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Tennessee's Non-Smoker Protection Act (2011)

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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE

...in cooperation with the Tennessee Municipal League

#209
HOT topic

June 2, 2011

TENNESSEE'S NON-SMOKER PROTECTION ACT

by Bonnie Jones, Human Resource Consultant

Tennessee, long labeled a "traditional tobacco state" with roots heavily tied to the tobacco industry, moves to the forefront of national regulation with the signing of the Non-Smoking Protection Act, Public Chapter 410. Smoking in public places (notably municipal workplaces) is now recognized by the Tennessee Legislature as a public health issue and is, therefore, banned. If any municipalities in Tennessee still allow smoking in any of their enclosed public buildings, such practices are now up in smoke.

The Non-Smoker Protection Act had an effective date of June 11, 2007, for the promulgation of rules and regulations. Municipalities, however, had to comply with the ban no later than Oct. 1, 2007. The new law required most every public and private employer in Tennessee to comply. It is estimated that about a quarter of all Tennesseans smoke.

Public Chapter 410 adds a new Part 18 to T.C.A. Title 39, Chapter 17, banning smoking in most enclosed public places in Tennessee, including places of employment. Section 1 of the new law defines "place of employment" as:

> An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility;

The new law does contain numerous exceptions, although none are applicable to municipally owned facilities. These exceptions include:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility, taxi or other commercial vehicle for hire;
2. Hotel and motel rooms that are designated as smoking rooms;
3. Retail tobacco stores that prohibit minors on their premises;
4. Non-enclosed areas of public spaces, so long as tobacco smoke is not reasonably expected to enter areas where smoking is prohibited;
5. Enclosed smoking areas of a building or facility that are physically separated and independently ventilated from areas of the building or facility where smoking is prohibited;
6. Venues that restrict access to persons who are 21 years of age or older;
7. Cigar bars;
8. Private clubs;
9. Private vehicles, except when used for the public transportation of children or for transportation by a health care facility or day care facility or when used as a taxi or other commercial vehicle for hire; and
10. All premises of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

Display sign requirements are also included under this new law, and municipalities must be aware that

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signage requirements apply. "No Smoking" signs or the international no-smoking symbol must be placed at every entrance to a public place or place of employment where smoking is banned.

The smoking ban is enforced by the Tennessee Department of Health and Department of Labor and Workforce Development. A person smoking in violation of the ban is subject to a civil penalty of $50. Owners or managers of public places who violate the ban will be subject to a warning for a first violation, a civil penalty of $100 for a second violation in a 12-month period and a civil penalty of $500 for a third or subsequent violation in a 12-month period.

Since the promotion of electronic cigarettes, several questions have arisen surrounding this issue. Here is a frequently asked question answered by MTAS Legal Consultant Josh Jones.

Q: Would the new electronic aids to quit smoking, E6 Cigarettes I think they are called, fall under the prohibition to smoke in a city work place as is the case of regular cigarettes? I understand these look like cigarettes but emit a water vapor instead of regular smoke. The city has a policy that prohibits smoking in city buildings and enclosed vehicles which I think is also found in state law.

A: The Tennessee Non-Smoker Protection Act prohibits smoking in certain public places including government buildings. Within that act, T. C. A. § 39-17-1802 (16) defines smoking as "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form ..."

The Tennessee Department of Health has stated, and I agree, that an electronic cigarette does not meet the definition of smoking under the aforementioned statute.

Across the country some employers, including some government employers, have adopted regulations prohibiting electronic cigarettes. These employers have cited FDA research as basis for doing so. Supposedly, a city could prohibit these as well, however, I know of no case law on point. Hence, such a policy could be challenged, but my guess is the ban would withstand a legal challenge.

For more information about how the Non-Smoker Protection Act affects your municipality, contact your MTAS municipal management consultant. You also may contact Richard L. Stokes or Bonnie Jones, MTAS human resource consultants.

To see a copy of the bill, visit http://tennessee.gov/sos/acts/105/pub/pc0410.pdf.

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