

Enforcement of Ohio's Smoking Ban

By CPM Business Attorneys

Enforcement of Ohio's smoking ban--which voters passed on November 7, 2006--began Thursday, May 3, 2007. Pursuant to the smoking ban, no employer, owner or manager of a public place or place of employment shall permit smoking in a public place or place of employment or in the areas directly or indirectly under the control of the employer, owner, or manager immediately adjacent to locations of ingress or egress to the public place or place of employment. In addition, a proprietor must take reasonable steps to ensure that smoke does not enter any prohibited area through entrances, windows, ventilation systems, or other means.

The new law also provides that all public places and places of employment must post conspicuous signs at each entrance and remove ashtrays and other smoking receptacles. The posted signs must be clearly legible and contain a toll-free number for reporting violations of the smoking ban. The Ohio Department of Health has designed two sample signs which, when properly placed, meet the requirements. For more information and sample signs, please see the Ohio Department of Health's website for additional information and for sample signs.

Under the new law, a public place is defined as an enclosed area where the public is invited or where the public is permitted and that is not a private residence. A place of employment is defined as an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area is a place of employment without regard to the time of day or the presence of employees.

There are some limited exceptions to the smoking ban. Private residences, hotel rooms designated as smoking rooms, some family-owned businesses, some nursing homes, retail tobacco stores, and outdoor patios that are physically separated from the building are exempt from the smoking ban. However, the Franklin County Common Pleas Court recently held that there is no exception for private clubs. Private clubs have employees; therefore, private clubs are places of employment, and the ban prohibits smoking in all places of employment.

Businesses cited under the law are subject to the fines and fees set forth by the Ohio Department of Health. Businesses are subject to a warning letter for the first offense; fines of \$100 for the second offense; \$500 for the third offense; \$1,500 for the fourth offense; and \$2,500 for the fifth and subsequent offense.

Clients should note that specific circumstances must be considered before determining that an exception from the smoking ban applies. If you have any questions or concerns about the specific circumstances of your business or organization, please contact your CPM attorney for an individualized review.