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Effective April 15, 2006, New Jersey's Smoke-Free Air Act bans smoking generally in all indoor public places and workplaces, with limited exceptions. The Act places requirements on building owners and operators to ensure compliance with the smoking ban, and employers should take steps to minimize the risk of violating the Act.

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East Coast Edition

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New Jersey Enacts Ban Prohibiting Smoking In Most Indoor Public Places

By Bryan M. Churgin

In one of his final official acts, former New Jersey acting Governor Richard J. Codey signed into law the New Jersey Smoke-Free Air Act on January 15, 2006, making New Jersey the 11th state in the nation to enact legislation banning smoking in indoor public places. This far-reaching law, lauded by public-health advocacy groups and overwhelmingly endorsed by state lawmakers, aims to protect workers and patrons from exposure to the dangerous effects of second-hand smoke and imposes substantial monetary fines upon individuals for violating the smoking ban. This newly enacted law is codified at P.L. 2005, c.383 and takes effect on April 15, 2006.

Scope of the Smoking Ban

The Smoke-Free Air Act (the "Act") bans smoking generally in all indoor public places or workplaces, including the indoor and outdoor facilities of any public or nonpublic elementary or secondary school. The Act broadly defines "public places" as any structurally enclosed place of business or commerce, whether publicly or privately owned and whether operated on a for-profit or nonprofit basis, which is "generally accessible to the public." It also identifies, by way of example, establishments that constitute indoor public places for purposes of the smoking ban; included within the list of "public places" are libraries, bars, restaurants, garages and parking facilities, licensed health care facilities, sporting event facilities, shopping malls and retail stores.

A limited exemption under the Act permits smoking in (i) gaming areas located within casinos at which a specified number of table games or slot machines "are available to the public for wagering;" (ii) licensed simulcasting facilities; (iii) retail cigar bars and cigar lounges which derive a certain percentage of revenue from the on-site sale of tobacco products, excluding tobacco sales from vending machines, and the rental of on-site humidors; and (iv) tobacco retail establishments. Additionally, owners of "lodging establishments" (i.e., hotels and motels) may permit smoking in up to 20% of the guest rooms at that facility. However, attractions on casino floors, including bars and restaurants, that do not offer table games or slot machines are not exempt from the smoking ban.

Responsibilities and Penalties

The Act requires building owners and operators — identified as "persons having control of an indoor public place or building" — to post readily visible signs on the premises indicating that smoking is prohibited on the premises except in designated areas and that violators are subject to a fine. Building owners and/or operators are also charged with ensuring that everyone on the premises complies with the Act's smoking ban.

Individuals who violate the act directly, by smoking in prohibited areas, or indirectly, by failing to police the smoking ban or comply with an order concerning such violations, are

subject to a monetary fine of not less than \$250 for the first offense, \$500 for the second offense, and \$1000 for each subsequent offense. The Act authorizes the New Jersey Commissioner of Health and Senior Services or the appropriate local board of health to enforce through a summary municipal court proceeding the smoking ban and recover the foregoing penalties, which constitute the only available civil remedies under the Act; a private right of action against violators is not permitted.

Recommendations

Because the effective date of the smoking ban is quickly approaching, we recommend that the following steps be taken as soon as feasible, but prior to April 15, to minimize the risk of violating the Act's requirements.

- All employees should receive written notification, with an appropriate acknowledgment of receipt, explaining where smoking is prohibited and, if applicable, permitted.
- If a no-smoking policy already exists, a written notice should be distributed to all employees reminding them about the policy's requirements.
- The written notification, regardless of the form, should further advise all recipients that violators are subject to monetary penalties and, possibly, appropriate discipline.
- Signs that are easily seen stating that smoking is prohibited on the premises should be displayed over each doorway utilized by anyone to enter or exit the building.
- Finally, management and company supervisors should be instructed to police compliance with the Act. This includes directing anyone that they witness violating the Act to cease smoking and documenting such infractions. This written documentation may minimize the company's legal exposure in the event that the state or a local board of health pursues a municipal court enforcement action and, with respect to employees, support future disciplinary action, up to and including termination.

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