



## Clearing the Air *Smoke Free Workplace Law*

*By David S. Katz*

**N**ew anti-smoking legislation, which will impact employers throughout the Commonwealth of Massachusetts, became effective recently. The law, which is entitled “An Act of Improving Public Health in the Commonwealth” (the “Act”), is an amendment to General Laws, Chapter 270 and prohibits smoking in virtually all workplaces, public and private.

Smoking is now prohibited in workplaces, workspaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restroom, restaurants, supermarkets, bars and facilities such as auditoriums and concert halls that are open to the public. (Additional prohibitions may apply to public employees.) There are only a few exceptions occupied by a membership association, smoking bars and tobacco stores. Under the Act, “workplace” is broadly defined as:

an indoor area, structure or facility or a portion thereof, as which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Moreover, the Act further widens its reach by defining a “workspace” as “an enclosed area occupied by an employee during the course of his employment.” According to sources at the Department of Public Health, the law does not prohibit smoking in cars and trucks belonging to private employers. Under the new law, employees are not prohibited from smoking in outdoor spaces; ***provided, however***, that such outdoor spaces must be physically separated from and enclosed workspace. If any doors or windows of the employer’s facility border the outdoor space, those openings must be closed to prevent the migration of smoke into the enclosed workspace - otherwise, the outdoor space will be considered an extension of the enclosed workspace and subject to the law’s prohibition.

The Act also requires that every area in which smoking is prohibited must have “no smoking” signs conspicuously posted and clearly visible to all employees, customers and visitors in the workplace.

Approved signs and templates for such signs may be obtained from the Department of Public Health or local boards of health.

Employers are prohibited from discriminating or retaliating against any individual for complaining about a violation of the Act or furnishing information concerning such a violation. Owners and managers in control of a building in which the Act is violated are subject to fines that will vary based on the number of offenses committed; for the purpose of calculating fines, each calendar day on which a violation occurs is considered a separate offense. In addition, an individual who violates the Act by smoking in a place where smoking is prohibited will be subject to a civil penalty of \$100 for each violation.

We recommend that employers inform their employees about this new law as soon as possible. Employers should also consider implementing written anti-smoking policies or revising existing policies to reflect the new law.

*If you have any questions, please do not hesitate to contact us.*

**We are in the process of updating our e-mail address list.**

**Would you kindly forward your e-mail address to us at [dschonhorn@katzlawgroup.com](mailto:dschonhorn@katzlawgroup.com).**