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Maine Laws and Rules Related
to Secondhand Smoke

February 2010



Healthy Maine Partnerships
Partnership For A Tobacco-Free Maine

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Workplace Smoking Act of 1985 and Accompanying Rules

Where does the Workplace Smoking Act apply?

The Workplace Smoking Act applies to all enclosed areas of business facilities in Maine where employees perform work and for which the employer is responsible. The law applies to workplaces, regardless of whether they are privately owned or owned by a state or local government entity.

A 'business facility' is a place of employment. Business facilities include 'residential facilities' defined as a facility with one or more residential units or apartments licensed by DHHS when an employee is physically present to perform work there.

It does not apply where work is performed outdoors except in certain limited circumstances as follows:

A person may not smoke tobacco in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.

Smoking tobacco is prohibited within outdoor eating areas when open and available for dining or beverage service.*

NOTE: Membership clubs, in operation prior to January 1, 2004, with employees (for example, the VFW, American Legion, Eagles, and Elks) are exempt from the law if all of their employees and a majority of members casting ballots vote to allow smoking. For more information, please contact the Partnership For A Tobacco-Free Maine and request a copy of the Veterans' Services Organizations brochure.

What tobacco-related activities are regulated by this law?

The law regulates tobacco **smoking**—of cigarettes, pipes, cigars, etc. It does **not** regulate the use of other tobacco, such as chewing tobacco and snuff.

Where in workplaces does the law prohibit smoking?

Smoking is prohibited in all enclosed areas where work is performed and in common areas, such as reception areas, break rooms, restrooms, cafeterias, hallways, and meeting rooms. Smoking is prohibited in private offices. Smoking is prohibited in employer-owned and -leased vehicles used by employees; it is also prohibited in employee-owned vehicles used in the course of work, whenever other employees are present in the vehicle, or another person is in the vehicle for work-related reasons.

Smoking is prohibited in residential facilities licensed by DHHS (see above) when an employee is physically present to perform work there.

Where does the law allow smoking?

Employers may only allow smoking outdoors, at least 20 feet from entryways, vents and doorways, and not in a location that allows smoke to circulate back into the building—for instance, through a ventilation system, windows, or doors. Also, an outdoor smoking area may be constructed to protect employees from the weather, as long as at least one wall has an opening that extends four feet or more from the ceiling or the floor.

May employers make rules about tobacco use that go beyond the law?

Yes. Employers may decide to prohibit all tobacco use, not just smoking. They may also decide not to allow smoking anywhere on their property, including outdoors. They may not require, as a condition of employment, that employees or prospective employees refrain from tobacco use when they are not at work, or otherwise discriminate against employees who use tobacco outside of employment.

What are the employer's responsibilities under the Workplace Smoking Act?

The employer must establish, or may negotiate through the collective bargaining process, a written smoking policy that complies with the law. The employer must also post the policy, supervise its implementation, and provide a copy of the policy to any employee who requests it.

NOTE: The Public Places Smoking Law and accompanying rules govern smoking in areas of workplaces into which members of the public are invited or allowed.

* "Outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment. "Eating establishment" means any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments, or establishments dispensing food from vending machines, or establishments preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, mobile eating places, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving foods, retail frozen dairy product establishments, airports, parks, theaters, vacation camps or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.

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Public Places Smoking Law and Accompanying Rules

Where does the ‘public places’ smoking law apply?

The law applies to places into which the public is **invited or allowed**, including stores and other retail businesses, restaurants, bars, nightclubs, movie theaters, bowling alleys, sports arenas, museums, libraries, day care facilities (including throughout the home at home-based day care facilities, during hours of operation). The law also applies to units or apartments within residential facilities licensed by DHHS when an employee is physically present to perform work there, government offices, transportation for the public (buses, trains, taxi cabs), and hotel and motel lobbies, hallways and meeting rooms. The law applies, regardless of whether the establishment is privately owned or owned by a state, or local government entity.

NOTE: A membership club that holds a function that is open to the public is a public place during the function.

What tobacco-related activities are regulated by this law?

The law regulates tobacco **smoking**—of cigarettes, pipes, cigars, etc. It does **not** regulate the use of other tobacco, such as chewing tobacco and snuff.

Where does the law prohibit smoking?

It is prohibited in “enclosed” areas of places that are open to the public. This includes residential facilities licensed by DHHS when an employee is physically present to perform work there. An area is “enclosed” unless at least one wall has an opening that extends four feet or more from the ceiling or the floor. Public transportation, including cars, taxis, trains, buses and limousines, not open to the sky are enclosed public places. At all day care facilities (including those that are home-based), smoking is also prohibited **outdoors** where children may be present and in **vehicles** when children are present.

Where does the law allow smoking?

Smoking is allowed outdoors at public places that are also workplaces, as long as the area designated for smoking is at least 20 feet from entryways, doorways and vents, and in a location that does not allow smoke to circulate back into an enclosed area of a public place. Also, an outdoor smoking area may be constructed to protect smokers from the weather, as long as it does not meet the definition of “enclosed” above. Smoking in enclosed areas of public places is prohibited unless there is a specific exception in the law.

Smoking is allowed in:

- 1) Any public place during the time that it is not open to the public (during its normal business hours, a public place must be closed for at least one hour to be considered “not open to the public”);
NOTE: A closed public place and private residences and residential facilities licensed by DHHS where employees are providing services for the employer are governed by the Workplace Smoking Act.
- 2) Theaters or other enclosed structures used for plays, lectures, recitals or other similar purposes if the smoking is solely by a performer and the smoking is part of the performance;
- 3) Any area where undertaken as part of a religious ceremony or as part of a cultural activity by a defined group;
- 4) Motel or hotel rooms that are rented to members of the public;
- 5) High-stakes bingo/beano games operated by federally recognized Indian tribes;
- 6) Tobacco specialty stores; and

NOTE: Smoking a water pipe or hookah is prohibited in a tobacco specialty store that requires a new license after January 1, 2007. On premises service, preparation, or consumption of food or drink is prohibited unless licensed for such service or consumption before January 1, 2007.

- 7) Smoking rooms in off-track betting facilities or simulcast racing facilities at a commercial track if all requirements spelled out in the law and the ventilation requirements in 10-144 Chapter 249 “Rules Relating to Smoking in Public Places” Section 3(C) are met.

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Miscellaneous Separate Laws and Rules Regarding Secondhand Smoke

Hospitals

Hospitals are covered by the general provisions of the Workplace Smoking Act, as are most other workplaces. No one may smoke tobacco or any other substance in any enclosed area of any hospital. Hospitals may designate the entire hospital campus, both buildings and grounds, as a nonsmoking area.

Nursing homes

Nursing homes are covered by the general provisions of the Workplace Smoking Act as are most other workplaces. Nursing homes may designate the entire grounds as a nonsmoking area.

Elementary and secondary public schools

Tobacco use in the buildings or on the grounds of any elementary or secondary school is prohibited. This prohibition applies to all students, staff and visitors, at all times—24 hours a day, 365 days a year.

Foster homes

Smoking is not permitted in foster homes when children are present or within 12 hours of their return if they are away. It is also prohibited in the vehicles of foster parents within 12 hours of transporting children and when children are present.

Vehicles

Smoking is prohibited in a motor vehicle by the operator or a passenger when a person who is under 16 years of age is present. From September 1, 2008 to August 31, 2009, a law enforcement officer shall give a written warning to an operator or passenger of a motor vehicle who is in violation of this section. Beginning September 1, 2009, a person who violates this section commits a civil violation for which a fine of \$50 must be assessed, except that a law enforcement officer, at his or her discretion, may give a written warning.



John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

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