

Labor & Employment Law E-Alert

Vorys, Sater, Seymour and Pease LLP

OHIO'S SMOKING BAN FINALIZED

On April 16, 2007, the Joint Committee on Agency Rule Review adopted the Ohio Health Department's proposed rules implementing Ohio's "Smoke Free Workplace Act." The Act was effective on December 7, 2006, but the Ohio Department of Health had not actively enforced it pending issuance of final rules. Now that the rules have been finalized, the Department of Health will begin enforcing the Act on May 3, 2007, including issuing fines and citations to businesses found in violation of the Smoke Free Workplace Act or the final rules.

The newly finalized rules impose three basic requirements on employers and proprietors:

- Prohibit smoking in "enclosed areas" of public places and enclosed areas of employment, with some exemptions.
- Remove ashtrays and other smoking receptacles.
- Conspicuously post specified "No Smoking" signs in every public place and place of employment where smoking is prohibited, including at each entrance. The required "No Smoking" signs are available from the Department of Health's website at: <http://www.odh.state.oh.us/alerts/ohiosmokingban.aspx>.

The Act also prohibits smoking in vehicles that are places of employment. The rules define a "vehicle" as a place of employment when the vehicle is enclosed, occupied by one or more non-smoking persons at the same time, and used for business purposes, or when it is part of a motor pool and shared by non-smoking employees. Therefore, for example, a driver or passenger may smoke in a truck used for business purposes only if: (1) everyone in the truck is a smoker; and (2) that truck is not shared with any other employee.

The Act allows smoking in designated rooms in hotels and nursing homes, tobacco specialty shops, certain family businesses, private homes not operating as businesses, outdoor open-air patios, and nonprofit private clubs. A "private club" under the rules must be in a free-standing building, have no employees unless the employees themselves are members, be closed to the public, and not admit anyone 18 years old or younger. Even this definition, however, is already facing legal challenge.

The final rules also include penalties for violating the Act, which include fines ranging from \$100 to \$2,500 a day.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

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