

Labor Law Bulletin

Labor and employment law trends of interest to our clients and other friends.

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NEW YORK CITY ANTISMOKING LAW

New York City's antismoking amendments went into effect this week. While the media attention has understandably focused on the new provisions effectively banning smoking in all bars and restaurants, the occasion serves to remind employers of the requirements of the original 1995 law, prohibiting smoking in most workplaces and requiring the adoption and publication of antismoking policies.

Specifically, employers are required to "adopt, implement, make known, maintain and update . . . a written smoking policy" containing "at minimum" the following provisions:

1. Smoking in the workplace is prohibited;
2. Retaliation against employees and applicants who exercise or attempt to exercise any rights under the statute is prohibited; and
3. Description of procedures to provide "adequate redress" for such retaliation must be included.

While little case law has developed since 1995, we believe the requirement that the employer "make known" the policy mandates that it be included in employee handbooks. Posting, though not required, is a good idea, and publicity in employee newsletters, preferably with the strong endorsement of senior management, is desirable.

The policy should prohibit smoking anywhere in the workplace or while on company business if in violation of the law (including smoking in company cars if occupied by more than one person), provide a speedy mechanism for reporting violations, assure that all reports will be investigated in a manner as confidential as is consistent with a fair, effective and thorough investigation, strictly prohibit retaliation with a mechanism for reporting retaliation directly to HR or Security and provide penalties for smoking violations and for retaliation.

Note that the provision in the old law permitting the establishment of "smoking rooms" on the premises is repealed. It remains to be seen whether permitting smoking immediately outside the premises is permitted, and it may be advisable to (a) expressly prohibit loitering on property belonging to the Company or associated with its premises; and (b) provide receptacles for cigarette butts at a reasonable distance from the entrance to the building, so that nonsmokers are not required to run a "gauntlet" of smoke in order to access the building.

Please call Alan Koral (212-407-7750), Neal Korval (212-407-7780) or Jonathan Wexler (212-407-7732) if you would like to discuss or review your smoking policies in the context of the new City law.

A further bulletin will follow for all New York State employers concerning the requirements of the newly passed State antismoking law.

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