

22 §1580-A. SMOKING IN PLACES OF EMPLOYMENT

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1. Title. This law shall be known as the "Workplace Smoking Act of 1985."

[1985, c. 126, (NEW) .]

2. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Business facility" means a structurally enclosed location or portion thereof at which employees perform services for their employer. A business facility does not include any workplace or portion of a workplace that also serves as the employee's or employer's personal residence. A business facility is a place of employment. Notwithstanding this paragraph, a personal residence or unit or apartment in a residential facility is a business facility only during the period of time that an employee is physically present to perform work there. A residential facility, nursing home or a hospital is a business facility. [2009, c. 300, §4 (AMD) .]

A-1. "Club" means a reputable group of individuals, including a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004), incorporated and operating in a bona fide manner solely for purposes of a recreational, social, patriotic or fraternal nature and not for pecuniary gain. [2005, c. 338, §3 (NEW) .]

A-2. "Designated smoking area" means an outdoor area where smoking is permitted, which must be at least 20 feet from entryways, vents and doorways. [2009, c. 300, §5 (NEW) .]

B. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied. Employee includes a person employed by the State or a political subdivision of the State. [1985, c. 126, (NEW) .]

C. "Employer" means a person who has one or more employees. Employer includes an agent of an employer and the State or a political subdivision of the State. [1985, c. 126, (NEW) .]

C-1. "Member" means a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member. [2005, c. 338, §3 (NEW) .]

C-2. "Qualifying club" means a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004) that is not open to the public or any other club that was not open to the public and that was in operation prior to January 1, 2004. [2005, c. 581, §1 (NEW) .]

C-3. "Residential facility" means a facility with one or more residential units or apartments that is licensed by the Department of Health and Human Services. [2009, c. 300, §6 (NEW) .]

D. "Smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke. [1985, c. 126, (NEW) .]

[2009, c. 300, §§4-6 (AMD) .]

3. Policy; notice. Each employer shall establish, or may negotiate through the collective bargaining process, a written policy concerning smoking and nonsmoking by employees in that portion of any business facility for which the employer is responsible, subject to paragraph A. In order to protect the employer and employees from the detrimental effects of smoking by others, the policy must prohibit smoking indoors subject to paragraph A, prevent environmental tobacco smoke from circulating into enclosed areas and prohibit smoking outdoors except in designated smoking areas. The policy may prohibit smoking throughout the business facility, including outdoor areas. The employer shall post and supervise the implementation of

the policy. The employer shall provide a copy of this policy to any employee upon request. Nothing in this section may be construed to subject an employer to any additional liability, other than liability that may exist by law, for harm to an employee from smoking by others in any business facility covered by this section.

A. All areas of a business facility into which members of the public are invited or allowed are governed by the provisions of chapter 262. [2009, c. 300, §7 (NEW).]

B. The Maine Center for Disease Control and Prevention shall accept inquiries from employers and employees and shall, when requested, assist employers in developing a policy. [2009, c. 300, §7 (NEW).]

[2009, c. 300, §7 (RPR) .]

4. Violations. Any violation of this section is a civil violation for which a fine of not more than \$100 may be adjudged, except that a fine of not more than \$1,500 may be adjudged for each violation of this section in cases in which the employer has engaged in a pattern of conduct that demonstrates a lack of good faith in complying with the requirements of this section. The Bureau of Health has authority to enforce provisions of this section.

[2005, c. 338, §4 (AMD) .]

4-A. Injunctive relief. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction and fines, penalties and equitable relief, and may seek to prevent or restrain violations of this section by any person.

[2005, c. 338, §5 (NEW) .]

5. Civil remedies. Nothing in the section may be construed as precluding any person from pursuing, in any court of competent jurisdiction, any civil remedy that person may have at law or in equity for harm occasioned to that person from smoking by others in any business facility covered by this section.

[1985, c. 126, (NEW) .]

6. Discharge, discipline or discrimination against employees. It is unlawful for any employer to discharge, discipline or otherwise discriminate against any of its employees because that employee has assisted in the supervision or enforcement of this section.

[1985, c. 126, (NEW) .]

7. Application.

[2005, c. 683, Pt. G, §1 (AMD); 2005, c. 683, Pt. G, §3 (AFF); T. 22, §1580-A, sub-§7 (RP) .]

8. Effective date. This section shall take effect January 1, 1986.

[1985, c. 126, (NEW) .]

9. Exception. Beginning September 1, 2006, and notwithstanding any provision to the contrary in this section, a qualifying club may allow smoking in its business facility in accordance with the following provisions.

A. Policies concerning smoking must have been mutually agreed upon by the employer and all the employees. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

B. The qualifying club must have met the requirements of this paragraph.

- (1) The qualifying club must have written policies allowing onto the premises only the employer and employees, members and invited guests accompanied by a member.
- (2) A vote in favor of smoking has been conducted according to the following provisions:
- (a) The qualifying club must provide all members notice of the date of the vote at least 30 days prior to the vote and an opportunity for an absentee ballot. Information designed to influence the vote of the member may not be provided with the notice and the absentee ballot;
 - (b) Members may not be subjected to undue influence regarding the vote;
 - (c) A majority of all valid ballots received must be in favor of smoking; and
 - (d) The ballot and procedures for voting and making available, collecting and counting absentee ballots must meet the requirements established by rule adopted by the Maine Center for Disease Control and Prevention.
- (3) The qualifying club must have provided written notice to the Maine Center for Disease Control and Prevention of the results of the vote within 30 days of the vote. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

C. The qualifying club may allow smoking under authority of this subsection for no longer than 3 years from the date of the vote. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

D. The qualifying club may revote under this subsection at any time. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

E. The qualifying club must have retained all ballots for at least 3 years and make them available to the Maine Center for Disease Control and Prevention upon request. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

F. The Maine Center for Disease Control and Prevention shall adopt rules to implement this subsection. Rules adopted pursuant to this subparagraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 581, §3 (NEW); 2005, c. 683, Pt. G, §3 (AFF).]

[2005, c. 683, Pt. G, §2 (AMD); 2005, c. 683, Pt. G, §3 (AFF).]

SECTION HISTORY

1985, c. 126, (NEW). 2005, c. 338, §§3-6 (AMD). 2005, c. 581, §§1-3 (AMD). 2005, c. 581, §4 (AFF). 2005, c. 683, §§G1,2 (AMD). 2005, c. 683, §G3 (AFF). 2009, c. 300, §§4-7 (AMD). MRSA T. 22, §1580-A, sub-§7 (AMD).

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