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State University of New York

Memorandum to Presidents

Date: December 29, 1989 Vol. 89 No. 22
From: Offices of University Counsel and Vice Chancellor
for Legal Affairs and Associate Vice Chancellor for
Employee Relations and Personnel
Subject: Smoking Legislation (Clean Indoor Air Act)
To: Presidents, State-operated Campuses
Presidents, Community Colleges

Comprehensive legislation to limit public exposure to second-hand tobacco smoke in New York State was enacted into law in 1989 as the Clean Indoor Air Act (Chapter 244 of the Laws of 1989, Attachment I). Effective January 5, 1990, smoking will be prohibited or severely restricted (with limited exceptions) in all indoor areas generally accessible to the public and in certain food service establishments. The law also requires nearly all employers in the State to establish on or before April 1, 1990, smoking policies for the workplace.

Specifically exempted from the law's application are hotel or motel rooms, bars, private homes, private residences and automobiles; indoor areas in which private social functions are being held under the control of the sponsor; and areas used for trade shows or conventions (provided notice to public is provided in advance that smoking will not be restricted).

Enforcement responsibilities have been delegated to the Commissioner of the New York State Department of Health who, with the assistance of designated county enforcement officers, is authorized to receive complaints, hold hearings, make determinations regarding alleged violations, impose civil penalties, and, if necessary, make application to court for injunctive relief.

WORKPLACE PROVISIONS

Effective April 1, 1990, all campuses, as employers, must adopt and implement a written smoking policy consistent with this legislation* which requires:

* More restrictive limitations may be imposed to the extent that such limitations are consistent with relevant provisions of collectively negotiated agreements with affected employees.

- Creation or designation of a smoke-free work area for nonsmoking employees;
- Provision of contiguous nonsmoking areas in employee cafeterias, lunch rooms and lounges sufficient to meet employee demand (designation of 70% of the indoor seating capacity as non-smoking is presumed to be sufficient).
- Prohibition of smoking in auditoriums, gymnasiums, restrooms, elevators, classrooms, hallways, employee medical facilities, offices with photocopying equipment.
- Prohibition of smoking in employer-owned vehicles and conference and meeting rooms unless all occupants agree that smoking may be permitted.
- Prominent posting of the workplace smoking policy and establishment of a procedure for distribution of copies to all present or prospective employees, upon request.

All employers may, but are not required to, set aside a work area for smoking if all employees assigned to that work area agree to that designation. Additionally, a separate enclosed room or rooms (not open to the public) may be designated as a smoking area for employees. These designated areas must be separated from a smoke-free work area by walls or some other means (other than ventilation or air cleaning devices) which is equally effective in the reduction of the effects of smoke.

State-operated campuses should continue to develop appropriate smoking policies for the workplace in accordance with the procedures contained in the August 28, 1989 Memorandum issued by the Governor's Office of Employee Relations (GOER), as amended (see Attachments II and III).

INDOOR AREAS OPEN TO THE PUBLIC

Two categories of "indoor areas open to the public" are identified by the legislation. The first category includes areas in which smoking is totally prohibited and the second category includes areas in which limited smoking areas may be designated at the option of the owner of the premises.

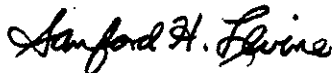
As applied to the buildings and facilities operated by State University campuses, this new legislation prohibits smoking in the following portions of campus buildings:

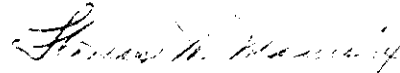
- classrooms used for instruction or training
- elevators
- gymnasiums
- auditoriums
- portions of physical education facilities containing a swimming pool
- hallways

Smoking areas may be designated in all other facilities, subject to the limitations imposed by the workplace and food establishment provisions discussed above. The primary function of the facility must be examined carefully before designations are made. For example, employee (primarily workplace) restrooms cannot be designated as a smoking area, whereas restrooms dedicated for use by the general public can be designated as smoking areas.

In order to determine the extent to which current smoking policies will need to be revised to comply with the new law, it is important to assess the primary function of each campus building. For example, buildings which are dedicated primarily to administrative office space will be governed by the "workplace provisions" whereas academic buildings containing classrooms will be primarily controlled by those provisions dealing with "indoor areas open to the public." A brochure published by the State Department of Health relating to educational institutions (see Attachment IV) addresses several general questions relating to indoor areas, including the applicability of the statute to the residence hall facilities and the posting of appropriate signs.

Any questions regarding the workplace provisions and development or amendment of smoking policies for employees should be directed to the Assistant Vice Chancellor for Employee Relations (518-443-5684). Questions about the law's general application should be directed to the Office of University Counsel and Vice Chancellor for Legal Affairs (518-443-5400).


Sanford H. Levine


Thomas M. Mannix

Attachments

Copies for information only sent to:
Deans, Statutory Colleges
President Coll
Provost Nesheim

LAWS OF 1989

SMOKING—REGULATION IN CERTAIN PUBLIC AREAS

CHAPTER 244

A. 7322-B

Approved July 5, 1989, effective as provided in section 7

Message of necessity, pursuant to Art.III, sec. 14, of Const.

AN ACT to amend the public health law, in relation to smoking restrictions and to repeal article 13-E of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Legislative declaration. The legislature finds that there is a substantial body of scientific research showing that breathing secondhand smoke is a significant health hazard for nonsmokers. The legislature further finds that it is in the best interests of the people of this state to protect nonsmokers from involuntary exposure to secondhand tobacco smoke in indoor areas open to the public, food service establishments, and places of employment. The legislature recognizes, however, that a balance must be struck between safeguarding citizens from such involuntary exposure to secondhand tobacco smoke and the need to minimize governmental intrusion into the affairs of its citizens. Therefore, the legislature declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this state by limiting exposure to tobacco smoke.

§ 2. Subdivision 1 of section 206 of the public health law is amended by adding a new paragraph (p) to read as follows:

(p) promulgate rules and regulations establishing procedures to be used in implementing the provisions of article thirteen-E of this chapter¹ as limited by section thirteen hundred ninety-nine-x of article thirteen-E of this chapter. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the relevant provisions of the code of fair procedure set forth in section seventy-three of the civil rights law.

¹ Public Health Law § 1399-n et seq.

