

PUBLICATION

"Non-Smoker Protection Act" Poised to Ban Smoking in Public Places and in Certain Places of Employment on October 1, 2007

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The Tennessee General Assembly recently passed legislation entitled the Non-Smoker Protection Act (NSPA), and it is anticipated that Governor Phil Bredesen will sign this bill into law. The act prohibits smoking in all enclosed public places within the State of Tennessee. Additionally, it appears that the NSPA prohibits smoking in all enclosed rooms not accessible to the general public at private businesses with more than three employees. These changes represent a significant departure from prior law prohibiting smoking only in government buildings.

For employers, the NSPA mandates that the prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application for employment. This provision suggests the need for employers to review employee handbooks, as well as employment application materials, to ensure compliance. Additionally, the owner, operator, manager or other person in control of a facility subject to this act is required to post "No Smoking" signs or the international "No Smoking" symbol in a clear and conspicuous manner at every entrance to each public place and place of employment where smoking is prohibited.

The law would define "place of employment" to include private offices, employee lounges, rest rooms, cafeterias and hallways. Essentially, any enclosed area would be included.

The NSPA provides for a number of exceptions to the ban on smoking. The following businesses and areas are exempt from the provisions of the act: (1) age-restricted venues; (2) certain hotel and motel rooms; (3) certain premises engaged in the supply-chain related to tobacco products; (4) non-enclosed areas of public places; (5) certain nursing homes and long-term care facilities; (6) private businesses with three or fewer employees; (7) private clubs; (8) private homes, residences, and motor vehicles; and (9) certain commercial vehicles.

For areas where smoking is prohibited, a person who owns, manages, operates or otherwise controls any such area and who knowingly fails to comply with the NSPA will be subject to escalating penalties, starting with written warnings and progressing to subsequent fines of \$100 - \$500 for each day a knowing violation has occurred. In addition, the smoker can also be punished under the act for knowingly smoking in a prohibited area.

The NSPA will take effect on October 1, 2007. If you have any questions regarding the NSPA, please do not hesitate to contact one of our labor and employment attorneys.