



OHIO SMOKING BAN UPDATE

MAAHS Compliance Assistance - MAAHS provides the following information to assist private ag and hort employers in better understanding the Ohio smoking ban. This information is not to be considered legal advice and employers should consult legal counsel for legal advice. MAAHS will not be held responsible for actions taken by anyone reading this compliance assistance. MAAHS Employer Members are granted permission to distribute this document to additional managers and supervisors in their businesses. MAAHS Sponsor Members are granted permission to distribute to their members. Other recipients of this document are not permitted to distribute to additional parties. *MAAHS members may contact MAAHS with questions.*

Background - Ohio voters passed Issue 5 on Nov. 7, 2006, creating Ohio's indoor smoking ban under a new chapter of the Ohio Revised Code (ORC) effective Dec. 7, 2006. To implement and enforce this new law, the Director of Health adopted rules in the Ohio Administrative Code (OAC) focusing on enforcement authority and procedures that are effective May 3, 2007. MAAHS cooperated with Sponsor Member, Ohio Farm Bureau Federation, and the Ohio Department of Health to clarify 1) the regulation of employer provided housing, 2) where signs are to be posted and 3) regulation of family based businesses with only family employees.

Visit <http://www.odh.state.oh.us/alerts/ohiosmokingban.aspx> for the complete law, regulations and sample signs. The information below does not include all details.

BASIC REQUIREMENTS

- Smoking is prohibited in "public places" and "places of employment."
- "Place of employment" includes certain registered motor vehicles. (see definition of vehicle)
- Proprietors of a "public places" and "places of employment" must post pedestrian entrances with "No Smoking" signs that contain the telephone number 1-866-559-OHIO (6446) for reporting violations.
- Signs posted in vehicles shall be firmly affixed to the vehicle dashboard, or firmly affixed to each passenger door window, or firmly affixed to other areas visible to all passengers.
- Proprietors of "public places" and "places of employment" must remove ashtrays and other smoking receptacles.
- No proprietor of a public place or place of employment, except where permitted, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.
- A proprietor of a public place or place of employment shall ensure that tobacco smoke does not enter any area in which smoking is prohibited through entrances, windows, ventilation systems, or other means.
- No person or employer shall discharge, refuse to hire, or in any manner retaliate against an individual for exercising any right, including reporting a violation, or performing any obligation under this chapter.
- No person shall refuse to immediately discontinue smoking in a public place, place of employment, or establishment, facility or outdoor area declared nonsmoking under section 3794.05 of this chapter when requested to do so by the proprietor or any employee of an employer of the public place, place of employment or establishment, facility or outdoor area.
- A proprietor shall take reasonable steps including, but not limited to, requesting individuals to cease smoking.

--MORE--

AREAS WHERE SMOKING IS NOT REGULATED

- Private residences, except during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present. Private residences include employer-provided housing where there is a reasonable expectation of privacy. (see definitions)
- Family-owned and operated places of employment in which all employees are related to the owner, but only if the enclosed areas of the place of employment are not open to the public, are in a free standing structure occupied solely by the place of employment, and smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.
- A family owned place of employment (described above), in which contractors or third parties not under the direction and control of the family owned place of employment are intermittently present, is not subject the smoking ban.
- All outdoor patios shall be physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the smoking prohibition.

DEFINITIONS

- "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence.
- "Place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees.
- "Employee" means a person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer for compensation or for no compensation.
- "Employer" means the state or any individual, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.
- "Enclosed Area" means an area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.
- "Outdoor patio" means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead covering regardless of the number of walls or other side coverings.
- "Private residence" means, except as otherwise provided by division (A) of section 3794.03 of the Revised Code, a dwelling or area of a dwelling where there is a reasonable expectation of privacy and used as an individual's residence, including employer-provided housing.
- "Vehicle" means the following: an enclosed motor vehicle registered by the Ohio bureau of motor vehicles when it is occupied by one or more non-smoking persons at the same time and while used for business purposes; a motor vehicle registered by the Ohio bureau of motor vehicles that is part of a motor pool and shared by non-smoking employees; a motor vehicle registered by the Ohio bureau of motor vehicles that is used for public mass transit; or, tourist or scenic railcars operated exclusively in Ohio.