

Client Alert

A report
for clients
and friends
of the firm February 2003

Smoking is Out Under New City Law

The New York City Smoke-Free Air Act of 2002 substantially changes the law with regard to smoking in the workplace and virtually all other public places. Although much of the publicity concerning this new law had focused on its restrictions on smoking in bars and restaurants, the law also prohibits smoking in places of employment throughout New York City. Effective March 30, 2003, **employees in the city may no longer smoke in private offices, even with the door closed. Separate smoking rooms are also prohibited in the workplace.** The new smoking prohibitions apply to:

- Banks and other financial institutions;
- Catering halls;
- Company vehicles occupied by more than one person and all city-owned vehicles;
- Convention halls;
- Health care facilities (except patients in separate smoking rooms);
- Motion picture theaters, concert halls, and other facilities used to present movies or performances;
- Offices where trade or vocational activity occurs or professional or consumer services are rendered;
- Non-profit entities, including religious institutions (other than "membership associations" that rely on members to provide all services without additional compensation);
- Public transportation facilities (including ticketing, boarding and waiting areas);
- Retail stores (other than retail tobacco stores);
- Restaurants;

- Schools; and
- Sports arenas and recreational areas.

Only hotel and motel guest rooms, private automobiles, private homes (to the extent they are not housing child day care facilities or health care facilities) and retail tobacco stores are exempt from regulation under the new statute.

Like the prior law, employers are prohibited from retaliating against any employee or applicant who exercises or attempts to exercise his or her rights under the statute. The new law also requires employers to update their smoking policies to include:

1. a prohibition on smoking in accordance with the law and regulations;
2. protection from retaliation; and
3. a procedure for the adequate redress of any retaliatory action taken against an employee.

The Department of Health and Mental Hygiene ("DOH") has proposed regulations implementing the provisions of the new law. Under these regulations, employers would be required to have updated their smoking policies by June 30, 2003. Employers must also ensure that "NO SMOKING" signs are conspicuously posted in the workplace.

The new smoking law allows "separate smoking rooms" only for patients of residential health care facilities and facilities providing day treatment programs, and for bars. These separate smoking rooms must be enclosed rooms for the exclusive purpose of smoking, in which no business transactions (including vending machines or other food service) is conducted. They are subject to specific restrictions regarding their construction, size and ventilation and must comply with all applicable fire and building code requirements. Separate smoking rooms will not be permitted in bars after January 2, 2006. Residential health care facilities and day treatment programs must obtain the prior approval of the

Fire Department before they can allow smoking in separate smoking rooms.

Owner operated bars, which rely on the principal owners of the bar to provide all services, other than cleaning when the bar is closed; tobacco bars that were established as of December 31, 2001; and membership associations, which rely on members to provide all services without compensation, are exempt from the prohibition on smoking if they register with the NYC DOH by September 26, 2003.

The sweep of the Smoke Free Air Act of 2002 is extraordinarily broad and likely to have a substantial impact on many employers. In light of the short deadlines imposed by the new law, employers must act quickly to review and update their smoking policies, post the required signs, and notify their employees at all levels of the new restrictions.

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Proskauer's Labor and Employment Department includes over 160 attorneys with significant and diverse labor and employment experience. For further information about the new smoking law and DOH regulations, please contact the attorneys listed below, who would welcome any question you might have:

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