prohibited under this chapter. However, this subsection does not prohibit the display of ashtrays or other smoking paraphernalia that are intended only for retail sale.

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Sec. 6. (a) The commission shall enforce this chapter.

(b) This chapter may also be enforced by:

- (1) the state department of health established by IC 16-19-1-1;
 - (2) a local health department, as defined in IC 16-18-2-211;
 - (3) a health and hospital corporation established by IC 16-22-8-6;
 - (4) the division of fire and building safety established within the department of homeland security by IC 10-19-7-1; and
 - (5) a law enforcement officer;
- in cooperation with the commission.

(c) The commission, the state department of health, a local health department, a health and hospital corporation, the division of fire and building safety, or a law enforcement officer may inspect premises that are subject to this chapter to ensure that the person responsible for the premises is in compliance with this chapter.

Sec. 7. (a) This section does not apply to an establishment or premises in which smoking is allowed under section 5 of this chapter.

(b) The owner, operator, manager, or official in charge of a public place shall do the following:

- (1) Post conspicuous signs that read "Smoking Is Prohibited By State Law" or other similar language.
- (2) Ask an individual who is smoking in violation of this chapter to refrain from smoking.
- (3) Cause to be removed from the public place an individual who is smoking in violation of this chapter and fails to refrain from smoking after being asked to refrain from smoking.
- (c) In addition to the requirements under subsection (b), the owner or operator of a restaurant shall post a conspicuous sign at each entrance to the restaurant informing the public that smoking is prohibited in the restaurant.

Sec. 8. (a) A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class B infraction, except as provided in subsection (b).

(b) A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class A infraction if the person has been adjudged to have committed at least three (3) prior unrelated infractions under:

- (1) this section; or

(2) IC 16-41-37-4 (before its repeal).

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Sec. 10. (a) An owner, manager, operator, or official in charge of a public place or place of employment who fails to comply with a requirement imposed by this chapter commits a Class B infraction, except as provided in subsection (b).

(b) A failure to comply described in subsection (a) is a Class A infraction if the owner, manager, operator, or official has been adjudged to have committed at least three (3) prior unrelated infractions under this chapter.

Sec. 11. An owner, a manager, or an employer shall not discharge, refuse to hire, or in any manner retaliate against an individual for:

(1) reporting a violation of this chapter; or

(2) exercising any right or satisfying any obligation under this chapter.

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Sec. 13. (a) This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.

(b) This chapter does not supersede a smoking ordinance that is adopted by a county, city, town, or other governmental unit before the effective date of this chapter and that is more restrictive than this chapter.

Should you have questions or require further information, please contact Stephen W. Lyman at 317.977.1422 or slyman@hallrender.com or your regular Hall Render attorney.