

ALERT

LABOR & EMPLOYMENT LAW

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Increased Regulation of Workplace Smoking in Michigan

Amendments to the Michigan Clean Indoor Air Act (Act) go into effect on May 1, 2010. Although most know that the changes prohibit smoking in bars, restaurants, and public places, the Act also limits smoking in all public and private workplaces. The Act prohibits smoking in all enclosed indoor areas of employment, which are defined as buildings containing one or more employees.

The Act requires that employers prohibit employees from smoking in enclosed indoor workplaces and undertake reasonable efforts to enforce the law. Employers that currently have designated indoor smoking areas need to make a plan to eliminate them before May 1. Employers may designate outdoor areas where employees can smoke. Smoking in a motor vehicle while working is not regulated under this law. Relying on recent Michigan Supreme Court precedent, the Michigan Department of Community Health will require that employers also comply with more restrictive local smoking ordinances. The Clean Indoor Air Act continues to prohibit smoking on real property where a child care center or institution is located.

The Act requires employers to label all building entrances with no smoking signs, remove all ashtrays from buildings, inform employees of the indoor smoking ban, and ask employees to leave the building if they do not comply with the indoor smoking ban. Unionized employers who currently allow smoking inside the workplace will have to consider contract language, reserved rights, practices, and policies to determine if they need to bargain over the effects of the amended law.

If employers fail to comply with the Act, they may be subject to a \$100 fine for the first violation and a \$500 fine for the second and subsequent violations. The Michigan Department of Community Health or local health departments have the authority to enforce the Act. In addition to fines, health departments and employees can seek injunctive relief if an employer fails to enforce the

smoking ban. Finally, employees and employment applicants cannot be retaliated against for objecting to an employer's failure to comply with the indoor smoking ban.

For additional information, please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm's Labor and Employment Law Department in the following offices: Kenneth J. Yerkes, Chair (317) 231-7513; Steven J. Whitehead, Atlanta (404) 264-4045; Norma W. Zeitler, Chicago (312) 214-8312; William A. Nolan, Columbus (614) 628-1401; Eric H.J. Stahlhut, Elkhart (574) 296-2524; Mark S. Kittaka, Fort Wayne (260) 425-4616; Michael A. Snapper, Grand Rapids (616) 742-3947; Peter A. Morse, Indianapolis (317) 231-7794; Kevin R. Coan, Minneapolis (612) 342-0324; Janilyn Brouwer Daub, South Bend (574) 237-1139; and Teresa L. Jakubowski, Washington, D.C. (202) 371-6366. For more information, visit www.btlaw.com/laborandemploymentlaw.

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