



## WORKPLACE SMOKING LAW

In 1994, the California legislature determined that the regulation of smoking in the workplace was a matter of statewide interest and concern and enacted Labor Code Section 6404.5 which prohibits smoking in enclosed places of employment. The purpose of the law is to reduce employee exposure to environmental tobacco smoke, and to eliminate the hardship and confusion resulting from enforcement of different local workplace smoking restrictions.

The workplace smoking law prohibits an employer from knowingly permitting, and persons from engaging in, the smoking of tobacco products in an enclosed space at a place of employment. Smoking is permitted in the following places since they are not "places of employment" covered by the law:

- (1) *hotels, motels or similar transient lodging establishments* as follows: (a) 65% of the guest rooms; and (b) 25% of a lobby which is over 2,000 square feet which is designated for smoking by the establishment (50% of the lobby if the lobby is 2,000 square feet or less);
- (2) *meeting and banquet rooms* in a hotel, motel or similar transient lodging establishment, restaurant or public convention center, except where food or beverage is being served or when the room is being used for an exhibit;
- (3) *tobacco shops*;
- (4) *truck tractors*, if no nonsmoking employees are present;
- (5) *warehouse facilities*, with more than 100,000 square feet of total floor space and 20 or fewer full-time employees (this does not include any area utilized as office space);
- (6) *gaming clubs or bingo facilities* that restrict access to minors, but only until January 1, 1997 or the date the Occupational Safety and Health Standards Board adopts regulations on this matter;
- (7) *bars and taverns* in which the serving of food is incidental;
- (8) *theatrical production sites*, if smoking is an integral part of the story in the theatrical production;
- (9) *medical research or treatment sites*, if smoking is integral to the research and treatment being conducted;
- (10) *private residences*, except for private residences licensed as family day care homes, during the hours of operation and in those areas where children are present;
- (11) *patient smoking areas* in long term health care facilities;
- (12) *employee breakrooms* designated by employers for smoking, provided that all of the following conditions are met: (a) air from smoking is to be exhausted directly to the outside by an exhaust fan, not recirculated to other parts of the building, (b) the employer is to comply with any ventilation standard or other standard, using appropriate technology, adopted by the Occupational Safety and Health Standards Board of the federal Environmental Protection Agency, (c) the smoking room is to be located in a nonwork area where no one is required to enter as part of his or her work responsibilities, and (d) there are sufficient nonsmoking breakrooms to accommodate nonsmokers;
- (13) *small employers* (those with 5 or fewer employees, either full-time or part-time) may permit smoking where all of the following conditions are met: (a) the smoking area is not accessible to minors, (b) all employees who enter the smoking area consent to permit smoking, without coercion by the employer, (c) no one is required as part of his or

her work responsibilities to work where smoking is permitted, and (d) the employer complies with the same ventilation standards as for employee breakrooms of larger employers described above.

A violation of the workplace smoking law is punishable by a fine not to exceed \$100 for the first violation, \$200 for a second violation within one year, and \$500 for a third and for each subsequent violation within one year.

Since an employer is only liable if it knowingly and intentionally permits smoking in a place of employment, an employer is not in violation of the law if it takes the following reasonable steps to prevent smoking by a nonemployee:

- (1) Posts a clear and prominent sign stating either "No Smoking" or "Smoking is prohibited except in designated areas" at each entrance to the building or structure;
- (2) Requests, where appropriate, that a nonemployee who is smoking refrain from smoking.

An employer is not required to physically eject a nonemployee from the place of employment, or to demand that a nonemployee refrain from smoking under circumstances involving a risk of physical harm to the employer or any employee.

An employer is permitted to be even more restrictive than required by the workplace smoking law, and may prohibit smoking in any enclosed place of employment. The workplace smoking law does not require any employer to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*