§ 3. The opening paragraph of subdivision 1 of section 340 of the public health law is designated paragraph (a) and a new paragraph (b) is added to read as follows:

(b) Notwithstanding the provisions of this subdivision or any other general, special or local law to the contrary, and except as provided in the provisions of article thirteen-E of this chapter, a board of health of a county health district, if there be one, shall have sole jurisdiction to enforce the provisions of article thirteen-E of this chapter on a county-wide basis.

¹ Public Health Law § 1399-n et seq.

§ 4. Section 347 of the public health law is amended by adding a new subdivision 3 to read as follows:

3. Except as provided in the provisions of article thirteen-E of this chapter, a board of health of a county health district shall exercise all the powers and perform all duties relative to the enforcement of article thirteen-E of this chapter pursuant to rules and regulations promulgated by the commissioner.

¹ Public Health Law § 1399-n et seq.

§ 5. Article 13-E of the public health law is REPEALED and a new article 13-E is added to read as follows:

ARTICLE 13-E—REGULATION OF SMOKING IN CERTAIN PUBLIC AREAS

<u>Section</u>	<u>1399-n.</u>	<u>Definitions.</u>
	<u>1399-o.</u>	<u>Smoking restrictions.</u>
	<u>1399-p.</u>	<u>Posting of signs.</u>
	<u>1399-q.</u>	<u>Smoking restrictions inapplicable.</u>
	<u>1399-r.</u>	<u>General provisions.</u>
	<u>1399-s.</u>	<u>Violations.</u>
	<u>1399-t.</u>	<u>Enforcement.</u>
	<u>1399-u.</u>	<u>Waiver.</u>
	<u>1399-v.</u>	<u>Penalties.</u>
	<u>1399-w.</u>	<u>Limitation of causes of action.</u>
	<u>1399-x.</u>	<u>Rules and regulations.</u>

§ 1399-n. Definitions.

For purposes of this article:

1. "Auditorium" means the part of a public building where an audience sits but does not include any corridors, hallways or lobbies adjacent thereto.
2. "Bar" means any indoor area open to the public devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than forty percent of total annual gross sales. Any bar that generates forty percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a food service establishment.
3. "Employer" shall mean any person, partnership, associate, corporation or nonprofit entity which employs one or more persons, including the legislative, executive and judicial branches of state government and any political subdivision of the state.
4. "Factory" means any mill or other manufacturing establishment where one or more persons are employed in manufacturing, including making, altering, repairing, finishing, bottling, canning, cleaning or laundering any article or thing.
5. "Food service establishment" means any indoor area open to the public or portion thereof in which the business is the sale of food for on-premises consumption and which has an indoor seating capacity of greater than fifty persons including, but not limited to restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment.
6. "Indoor area open to the public" means any indoor area or portion thereof generally accessible to the public.
7. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but which is not generally accessible to the public.
8. "Public building" means any building owned or operated by the state or any county, city, town, village or any other political subdivision, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.
9. "Smoke-free work area" means an enclosed indoor area in a place of employment where no smoking occurs. Such area shall be clearly designated, and separate from any smoking area.
10. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.
11. "Smoking area" means an enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means, equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.
12. "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.
13. "Warehouse" means any building or structure used for the purpose of storing merchandise or commodities.
14. "Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for their employer.

§ 1399-o. Smoking restrictions

1. Smoking shall not be permitted and no person shall smoke in the following indoor areas open to the public:

(a) auditoriums;

(b) elevators;

(c) gymnasiums;

(d) enclosed indoor areas open to the public containing a swimming pool;

(e) indoor areas open to the public in food stores provided, however, that any separate or distinct portion or part of such establishment which is dedicated to the sale of food for on-premises consumption shall be governed by the provisions of subdivision five of this section;

(f) classrooms, provided, however, that a classroom being used or occupied, temporarily or permanently, for purposes other than instruction or training shall be governed by the provisions of subdivision two of this section;

(g) public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines; and

(h) ticketing and boarding areas in public transportation terminals.

2. Except as provided in subdivisions three, four and five of this section, smoking shall not be permitted and no person shall smoke in any indoor area open to the public, including but not limited to any indoor area open to the public in:

(a) all public and private schools, including elementary and secondary schools, colleges, universities and other education and vocational institutions;

(b) general hospitals and residential health care facilities as defined in article twenty-eight of this chapter, and other health care facilities licensed by the state in which persons reside, provided, however, that cafeterias and lunchrooms in such facilities shall be governed by the provisions of paragraph (c) of subdivision six of this section;

(c) public buildings, provided, however, that an employee whose work area is in an indoor area open to the public shall be governed by the provisions of subdivision six of this section;

(d) theaters;

(e) museums;

(f) libraries;

(g) retail stores in which goods, wares or merchandise are offered for sale;

(h) commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;

(i) indoor arenas;

(j) waiting rooms and waiting areas;

(k) banks and other financial institutions;

(l) restrooms;

(m) waiting areas in public transportation terminals; and

(n) service areas in cafeterias and businesses selling food for on-premises and off-premises consumption.

3. The owner, operator or manager of an indoor area open to the public subject to subdivision two of this section may designate a smoking area or areas. Such smoking area shall not include any of the indoor areas open to the public set forth in subdivision one of this section.

4. (a) The owner, operator or manager of a bowling establishment may permit smoking in the concourse area, which is the area directly behind and immediately contiguous to the bowler settee area, but shall provide a nonsmoking area constituting at least twenty-five percent of the square footage of the concourse area.

(b) The organizer or sponsor of bingo shall provide a contiguous nonsmoking area sufficient to meet patron demand. If at least fifty percent of seating capacity is designated for nonsmokers, demand shall be deemed to have been met. The organizer or sponsor may not determine that no such demand exists. Notice shall be prominently posted at each entrance stating that a nonsmoking section is available.

5. The owner, operator or manager of a food service establishment:

(a) shall designate a contiguous nonsmoking area sufficient to meet customer demand and may not determine that no such demand exists. If seventy percent of a food service establishment's indoor seating capacity for dining is designated as a nonsmoking area, then customer demand will be deemed to have been met. The designation of less than seventy percent of the indoor seating capacity for dining of a food service establishment as a nonsmoking area shall not create the presumption of noncompliance with the provisions of this subdivision;

(b) shall prominently post notice at each entrance advising that a nonsmoking section is available, and each patron shall be given an opportunity to state his preference; and

(c) may designate a separate enclosed room or rooms solely for use by smokers.

