

WORKPLACE SMOKING BAN ENACTED IN MASSACHUSETTS

On June 18, 2004, Massachusetts Governor Mitt Romney signed into law the Massachusetts Smoke-Free Workplace Law, which bans smoking in almost all workplaces in Massachusetts. Under the new law, as of **July 5, 2004**, all workplaces that have one or more employees must be smoke-free, with very limited exceptions.

EXTENT OF THE BAN

The new law is primarily intended to protect workers from health hazards resulting from exposure to secondhand smoke. Employers are responsible for providing a smoke-free environment for all employees working in an enclosed workplace. Smoking is prohibited in common work areas, hallways, conference and meeting rooms, offices, employee lounges, restrooms and staircases; auditoriums, theaters, concert halls and convention centers; museums, libraries, schools, colleges and classrooms; restaurants, bars, taverns, food courts and supermarkets; medical facilities, health facilities, child care centers, camps for school-age children; public transportation such as trains, planes, taxis, buses, airports, train and bus stations, terminals and enclosed outdoor platforms; and public buildings. Designated smoking areas or smoking rooms are not permitted.

EXCEPTIONS

If certain conditions are met, smoking may be permitted in some workplaces including private residences (except if used to operate certain businesses such as child care centers); membership associations (private clubs); designated guest rooms in hotels and motels; retail tobacco stores that prohibit access to anyone under age 18; certain "smoking" or "cigar" bars; and certain nursing homes and substance abuse treatment centers.

EMPLOYER OBLIGATIONS

Employers should take immediate steps to communicate the change in the law to its employees, especially if an employer

now permits smoking in any space within its workplace. The new law requires that every area in which smoking is prohibited shall have "no smoking" signs conspicuously posted; the Massachusetts Department of Public Health ("DPH") recommends that such signs be posted at entrances to the workplace and any area in which smoking is currently permitted or believed to take place. In areas exempt from the ban, signs must be posted warning of the danger of secondhand smoke. Employers should also review existing policies and make any necessary changes.

A proposed requirement that employers implement a written policy prohibiting smoking in the workplace and distribute the policy annually was not included in the final version of the new law. Note, however, that employers in the City of Boston are required to implement such a written policy under a Boston Public Health Commission regulation that became effective on May 5, 2003.

DPH provides additional information for business owners, including fact sheets, "no smoking" signs and a guide for implementation of the smoke-free workplace law, at its website: www.mass.gov/dph/mtcp.

NO RETALIATION

An employer subject to the smoking prohibitions in the Smoke-Free Workplace Law may not discriminate or retaliate in any manner against a person for making a complaint of a violation of the law, or for furnishing information to a person, organization or enforcement authority concerning a violation of the law.

PENALTIES

Under the Smoke-Free Workplace Law, a civil fine ranging from \$100 to \$300 may be assessed against an employer for each violation of the law; further, each calendar day on which a violation occurs will be considered a separate offense. Egregious noncompliance with the law may result in the local board of health taking action to revoke or suspend the employer's license to operate. A civil penalty of \$100 may also be assessed against an individual who smokes in a place where smoking is prohibited.

The MORSE, BARNES-BROWN & PENDLETON EMPLOYMENT & LABOR PRACTICE GROUP provides sophisticated legal services and practical advice to employers of all sizes, ranging from technology start-ups to Fortune 500 companies.

Robert M. Shea – rms@mbbp.com ♦ Mark H. Burak – mhb@mbbp.com

Donald W. Parker – dwp@mbbp.com ♦ Sandra E. Kahn – sek@mbbp.com ♦ Scott J. Connolly - sjc@mbbp.com

BUSINESS | SECURITIES | M&A | TECHNOLOGY + IP | TAX | EMPLOYMENT + IMMIGRATION

Reservoir Place • 1601 Trapelo Road • Waltham, MA 02451 • (p)781-622-5930 • (f)781-622-5933 • www.mbbp.com