



## EMPLOYER RESPONSIBILITIES UNDER WISCONSIN'S NEW INDOOR SMOKING BAN

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With credit to Lincoln Loehrke, Summer Law Clerk

Many Wisconsin employers will be required to prohibit indoor smoking in their workplaces when the controversial statewide ban becomes effective on July 5. This ban will generally prohibit smoking in all enclosed public places or places of employment, including taverns and restaurants. However, in addition to punishing smokers who violate the ban, the law provides for up to \$100.00 in fines per day for “persons in charge” who fail to take reasonable efforts to prohibit illegal smoking. All employers should become familiar with the new ban’s requirements to avoid complaints or possible citations.



### **What locations are subject to the indoor smoking ban?**

The new ban has wide-ranging applicability. It prohibits smoking in all “enclosed places” that are public places or places of employment. Enclosed places include any structures or areas that have a roof and at least two substantial walls. A “place of employment” is any enclosed place that employees normally frequent during the course of employment, including office or work areas, employee lounges, restrooms, conference or meeting rooms, classrooms, hallways, stairways, lobbies, common areas, or even vehicles. Sports arenas, public conveyances, private clubs, restaurants, taverns and other locations are specifically included in the ban. Under these broad definitions, employers cannot allow smoking in any enclosed space that is open to the public or frequented by employees.

The new ban no longer allows businesses to designate rooms or parts of rooms as smoking areas. However, outdoor smoking areas may be designated by taverns, restaurants, private clubs, or retail establishments. These outdoor areas must be a “reasonable distance” from any entrance to the facilities. Local ordinances are not allowed to define the “reasonable distance” term or set any specified minimum distance.

The ban also prohibits smoking in certain outdoor areas. These include the premises of in-use day care centers, the grounds of juvenile correctional facilities, or any areas within 25 feet of a UW system residence hall or dormitory.

Smoking is still allowed in private residences, grandfathered tobacco stores and tobacco bars, certain rooms in assisted living facilities, and tribal casinos or facilities.

### **What responsibilities do employers have under the new ban?**

The statewide indoor smoking ban states that no “person in charge” may allow any person to smoke at a location subject to the indoor smoking ban. “Person in charge” is defined as any person, or his or her agent, who ultimately controls, governs or directs the activities at a location where smoking is prohibited. In many cases, a supervisor or other member of the management team will be considered the person in charge. Therefore, management may be personally liable for failure to meet the smoking ban’s requirements.

Employer responsibilities go beyond stopping smoking when it is seen. For example, the person in charge cannot provide matches, ashtrays or other smoking equipment at a location where smoking is prohibited. The person in charge is also required to make reasonable efforts to prohibit smoking by doing all the following:

- Posting “no smoking” signs and providing other appropriate notification and information concerning the prohibition.
- Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.
- Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.

The law requires the person in charge to notify law enforcement if a person refuses to leave after being asked to do so. A person in charge may also take measures in addition to the required actions listed above.

### **Are local smoking ordinances still valid?**

Yes, local governments and school districts may enact ordinances or policies that, if complying with the purpose of the state ban, protect the health and safety of the public. Any local rule regulating or prohibiting outside smoking in certain areas may apply only to the public property under the jurisdiction of the governmental unit.

### **What is the penalty for violating the new smoking ban?**

A person who smokes where it is prohibited is subject to a forfeiture between \$100.00 and \$250.00 for each violation. If the person in charge of a facility fails to make the “reasonable efforts” described above, he or she is personally subject to a \$100.00 forfeiture for each violation. However, they can only be given a warning on their first offense. The person in charge also cannot be fined more than \$100.00 per day. Courts have the power to grant injunctions to stop repeated violations of the indoor smoking ban.

Questions on Wisconsin’s new indoor smoking ban should be directed to the firm’s employment team: Greg Grobe (grobe@lcojlaw.com), Jodi Arndt (jla@lcojaw.com) or Ross Townsend (rwt@lcojlaw.com). You can also reach the members of the employment team at (920) 437-0476.