6. Each employer shall adopt and implement a written smoking policy. The policy shall apply only to a place of employment as defined in subdivision six of section thirteen hundred ninety-nine-n of this article and shall require at least the following:

(a) that employers shall provide nonsmoking employees with a smoke-free work area;

(b) that employers may set aside a work area for smoking if all employees assigned to the work area agree to the designation;

(c) that employers shall provide for contiguous nonsmoking areas in employee cafeterias, lunch rooms and lounges. The contiguous nonsmoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand. An employer may not determine that no such demand exists. If seventy percent of the indoor seating capacity is designated as a non-smoking area, employee demand shall be deemed to have been met. The designation of less than seventy percent of the indoor seating capacity for dining of a food service establishment as a nonsmoking area shall not create the presumption of noncompliance with the provisions of this subdivision;

(d) that smoking shall be prohibited in auditoriums, gymnasiums, rest rooms, elevators, classrooms, hallways, employee medical facilities and rooms or areas which contain photocopying equipment or other office equipment used in common, and in company vehicles occupied by more than one person unless the occupants of such vehicle agree that smoking may be permitted;

(e) that smoking shall be prohibited in conference rooms and meeting rooms, unless everyone in that room agrees that smoking may be permitted;

(f) that an employer may designate a separate enclosed room or rooms not open to the public for use as a smoking area;

(g) that employers shall prominently post the smoking policy in the workplace, and supply a written copy upon request to any existing or prospective employee;

(h) an employer shall not be required to make any expenditures or structural changes to create a smoke-free work area. In the event an employer cannot, after using its best efforts, comply with an employee's request for a smoke-free work area, the employer shall designate that employee's work area as a smoke-free work area; and

(i) any provisions in a smoking policy that are more restrictive than the minimum requirements set forth in this subdivision shall, if a collective bargaining unit exists, be subject to applicable law governing collective bargaining.

7. (a) For the purposes of this article, the employer of any place of employment within the New York state senate, and the owner, operator or manager of an indoor area open to the public in that portion of a public building occupied by the New York state senate or any member or employee thereof, shall be the temporary president of the senate or any person or persons designated by the temporary president.

(b) For the purposes of this article, the employer of any place of employment within the New York state assembly, and the owner, operator, or manager of an indoor area open to the public in that portion of a public building occupied by the New York state assembly or any member or employee thereof, shall be the speaker of the assembly or any person or persons designated by the speaker.

(c) For the purposes of this article, the employer of any place of employment within the executive chamber of the state capitol, and the owner, operator, or manager of an indoor area open to the public in that portion of a public building occupied by the governor or any employee of the governor's office, shall be the governor.

(d) For the purposes of this article, the employer of any place of employment within any state agency as defined in paragraph (g) of subdivision one of section seventy-three of the public officers law, and the owner, operator, or manager of an indoor area open to the public in that portion of a public building occupied by any such agency, shall be the commissioner, director, or other chief executive officer of such agency.

(e) For the purposes of this article, the employer of any place of employment within the judiciary, and the owner, operator or manager of an indoor area open to the public in that portion of a public building occupied by the judiciary, or any employee thereof, shall be the chief administrative judge of the office of court administration, or any person or persons designated by the chief administrative judge.

(f) Notwithstanding section two of the public buildings law or any other provision of law, the commissioner of general services shall not have or exercise any supervision or control over places of employment or with respect to any indoor area open to the public in that portion of a public building, which are subject to the provisions of paragraph (a), (b), (c), (d) or (e) of this subdivision.

§ 1399-p. Posting of signs

1. "Smoking" or "No Smoking" signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained where smoking is regulated by this article, by the owner, operator, manager or other person having control of such indoor area.

2. The owner, operator or manager of a hotel or motel that chooses to develop and implement a smoking policy for rooms rented to guests shall post a notice at the reception area of the establishment as to the availability, upon request, of rooms in which no smoking is allowed.

§ 1399-q. Smoking restrictions inapplicable

This article shall not apply to:

1. Private homes, private residences and private automobiles;
2. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;
3. Any indoor area open to the public exclusively reserved for conventions and trade shows if the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts notice at the entrance to the convention or trade show advising the public that smoking will not be restricted;
4. A hotel or motel room rented to one or more guests;
5. Tobacco businesses;
6. Limousines under private hire by an individual or corporation;
7. Wholly or partially enclosed private boxes in indoor arenas; and
8. Bars.

§ 1399-r. General provisions

1. Nothing in this article shall be construed to deny the owner, operator or manager of a place covered by this article the right to designate the entire place, or any part thereof, as a non-smoking area.

2. The provisions of this article shall apply to the legislative, executive and judicial branches of state government and any political subdivision of the state.

3. Smoking may not be permitted where prohibited by any other law, rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.

§ 1399-s. Violations

1. It shall be unlawful for any person, firm, corporation or other entity that owns, manages, operates or otherwise controls the use of an indoor area open to the public in which smoking is prohibited or restricted pursuant to section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of this article. For violations of this subdivision, it shall be an affirmative defense that during the relevant time period actual control of the indoor area open to the public was not exercised by the respondent, but rather by a lessee, the sublessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the appropriate enforcement officer within thirty days of receipt of such notice of violation.

2. It shall be unlawful for any person, firm, corporation or other entity that owns, manages or operates a food service establishment in which smoking is restricted to fail to designate areas pursuant to subdivision five of section thirteen hundred ninety-nine-o of this article, or to fail to make good faith efforts to ensure that employees responsible for seating arrangements substantially comply with the requirements of this article. In actions brought for violations of subdivision five of section thirteen hundred ninety-nine-o of this article, it shall be an affirmative defense that notice of a violation was provided to a customer.

3. It shall be unlawful for an employer whose place of employment is subject to subdivision six of section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of such subdivision. For violations of subdivision six of section thirteen hundred ninety-nine-o of this article, it shall be an affirmative defense that the employer has made good faith efforts to ensure that employees comply with the provisions of any policy adopted pursuant to subdivision six of section thirteen hundred ninety-nine-o of this article.

4. It shall be unlawful for any person to smoke in any area where smoking is prohibited or restricted under section thirteen hundred ninety-nine-o of this article.

