

EMPLOYMENT LAW

A L E R T

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Summary of How the “Non-Smoker Protection Act” Applies to Employers

August 2, 2007

Essentially all Tennessee employers will have to make some changes in operations due to a new Tennessee law that takes effect on October 1, 2007. The Non-Smoker Protection Act was recently signed into law by Governor Bredesen and will cover almost all “public places” in Tennessee, including almost all places of employment.

The heart of the act prohibits smoking “in all enclosed public places within the state of Tennessee.” Enclosed public places are defined as “an enclosed area under the control of a ...private employer that employees normally frequent during the course of employment,” including work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways and vehicles. Private employers with less than three employees are exempt.

The smoking ban does not apply to areas such as open air patios, porches or decks; areas enclosed by garage type doors on one or more sides so long as all doors are completely open; and tents or awnings with removable sides or vents when all such sides or vents are completely removed or open. These exceptions apply only so long as smoke from these areas does not “infiltrate” areas where smoking is prohibited. There are certain other exclusions for other venues including “age-restricted venues” (places that are restricted to a 21-and-over crowd), private clubs, certain hotel and motel rooms, premises of residents of nursing homes and long-term care facilities and for employers in the tobacco industry.

So what changes are required? First, employers must inform all current employees about the smoking ban by October 1, 2007. Second, employers must communicate the smoking ban to all future employees upon their application of employment. Third, an employer must post “No Smoking” signs (or the “No Smoking” symbol) at every entrance to its facility.

Penalties for violation of the new law will be assessed according to the number of violations in any 12-month period. Each day of a knowing violation is a separate violation. A first violation results in a written warning from the Department of Health or the Department of Labor. A second violation is a civil penalty of \$100, and a third or subsequent violation is a penalty of \$500.

Stay tuned, as the Department of Health and the Department of Labor are expected to issue regulations under this new law.

If you have any questions about the matters described in this *Employment Law Alert* please contact one of the Bass, Berry & Sims attorneys in the Labor and Employment Practice Area listed at the end of this alert.

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