

## EMPLOYMENT, LABOR & BENEFITS LEGAL UPDATE



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### Wisconsin Goes Smoke Free - Are you Ready?

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**W**isconsin recently adopted a law that will impact many employers in the state, both private and public. The new law, 2009 Wisconsin Act 12, prohibits smoking in most private and public places. The law takes effect on July 5, 2010. Until then, Wisconsin's current Clean Indoor Air Act will remain in effect, as well as local municipal ordinances restricting smoking.

**Current Smoking Ban.** Under the current Clean Indoor Air Act, smoking is generally completely prohibited in hospitals, motor buses, daycare centers where children are present, and a few other places. Smoking is also prohibited, except in designated areas, in indoor locations in government buildings, offices, restaurants, schools, retail establishments, movie theaters, community-based residential facilities, and nursing homes. Exempted from the ban are places such as taverns, bowling centers, rooms where the main occupants are smokers, and manufacturing facilities.

**New Smoking Ban.** The new law rewrites the prior law. The new law prohibits smoking in enclosed "public places" and enclosed "places of employment." Smoking is also prohibited in any of the following enclosed places: state or local buildings, taverns, restaurants, bowling centers, theaters, lodging establishments, retail establishments, daycare centers, educational facilities (i.e., schools), correctional facilities, state institutions, college residence halls or dormitories, hospitals and clinics, assisted living facilities, common areas of multiple-unit residential properties, sports arenas (e.g., Lambeau Field), bus shelters, public conveyances, and private club facilities (those used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose).

Unlike the old law, the new law states that indoor areas (e.g., rooms or parts of rooms) cannot be designated as smoking areas. Outdoor smoking areas may be designated that are a reasonable distance from any entrance to the facility so that customers, employees, and others associated with the business may smoke.

**Definitions.** "Places of employment" under the new law is defined as any indoor place that employees normally frequent during the course of employment. This includes enclosed places such as an office or work area, an employee lounge, a restroom, a conference or meeting room, a classroom, or a hallway. All smoking must occur outside of the workplace and at a reasonable distance from the workplace. "Public place" is defined as a place that is

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open to the public, regardless of whether a fee is charged, or a place to which the public has lawful access or may be invited. “Smoking” means burning or holding or inhaling or exhaling smoke from a lighted cigarette, cigar, pipe, or any other lighted smoking equipment.

**Local Ordinances.** Local authorities (cities, counties, villages, and towns) may go further than the new law and restrict outside smoking on public properties such as parks, fairgrounds, and the like. Local authorities may not, however, define the term “reasonable distance” or set any number of feet as being a reasonable distance from the main/front entrance for restaurants, taverns, private clubs, and retail establishments where smoking is permitted.

**Responsibilities of Person In Charge.** The person in charge of a facility where the law applies is responsible for making reasonable efforts to prohibit persons from illegally smoking. The person in charge must: post warning signs or provide other appropriate notification of the no smoking rules to others; refuse to serve a person who is smoking in a tavern, restaurant, or private club; ask a person who is illegally smoking to refrain from doing so; ask a person to leave if he or she refuses to stop smoking; and immediately notify an appropriate law enforcement agency if a smoker refuses to leave after being asked to do so.

**Penalties for Violations.** A person who smokes where it is prohibited is subject to a forfeiture of not less than \$100 nor more than \$250 for each violation. Any person in charge of a facility where the law applies and who violates the law can be fined \$100. The first violation requires a warning. Thereafter, the maximum daily fine is \$100 regardless of the number of violations.

**School Prohibitions.** Be aware that a current Wisconsin statute, Section 120.12(20), prohibits the use of all types of tobacco products on school grounds, including cigarettes, cigars, pipes, and chewing tobacco or snuff. This prohibition applies to all premises under the control of a school board, whether owned or rented. It covers faculty, staff, students, and all other persons who enter school buildings or grounds. The prohibition applies at all times and covers school-sponsored athletic or extracurricular events. The only exception is that a school board may allow the use of tobacco products on school property that is rented to a person or group for non-educational purposes.

State law does not provide specific penalties for violations of the ban on tobacco use on school property as set forth in Section 120.12(20). Therefore, school boards should develop enforcement policies. Violations by school faculty and staff may be handled through a school district’s disciplinary process. Violations by students may result in disciplinary actions such as detention, suspension, or expulsion from school. Violations by other parties could result in referral to a law enforcement agency.

In light of the upcoming changes to Wisconsin’s no smoking laws, employers should be taking action to develop a plan and policy addressing the new law’s provisions so they are ready when the new provisions go into effect on July 5, 2010. This would include revising or adding to provisions in employee handbooks, and personnel policies and determining what action is to be taken with regard to violators. Employers should also be prepared to post signage that notifies employees and visitors that smoking is not permitted in the workplace. If not already in place, school boards should take action to adopt provisions prohibiting smoking on school grounds and imposing penalties for violations.

If you have questions regarding the above, please contact Jeff Jones or Chris Toner, the authors of this article, or any of the attorneys in the Employment, Labor & Benefits Practice Group of Ruder Ware: Ron Rutlin, Dean Dietrich, Mary Ellen Schill, or Sara Ackermann. 

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Ruder Ware's Employment, Labor & Benefits practice group works in tandem with private and public employers providing counsel on all aspects of human resource management. The breadth of services offered, unique for a law firm headquartered in Wausau, Wisconsin, includes counsel on highly sensitive issues such as workplace harassment, employee privacy, drug and alcohol testing, and disciplinary issues. In addition, attorneys design and assist with the development, implementation, and enforcement of policies and procedures relating to benefits, hiring practices, employee handbooks, state and federal discrimination laws, FMLA, FLSA, ADA, OSHA, and workers' compensation.

Attorneys in the group regularly represent public and private sector employers in collective bargaining, negotiations, union elections, unfair labor practices, and grievance arbitration matters in addition to guiding nonunion clients on maintaining their union-free status.

Actively involved in organizations with human resource professionals as the primary member base, our attorneys are in tune with the various sensitivities and complexities of the profession. Our attorneys often present seminars and in-house training on employment law topics both across the state and nationwide.

Areas of practice by the Employment, Labor & Benefits practice group:

- Employee Benefits & Executive Compensation
- Employment Law
- Labor Law

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