§ 1399-t. Enforcement

1. For the purpose of this article the term "enforcement officer" shall mean the board of health of a county or part county health district established pursuant to title three of article three of this chapter, or in the absence thereof, an officer of a county designated for such purpose by resolution of the elected county legislature or board of supervisors adopted within sixty days after the effective date of this act. Any such designation shall be filed with the commissioner within thirty days after adoption. If no such designation is made, the county will be deemed to have designated the department as its enforcement officer. Any county that does not designate an enforcement officer during the time period specified above may do so at any time, thereafter, such designation will be effective thirty days after it is filed with the commissioner. The enforcement officer shall have sole jurisdiction to enforce the provisions of this article on a county-wide basis pursuant to rules and regulations promulgated by the commissioner. In a city with a population of more than one million the enforcement officer shall be the board of health of such city which shall have sole jurisdiction to enforce the provisions of this article in such city.

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, a civil penalty may be imposed by the enforcement officer pursuant to section thirteen hundred ninety-nine-v of this article. When the enforcement officer is the commissioner, the hearing shall be conducted pursuant to the provisions of section twelve-a of this chapter. When the enforcement officer is a board of health or an officer designated to enforce the provisions of this article, the hearing shall be conducted pursuant to procedures set forth in the county sanitary code, or in the absence thereof, pursuant to procedures established by the elected county legislature or board of supervisors. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this article.

3. Any person who desires to register a complaint under this article may do so with the appropriate enforcement officer.

4. The owner, manager, operator or other person having control of an indoor area open to the public, food service establishment or place of employment under this article, shall inform, or shall designate an agent who shall be responsible for informing individuals smoking in an area in which smoking is not permitted that they are in violation of this article.

5. Any person aggrieved by the decision of an enforcement officer other than the commissioner may appeal to the commissioner to review such decision within thirty days of such decision. The decision of any enforcement officer shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.¹

6. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in section thirteen hundred ninety-nine-v of this article in any court of competent jurisdiction.

¹ CPLR § 7801 et seq.

§ 1399-u. Waiver

1. The enforcement officer may grant a waiver from the application of a specific provision of this article, provided that prior to the granting of any such waiver the applicant for a waiver shall establish that:

(a) compliance with a specific provision of this article would cause undue financial hardship; or

(b) other factors, including but not limited to the physical layout, exist which would render strict compliance unreasonable.

2. Notwithstanding subdivision one of this section, the enforcement officer shall grant a waiver from the application of subdivision six of section thirteen hundred ninety-nine-o of this article to any applicant who as the owner, operator or manager of a factory or warehouse demonstrates that the effects of smoking on employees in work areas have been reduced to a minimal degree by factors, including but not limited to, the physical layout or size of such factory or warehouse.

3. Subdivision two of this section shall not apply to work areas in separate enclosed offices, employee cafeterias, lunchrooms or lounges in a factory or warehouse.

4. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose of this article.

§ 1399-v. Penalties

The commissioner may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in subdivision one of section twelve of this chapter. Any other enforcement officer may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in paragraph f of subdivision one of section three hundred nine of this chapter.

§ 1399-w. Limitation of causes of action

An employer, administrator, manager, owner or operator of any indoor area, food service establishment, or place of employment regulated by this article who complies or fails to comply with the provisions of this article shall not be subject to any legal liability or action solely as a result of such compliance or noncompliance except as provided in section thirteen hundred ninety-nine-v of this article. Nothing in any other section of this article shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any theory of liability upon which any person may be held liable to any other person for exposure to smoke.

§ 1399-x. Rules and regulations

The commissioner shall not promulgate any rules or regulations to effectuate the provisions of section thirteen hundred ninety-nine-n, subdivision six of section thirteen hundred ninety-nine-o or subdivision one of section thirteen hundred ninety-nine-p of this article. The commissioner shall not promulgate any rules or regulations that create, limit or enlarge any smoking restrictions.

§ 6. Severability. If any provision of this act or any portion thereof or the application or method of implementation is held invalid, the remainder of this act or portion of any provision thereof and the application and implementation of any portion of any provision thereof to other persons or circumstances, shall not be affected by such holding and shall remain in full force and effect.

§ 7. This act shall take effect on the one hundred eightieth day after it shall have become a law, except that subdivision 6 of section 1399-o of the public health law, as added by section five of this act, shall take effect on the two hundred seventieth day after it shall have become a law and section 1399-t of the public health law, as added by section five of this act, shall take effect on the sixtieth day after it shall have become a law.



STATE OF NEW YORK
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS

AGENCY BUILDING NO. 2
ALBANY, NEW YORK 12223

ELIZABETH D. MOORE
DIRECTOR

NANCY L. HODES
EXECUTIVE DEPUTY DIRECTOR
JOSEPH M. BRESS
GENERAL COUNSEL

MEMORANDUM

OER-89-3

August 28, 1989

TO: STATE DEPARTMENT AND AGENCY HEADS
FROM: Elizabeth D. Moore *EM*
SUBJECT: Clean Indoor Air Act

On July 5, 1989, Governor Cuomo signed the "Clean Indoor Air Act" into law which restricts tobacco smoking in indoor areas. As you are no doubt aware, New York State, as an employer, has collaborated with public employee unions in the issuance of a document entitled "Guidelines for Development of Policies on Smoking in the Workplace" which was attached to OER-86-7 dated August 28, 1986.

Subsequent to OER-86-7, another memorandum entitled "Smoking in the Workplace" was issued on March 2, 1987 to clarify the impact of the Public Health Council's "no smoking" regulations. This memo discussed PERB's requirement for public employers to negotiate smoking restrictions with public employee unions, if "no legislation has been enacted which would have the effect of superseding the [employer's] duty...to bargain" PERB 21-3023 (See Attachment #1). The "Clean Indoor Air Act" is similar to the Public Health Council's regulations which "affect the State as a whole, private and public establishments alike." Because of that, these laws "fall under the PERB doctrine of 'sovereign' State action -- or action taken by the State in its sovereign capacity and not as employer." Consequently, any smoking policy developed by a State agency must comply with the law. While compliance with the law does not require agreement by the unions, you should continue to develop and implement your agency and/or facility smoking policy in cooperation with the unions. (Agencies with multiple locations and/or facilities may wish to delegate the development of the required policy to allow for unique situations.)

