

Employment Edge 76th Edition - No More Free Matches: October 1 Smoking Ban Affects Your Business

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NO MORE FREE MATCHES: OCTOBER 1 SMOKING BAN AFFECTS YOUR BUSINESS

Written by **Doraine Larison and Sam Diehl**

By October 1, 2007, all Minnesota employers must comply with new obligations under the "Freedom to Breathe Act." The new Minnesota law, enacted earlier this year, prohibits smoking in indoor public places, on public transportation, and in nearly all places of employment.

Employers should be aware that the ban includes "any indoor area at which two or more individuals perform any type of a service" for payment, notably including "employee cafeterias, lounges, auditoriums ...[and] restrooms, elevators, hallways." The ban also includes vehicles "used in whole or in part for work purposes ... during hours of operation if more than one person is present."

Private residences also may be covered by the ban if an area is used regularly as a place of business with one or more on-site employees, or if the homeowner uses the area regularly to meet with patients, clients, or customers.

Notable exceptions to the ban include private homes (except as discussed above), private automobiles (not used for business), tobacco shops, cabs of heavy commercial vehicles, farm and construction vehicles, and family farms with two or fewer non-family employees.

The law requires employers to enforce the ban in their workplaces or be subject to a petty misdemeanor charge. Specifically, the law states that employers must post signs, make reasonable efforts to keep individuals from smoking, and take any other appropriate measures. Businesses are now prohibited from providing "smoking equipment," such as ashtrays or matches, in areas where smoking is prohibited.



Employers should be aware that the law specifically prevents employers from discharging, refusing to hire, penalizing, discriminating against, or retaliating against an employee, applicant, or customer because the individual exercises their "right to a smoke-free environment."

As with other areas of employment law, the new smoking ban may present a trap for the unwary. In implementing the new ban on smoking in the workplace, employers should be cautious not to run afoul of Minnesota's Lawful Consumable Products Act, which prevents employers from discriminating against employees or applicants who use a lawful consumable product, such as tobacco or alcohol, during non-working hours when the employee is off the employer's premises. Minn. Stat. § 181.938.

The Freedom to Breathe Act is 2007 Minnesota Session Law Chapter 82 and amends Minnesota Statute Sections 141.411-417. It goes into effect October 1, 2007. For assistance on compliance with the new law or any other legal questions please contact Dorraine Larison, Sam Diehl or another member of the Gray Plant Mooty Employment and Labor Law Practice Group.

WHAT THE EEOC IS WATCHING: EEOC HIGHLIGHTS ENFORCEMENT STRATEGIES

Written by Sam Diehl

Employers may want to take note of recent comments by Equal Employment Opportunity Commission (EEOC) attorneys in which they described major enforcement initiatives, changes in EEOC strategy, and areas where the agency anticipates a large number of claims. Employers should consider their risk in these areas and may want to use this opportunity to talk with counsel about ways to limit their exposure to claims. Areas of EEOC emphasis include:

Systematic Litigation: EEOC offices often operate somewhat independently, but under its Systematic Litigation Initiative, the agency hopes to change that. The goal is to act as a "national law enforcement agency" by better coordinating cases against national employers or industries. Taking information from advocacy groups, media reports, and other sources, EEOC attorneys hope to target particular industries, groups of employers, or large national employers.

E-Race: The Eradicating Racism and Colorism from Employment (E-RACE) Initiative seeks to continue to focus on racial barriers to employment and advancement. Race discrimination remains the largest part of the EEOC's caseload at 36%. The agency will particularly focus on "disparate impact" claims. Such claims may arise, for example, when an employer intentionally or unintentionally screens applicants by zip code, name, credit report, or arrest and conviction record, among others, which can implicate race and national origin. The EEOC is also scrutinizing employer testing programs in this regard.



Youth: The agency also will conduct a national education campaign for young employees, their supervisors, and employers regarding the EEOC and young employees' legal rights. The agency hopes to change young workers' lack of awareness of their rights.

Family Responsibilities: The EEOC is also emphasizing the growing area of family responsibilities discrimination. The term "family responsibility discrimination" refers to the growing number of suits against employers for discriminating against employees based on assumptions about their family responsibilities. Discrimination arises because the employer's decisions are based not on the individual's actual performance, but rather on stereotypes of how the individual will or should act due to his or her caregiving role. Although no law specifically prohibits discrimination on the basis of family responsibilities, differential treatment of employees with care-giving responsibilities may violate various employment laws, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act ("ADA"), the Family and Medical Leave Act ("FMLA"), and the Minnesota Human Rights Act.

These EEOC priorities represent areas where employers should continue to scrutinize their policies and practices to minimize the risk of suits or enforcement actions. If you need assistance in reviewing your policies and practices or in evaluating your risk, please contact Sam Diehl or another member of the Gray Plant Mooty Employment and Labor Law Practice Group.

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