Workplace Smoking Now Prohibited in New Jersey

In recent years, many states and local governments implemented smoke-free air laws prohibiting smoking in public places, including workplaces. Although New Jersey was slow to “jump on the bandwagon,” on January 14, New Jersey’s Acting Governor Cody, in one of his last official duties, signed into law the New Jersey Smoke-Free Air Act (“SFAA”), making it illegal to smoke in virtually all workplaces. The SFAA becomes effective April 14, 2006.

The SFAA prohibits smoking in any “workplace,” which is defined as a “structurally enclosed location or portion thereof at which a person performs any type of service or labor.” There are limited exceptions applicable to casinos and retail tobacco establishments, but otherwise virtually all New Jersey employers are covered by the SFAA. The new law also leaves intact New Jersey’s pre-existing law prohibiting discrimination against employees or applicants because they do or do not smoke. Thus, New Jersey employers cannot allow employees to smoke on their premises, but curiously also cannot discriminate against employees who choose to smoke.

The new law also requires a “person having control” of an indoor public place or workplace to install in every public entrance a clearly visible sign containing letters or a symbol indicating that smoking is prohibited, and that violators are subject to a fine. A “person having control” is defined as the “owner or operator of a commercial or other office building or other indoor public place from whom a workplace or space within the building or indoor public place is leased.”

Violations of the SFAA can result in civil fines against either the individual smoker or the “person having control” of a workplace. The fines range from not less than $250 for the first offense, to $500 for the second offense and $1,000 for each subsequent offense. The Commissioner of Health and Senior Services (and/or local boards of health) are responsible for collecting the fines and may proceed in municipal court to do so. The above fines are the only remedies available for violation of the SFAA, and the law expressly provides that there is no private right of action. The SFAA contemplates the possibility that local governments or boards of health also may impose smoking restrictions. It states that such ordinances are permissible to the extent their prohibitions are equivalent to or greater than those of the SFAA.

For New Jersey employers with pre-existing no smoking policies, compliance with the SFAA should not impose a difficult burden. Indeed, the SFAA may provide an additional incentive for employee compliance with such policies. However, New Jersey employers without a no smoking policy should put one in place and distribute it to the employees.

The SFAA’s long-term effect remains to be seen. Employers in the bar and restaurant industry have complained that the new law will harm their businesses. Some employers also have complained that...
the SFAA’s gaming industry exemption is unfair. The New Jersey legislature will likely revisit these (and other) issues because the SFAA automatically expires in two years.

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