ATTACHMENT II

Agendas for labor/management meetings on the subject can be gleaned from applicable sections of the law. A sample agenda follows:

Agenda: (Referenced sections are from the Clean Indoor Air Act, Public Health Law Article 13-E section 1399-o subsection 6 (a-g))

1. Set out to produce and implement a written agency smoking policy. (See Attachment #2)
2. Enfranchise the right of nonsmokers to breathe smoke free air.
3. Explore setting aside work areas for smokers where possible.
4. Recognize those sections of the law where employer actions are mandatory (i.e., subsection o-6g.) and those where employer action is permissive or discretionary (i.e., o-6f.)

Previously negotiated agency policies, presently in effect, which are in compliance with the law or are more stringent than the law requires may continue in effect. Agency policies which are not in compliance must be modified through the above process to comply with law.

For illustrative purposes, a modified draft of the original New York State Smoking Policy Guideline is attached (See Attachment #2). It has been modified to include some minor revisions which reflect the impact of the "Clean Air Act". It is still appropriate to use these guidelines since the New York State Clean Air Act adopted many of the regulations proposed by the Public Health Council.

For your information, Attachment #3 contains those sections of the Act which apply to employers.

Inasmuch as the employer/employee related aspects of the law are effective on January 5, 1990, I urge you to immediately review your existing policy, if any, and to immediately commence working in the labor/management setting to achieve compliance. Copies of your agency and/or facility policies should be filed with the Governor's Office of Employee Relations by December 1, 1989.

The point of contact at OER for further information is the Assistant Director for Safety and Health, Charles Vejvoda, 518-473-9357.

Thank you for your continued cooperation.

Attachments (3)
EDM/JJD/CEV/smd

921-3023

PERB

Board Decisions

921-3023

In the Matter of

RUSH-HENRIETTA EMPLOYEES' ASSOCIATION, BUILDINGS AND GROUNDS, BUS MECHANICS CHAPTER, NYSUT/AFT, AFL-CIO,

Charging Party,

and

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Respondent.

In the Matter of

RUSH-HENRIETTA EMPLOYEES' ASSOCIATION, TEACHERS CHAPTER, NYSUT/AFT, AFL-CIO,

Charging Party,

and

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Respondent.

In the Matter of

RUSH-HENRIETTA EMPLOYEES' ASSOCIATION, AIDES CHAPTER, NYSUT/AFT, AFL-CIO,

Charging Party,

and

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Respondent.

Case Nos. U-9463, U-9464, U-9477
Before HAROLD R. NEWMAN, Chairman;
WALTER L. EISENBERG; April 27, 1988

INDEX NOS. 43.476, 46.21, 72.665, 72.667

ALJ properly concluded that school district violated its bargaining obligation by unilaterally prohibiting smoking in district buildings and buses [see 21 PERB 4513 (PERB ALJ (1988))].

Back reference: 21 PERB 4513

Gilbert Biancucci, Senior Field Representative, NYSUT, for Charging Parties

Harris, Beach, Wilcox, Rubin & Levey (James A. Spitz, Jr., Esq., of Counsel), for Respondent

Board Decision and Order

This matter comes to us on the exceptions of the Rush-Henrietta Central School District (District) to an Administrative Law Judge (ALJ) decision dated February 9, 1988, which, in three consolidated cases, found that the District violated § 209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally prohibited smoking in all District buildings and buses. The resolution enacted by the Board of Education on April 14, 1987, to be effective May 7, 1987,¹ superseded a practice which had permitted employees to smoke in work areas of the building, except when students were present (Stipulation of the parties). Since enactment of the Board's resolution, employees wishing to smoke may do so only outside of the District's buildings.

In concluding that the imposition of a complete ban on smoking in District buildings and buses constitutes a mandatory subject of bargaining, the ALJ found that (1)

No free-standing public policy against smoking can be identified and relied upon by the District in support of its actions; (2)

The blanket prohibition against smoking (as compared to the previous practice of prohibiting smoking only when students are present) primarily affects employees in the terms and conditions of their employment;

(3) No legislation has been enacted which would have the effect of superseding the District's duty under the Act, if a duty exists, to bargain concerning the prohibition against

¹ By resolution of April 28, 1987, the Board of Education reaffirmed its April 14 resolution following receipt of a decision of the New York State Court of Appeals in *Boreali v. Axelrod*, 130 A.D.2d 107 (3d Dep't 1987), *aff'd*, 71 N.Y.2d 1 (1987), which struck down regulations promulgated by the Public Health Council prohibiting smoking in many public areas.

Board Decisions

921-3023

smoking as a term and condition of employment; and (4) A balancing of interests is appropriate to determine whether the employer's objectively demonstrable need to act in furtherance of its mission outweighs the bargaining agent's entitlement to negotiation before changes in terms and conditions of employment can be made.

The bulk of the District's exceptions relate to the argument that the ALJ's decision fails to take into account the duty of the District to provide protection to its 5,500 students who are under its care and supervision. However, the issue before the ALJ, and before us, is not whether the District is entitled to act unilaterally to protect its students from the effects of secondhand smoke,² but whether employees should be prohibited from smoking in District facilities outside the presence of students.

* We recently had occasion to address the issue of whether unilateral imposition of a no-smoking requirement by an employer constitutes a violation of § 209-a.1(d) of the Act [*County of Niagara (Mount View Health Facility)*, 21 PERB ¶ 3014 (decided March 11, 1988)]. In that case, the Board concluded that no free-standing policy exists which would require a public employer to prohibit smoking in the workplace. We further held that, in the absence of legislation requiring such prohibition, regulations affecting employee smoking constitute work rules subject to the balancing test outlined in *County of Montgomery*, 18 PERB ¶ 3077 (1985), in order to determine whether unilateral promulgation of work rules constitutes a violation of the Act. Applying the *County of Montgomery* balancing test to the employer's prohibition in *County of*

Niagara, we found that smoking regulations do affect terms and conditions of employment, and stated:

In order to be accorded the right to act unilaterally insofar as smoking regulations are concerned, a public employer must demonstrate that there is a need related to its mission for the restrictions which it imposed on employees smoking in its facilities. [footnote omitted]. Further, the employer must show that those restrictions do not go beyond what is needed to further its mission.

