



## Michigan Falls in Line with the Majority of States and Passes Public Smoking Ban

by Nicole A. Flynn and Lynn Vuketich Luther

On December 11, 2009, Michigan passed HB 4377, The Smoking Ban, and became the 38th state to ban smoking. The ban will go into effect on May 1, 2010 and prohibits smoking in all restaurants, bars and public places, including places of employment. A "place of employment" includes any place where at least one person is performing work. The law bans smoking anywhere in an employer's indoor facilities and thus, appears to prohibit even dedicated smoking rooms. Pursuant to the law, employers have the following obligations:

- Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol at the entrances to all buildings where smoking is prohibited;
- Remove all ashtrays and other smoking paraphernalia;
- Inform individuals smoking in violation of the Act that they are violating state law;
- Refuse to serve an individual smoking in violation of the Act; and

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- Ask an individual smoking in violation of the Act to refrain from smoking and ask him or her to leave if they persist in smoking.

The Act contains several exceptions. Detroit's three currently existing casinos can permit smoking in gaming areas (but not in restaurants, bars and hotels). Likewise, smoking will be permitted in cigar bars, tobacco specialty stores, home offices and motor vehicles.

In light of this new law, employers should consider adopting a no smoking policy and should, at the very least, train all supervisors of the requirements of the Act, including the employer's obligation to confront employees who are caught smoking in violation of the law. Although the law does not provide for specific penalties against an employer whose employees smoke in violation of the law, it does impose fines on individuals who violate the law and employers are obligated to advise violators of those fines. Finally, the Act prohibits "personnel action" against individuals who seek to enforce their rights under the law.

For assistance in preparing your workplace no smoking policy, contact an Eastman & Smith attorney.



*Ms. Luther is an associate. Her practice focuses on representing employers against claims of discrimination, harassment, wage and hour violations, and defending OSHA, EEOC, workers' compensation, state civil rights and other administrative claims.*



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