County of Niagara (Mount View Health Facility), *supra* at p. —

In the instant case, the record establishes that the Board of Education of the District initially met to consider enacting a resolution to limit smoking to certain specific areas of its facilities. After being informed, however, that the cost of ventilating and adapting areas for smoking would be substantial, the Board of Education voted, instead, to prohibit smoking entirely. The ALJ found, and we agree, that the decision to eliminate smoking entirely, rather than to limit it to certain specific areas, was one which was economically based, and did not depend for its enactment upon considerations necessary to its mission. There is, in fact, no evidence contained in the record to support a claim that the complete prohibition against smoking in District facilities was necessitated by evidence of a health hazard to students, since it was not established that students were coming into contact with secondhand smoke prior to enactment of the at-issue resolution.

In view of the foregoing, and in accordance with our decision in *County of Niagara (Mount View Health Facility)*, *supra*, we conclude, as did the ALJ, that a balancing test is appropriate, and that application of the balancing test fully supports the ALJ's finding that the smoking ban herein is a mandatory subject of negotiations. We accordingly affirm the ALJ holding that the District violated § 209-a.1(d) of the Act when it unilaterally banned smoking in District buildings and buses.

² No evidence was presented at the hearing that the practice in effect prior to the enactment of the April 14, 1987 resolution, which prohibited smoking by employees when students were present, failed to provide adequate protection to students from exposure to secondhand smoke, or that a complete ban on smoking was necessary to provide such protection to students.

**STATE OF NEW YORK
GUIDELINES FOR SMOKING POLICIES**

BACKGROUND

The policy and guidelines are predicated on the fact that health risks associated with smoking are well documented. The risk of lung cancer from smoking 2 packs of cigarettes a day is twice the risk associated with working a lifetime in an environment heavily contaminated with asbestos (i.e. 100+ fibers per cubic centimeter of air).

The US Department of Health and Human Services has estimated that 30 percent of all cancers and 85 percent of all lung cancers are caused by smoking. Further, more than 80 percent of severe lung diseases such as emphysema and chronic bronchitis are linked to smoking. Risks associated with "passive smoking" are becoming more precisely identified as evidence accumulates. Studies have demonstrated higher rates of cancer among non-smokers who are exposed to smoke from tobacco use by smokers. State employees and members of the public who come to State offices and facilities for services or assistance should not be subjected to a potentially unhealthy environment.

In 1986, the State and the public employee unions recognized the need to work toward a smoke-free environment for all employees, clients and visitors, by working through safety and health labor/management committees in the development of guidelines. The results of that coalition were used as a backdrop for the formulation of previous workplace smoking policies and continue to be used in this document.

Recently the New York State Clean Air Act became law and by January 1, 1990, it requires every employer in the State to provide smoke-free work areas for non-smoking employees who desire it and to develop and maintain a written policy regarding smoking in the workplace. The specific requirements of those regulations are contained in the following policy.

POLICY

In response to the above considerations, this document is hereby established as the guideline for New York State smoking policy for the State as an employer and that:

- Smoking shall be prohibited in any enclosed work area occupied by more than one person whenever one or more employees in the work area request a smoke free environment, unless such work area is occupied

exclusively by consenting employees or active smokers. For purposes of this policy, work area shall mean a room, office, state car, or any other area enclosed by walls and doors in which State employees are conducting State business.

- Smoking is prohibited in auditoriums, classrooms, gymnasiums, elevators, restrooms, hallways, employee medical facilities and rooms or areas containing photocopying or other equipment used by employees in common. Smoking shall be prohibited in conference rooms and meeting rooms unless everyone in that room agrees smoking may be permitted. Other areas designated as no smoking for safety reasons, shall remain so at the discretion of appropriate authority.
- A contiguous non-smoking area sufficient to meet employee demand must be designated in cafeterias and lunchrooms. Assessment should be made of your employee population in order to determine the demand. You may not determine that there is no demand. If 70 percent of seating capacity in these areas is designated non-smoking, employee demand will be deemed to have been met.
- It is permissible under the New York State Clean Air Act to designate a separate enclosed room or rooms not open to the public or used as a work area where a non-smoker is required to be present as a smoking room. Smoking rooms are topics for labor/management committee discussion subject to worksite space availability and practicality. However, an employer shall not be required to make any expenditure or structural change to create a smoke free environment. Since the creation of such a room is a worksite specific matter, it is suggested that labor/management discussions occur on a worksite coalition basis. OER has delegated authority for such discussions to the appointing authority, who may determine the appropriate organizational level for discussions.
- Any agreement to designate such a smoking area should be entered into for a temporary duration (e.g. six months) to allow for assessment of impact on productivity, workplace ventilation, morale, etc.
- Designated smoking areas must be enclosed rooms having closed doors and floor-to-ceiling partitions with adequate ventilation in order that non-smokers in adjacent work areas are not exposed to second hand or side-stream smoke.

- No appointing authority or designee shall have the discretion to authorize or negotiate any additional "breaks" in the workday.

IMPLEMENTATION

- Appointing authorities or designees are responsible for prominently posting a complying policy in the workplace and must supply a copy upon request to any existing or prospective employee.
- It is the responsibility of each appointing authority or designee to make every effort to comply with requests from non-smokers to be assigned to areas where smoking is not permitted by non-employees.
- Smoking signs, no smoking signs or the international symbol for no smoking shall be prominently and conspicuously posted appropriately in all work areas.
- To help ensure constructive implementation of the law through this guideline, union and management discussions of policy at the appropriate level are desirable and encouraged. Labor/management discussion is encouraged in order to develop ways to promote education and awareness of the hazards of smoking and to ensure that the legal mandates and philosophy behind the policy is known by all. Efforts should be undertaken to promote smoking cessation programs on a continuing basis. A variety of program possibilities should be explored to fit the needs of smokers desirous of modifying their habits. Dialogue as appropriate should be pursued on ventilation system operation, workplace design and other such factors which sometimes contribute to indoor air pollution.
- It would be counterproductive and not in adherence with the New York State Clean Air Act to apply this policy only to employees to the exclusion of clients. However, exceptions to that premise are construed to apply to residential health care facilities (e.g., OMH, OMRDD, Department of Health, SUNY Health Science Centers, Alcoholism treatment facilities, etc.) and other such State licensed residential facilities, where smoking is permitted by residents in at least one area not used by a non-smoker or in a separate enclosed room or rooms set aside for use as a smoking room(s). Client custodial personnel assigned to resident supervision may of course smoke in those same areas. Non-smokers not wishing to be assigned to custodial supervision in client smoking areas should be accommodated to the extent possible. Agencies should review the

regulations as to their application to agency clients and the general public.

COMPLIANCE

- Smoking policies are mandated by law and all employees have a responsibility to comply with the resulting policies. Likewise, management representatives have a responsibility to enforce it. That notwithstanding, the effectiveness of the policy, and harmony in the workplace, relies on the thoughtfulness, consideration and cooperation of smokers and non-smokers for its success.
- Everyone should be sensitive to the fact that there is a strong emotional element to the smoking issue. Employees who do not readily embrace smoking policies should be made aware of its standing as a requirement of law. While education, coaching, and persuasion are encouraged to elicit cooperation, informal counseling, formal written counseling and appropriate progressive discipline can and must be applied as necessary to ensure the State's compliance with the law and to avoid assessment of penalty for non-compliance.
- Each agency is responsible for establishing necessary controls to ensure that implementations occur, and that complaints or concerns regarding policy implementation is referred for prompt and appropriate attention.

OTHER POLICIES

- More restrictive policies currently in place may remain in place, subject to review by the Governor's Office of Employee Relations. Any department or agency desiring to put in place a more restrictive policy, may not do so without the approval of the Governor's Office of Employee Relations. More restrictive policies will require negotiations with employee unions and may only commence with GOER authorization.

EFFECTIVE DATE

- Agency policies resulting from the foregoing shall be effective on the date the policy is filed with the Assistant Director for Safety and Health at the Governor's Office of Employee Relations.

Exerpts from the New York State Clean Indoor Air Act which added a new article 13E to the Public Health Law.

Definitions (Art. 13E Section 1399-n)

Place of employment :

(7) 'Place of employment' means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but which is not generally accessible to the public.

Smoking area:

(11) 'Smoking area' means an enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means, equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.

Work area:

(14) 'Work area' means an area in a place of employment where one or more employees are routinely assigned and perform services for their employer.

Section 1399-o states:

(6) Each employer shall adopt and implement a written smoking policy. The policy shall apply only to a place of employment as defined in subdivision seven "of the section thirteen-hundred ninety-nine-n of this article and shall require at least the following:

(a) that employers shall provide nonsmoking employees with a smoke-free work area;

(b) that employers may set aside a work area for smoking if all employees assigned to the work area agree to the designation;

(c) that employers shall provide for contiguous nonsmoking areas in employee cafeterias, lunch rooms and lounges. The contiguous nonsmoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand. An employer may not determine that no such demand exists. If seventy percent of the indoor seating

capacity is designated as a nonsmoking area, employee demand shall be deemed to have been met. The designation of less than seventy percent of the indoor seating capacity for dining of a food service establishment as a nonsmoking area shall not create the presumption of noncompliance with the provisions of this subdivision;

(d) that smoking shall be prohibited in auditoriums, gymnasiums, rest rooms, elevators, classrooms, hallways, employee medical facilities and rooms or areas which contain photocopying equipment or other office equipment used in common, and in company vehicles occupied by more than one person unless the occupants of such vehicle agree that smoking may be permitted;

(e) that smoking shall be prohibited in conference rooms and meeting rooms, unless everyone in that room agrees that smoking may be permitted;

(f) that an employer may designate a separate enclosed room or rooms not open to the public for use as a smoking area;

(g) that employers shall prominently post the smoking policy in the workplace, and supply a written copy upon request to any existing or prospective employee;

(h) an employer shall not be required to make any expenditures or structural changes to create a smoke-free work area. In the event an employer cannot, after using its best efforts, comply with an employee's request for a smoke-free work area, the employer shall designate that employee's work areas as a smoke-free work area; and

(i) any provisions in a smoking policy that are more restrictive than the minimum requirements set forth in this subdivision shall, if a collective bargaining unit exists, be subject to applicable law governing collective bargaining.

(7) (a) For the purposes of this article, the employer of any place of employment within the New York State senate, and the owner, operator or manager of an indoor area open to the public in that portion of a public building occupied by the New York State senate or any member or employee thereof, shall be the temporary president of the senate or any person or persons designated by the temporary president.

(b) For the purposes of this article, the employer of any place of employment within the New York State assembly, and the owner, operator, or manager of an indoor area open to the public in that portion of a public building occupied by the New York State assembly or any member or employee thereof, shall be the speaker of the assembly or any person or persons designated by the speaker.

(c) For the purposes of this article, the employer of any place of employment within the executive chamber of the state capitol, and the owner, operator, or manager of an indoor area open to the public in that portion of a public building occupied by the governor or any employee of the governor's office, shall be the governor.

(d) For the purposes of this article, the employer of any place of employment within any state agency as defined in

paragraph (g) of subdivision one of section seventy-three of the public officers law, and the owner, operator, or manager of an indoor area open to the public in that portion of a public building occupied by any such agency, shall be the commissioner, director, or other chief executive officer of such agency.

(e) For the purposes of this article, the employer of any place of employment within the judiciary, and the owner, operator or manager of an indoor area open to the public in that portion of a public building occupied by the judiciary, or any employee thereof, shall be the chief administrative judge of the office of court administration, or any person or persons designated by the chief administrative judge.

(f) Notwithstanding section two of the public buildings law or any other provision of law, the commissioner of general services shall not have or exercise any supervision or control over places of employment or with respect to any indoor area open to the public in that portion of a public building, which are subject to the provisions of paragraph (a), (b), (c), (d) or (e) of this subdivision.

Section 1399-p:

Posting of signs

(1) 'Smoking' or 'No Smoking' signs, or the international 'No Smoking' symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained where smoking is regulated by this article, by the owner, operator, manager or other person having control of such indoor area.

Section 1399-r:

(2) The provisions of this article shall apply to the legislative, executive and judicial branches of state government and any political subdivision of the state."

Section 1399-s:

(3) It shall be unlawful for an employer whose place of employment is subject to subdivision six of section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of such subdivision. For violations of subdivision six of section thirteen hundred ninety-nine-o of this article, it shall be an affirmative defense that the employer has made good faith efforts to ensure that employees comply with the provisions of any policy adopted pursuant to subdivision six of section thirteen hundred ninety-nine-o of this article.

(4) It shall be unlawful for any person to smoke in any area where smoking is prohibited or restricted under section thirteen hundred ninety-nine-o of this article.



STATE OF NEW YORK
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS
AGENCY BUILDING NO. 2
ALBANY, NEW YORK 12223


ELIZABETH D. MOORE
DIRECTOR

NANCY L. HODES
EXECUTIVE DEPUTY DIRECTOR

MEMORANDUM

OER-89-3 (AMENDED)

September 7, 1989

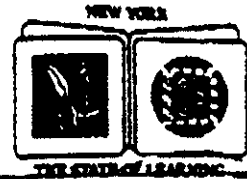
TO: STATE DEPARTMENT AND AGENCY HEADS
FROM: Elizabeth D. Moore 
SUBJECT: Clean Indoor Air Act

OER 89-3, dated August 28, 1989 on the subject of the "Clean Indoor Air Act" indicated that the effective date of the Act for employers was January 5, 1989, and that policies developed by agencies in cooperation with their unions be filed with the Governor's Office of Employee Relations by December 1, 1989.

While a number of the provisions of the Act are effective in January, the requirement that employers adopt and implement a written smoking policy (Section 1399-o) is effective April 1, 1990. While full compliance with the law isn't required by the Act until that date, agencies that develop smoking policies earlier are encouraged to implement them as soon as possible.

The earlier date (December 1, 1989) for concluding the development of agency smoking policies is intended to provide the opportunity for review of policies by this office and for the opportunity for agencies to accomplish modifications, as necessary, prior to the effective date of April 1, 1990.

cc: Employee Relations Officers



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY N.Y. 12234

PRESIDENT OF THE UNIVERSITY
AND COMMISSIONER OF EDUCATION
THE NEW YORK STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

November 1989

TO: Chief Executive Officers of Degree Granting Institutions
Owners and Directors of Licensed Private Trade and
Registered Private Business Schools
District Superintendents of Schools
Superintendents of Public and Nonpublic Schools
Administrators of Nonpublic Elementary and Secondary Schools

FROM: Thomas Sobol *Thomas Sobol*

SUBJECT: New York State Clean Indoor Air Act

The Clean Indoor Air Act, which becomes effective January 1, 1990, prohibits or limits smoking in most public places including educational institutions. We are cooperating with the State Department of Health in providing you the enclosed copy of its brochure: "Clearing The Air: Applying New York's Clean Indoor Air Act in Educational Institutions."

Questions regarding application or enforcement of the Act's provisions may be directed to your local health department, the Bureau of Community Relations of the State Department of Health at (518) 474-5370, or the information sources noted in the brochure.

Enclosure

ATTACHMENT IV

How does the State Clean Indoor Air Act affect local laws or regulations?

Where a local smoking rule is in effect, the more restrictive provisions of the two would prevail.

For information and assistance...

Many voluntary health agencies and local health departments can assist administrators in applying New York's Clean Indoor Air Act in educational institutions. For more information, contact your local health department, or local chapter of the American Cancer Society, American Heart Association or American Lung Association.

Or, write:
Clean Indoor Air
P.O. Box 2000
Albany, NY 12220

CLEARING THE AIR:

**Applying
New York's
Clean Indoor
Air Act
in Educational
Institutions**



State of New York
Mario M. Cuomo, Governor
Department of Health
David Axelrod, M.D., Commissioner

New York State Education Department



Several scientific studies, including a 1986 report of the U.S. Surgeon General, have cited involuntary exposure to tobacco smoke as the cause of several diseases or health problems in otherwise healthy nonsmokers. New York State's Clean Indoor Air Act protects and promotes public health by reducing involuntary exposure to tobacco smoke in public places.

What is New York's Clean Indoor Air Act?

New York's Clean Indoor Air Act prohibits or limits smoking in most public places. The Act, passed by the State Legislature, becomes effective January 1, 1990.

How does the Act apply to educational institutions?

The Act limits smoking in public and private elementary and secondary schools, colleges and universities, and other educational or vocational institutions.

Where is smoking prohibited?

Smoking is prohibited in all classrooms (when used for instruction), elevators, restrooms, medical facilities and gymnasiums.

Smoking is also prohibited in conference rooms and meeting rooms unless everyone in the room agrees that smoking may be permitted. Similarly, in administrative or faculty offices, smoking is prohibited unless all persons assigned to an area agree that smoking may be permitted.

In addition, unless a portion of an area is designated as "Smoking Permitted," smoking is prohibited in lobbies, hallways, indoor arenas and locker rooms.

Are educational institutions required to have smoking areas?

No. While smoking areas may be established, this decision belongs to the administration. The Act does not prohibit educational institutions from becoming "smokeless." Where a collective bargaining unit exists, a decision to implement rules that are more restrictive than those required by the Clean Indoor Air Act is subject to applicable laws governing collective bargaining.

How does the Act apply to faculty lounges?

A "No Smoking" area, large enough to satisfy demand, must be designated.

How does the Act apply to student union facilities?

Smoking is prohibited in public areas of student union facilities, unless a "Smoking Permitted" area has been designated. In offices and other work areas, worksite rules apply.

How does the policy affect dormitory facilities?

Smoking is prohibited in all dormitory areas which students use in common, or to which the public has access, unless a "Smoking Permitted" area has been designated.

The administration may establish special, enclosed smoking areas, but this is not required. It may choose to become "smokeless."

Additionally, the administration may choose to designate individual student rooms as either smoking or nonsmoking areas. However, when smoking and

nonsmoking students are required to share rooms, the right of a nonsmoker to smoke-free air will prevail over a smoker's desire to smoke.

What else does the Act require?

"Smoking" or "No Smoking" signs, or the international "No Smoking" symbol, must be prominently posted in every place where smoking is prohibited or restricted under New York's Clean Indoor Air Act.

In addition, the administration is required to adopt written rules regarding smoking and to make the rules available to all employees.

Who enforces New York's Clean Indoor Air Act?

The administration must make a reasonable effort at enforcement.

If nonsmokers' complaints cannot be resolved by the administration, the local, designated enforcement officer is available to help.

If a county has a Board of Health, the Board of Health is the enforcement officer. In a county without a Board of Health, the county may designate an enforcement officer. If no designation is made, the State Health Department serves as the enforcement officer.

When the State Health Department is the enforcement officer, a fine of up to \$1,000 may be imposed on institutions which do not comply with the Act. A fine of up to \$500 may be imposed when the enforcement officer is a local official.

What if it is impossible to comply with the Act?

The enforcement officer can grant a waiver when an applicant can establish that a financial hardship or other factors would make compliance unreasonable.