

Maine's Workplace Smoking Law FAQ

A GUIDE FOR MAINE EMPLOYERS

There is no risk-free level of secondhand smoke exposure, even brief exposure can be harmful to health. Exposure to secondhand smoke can lead to cancer and other diseases. 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke, in the past 50 years.

Maine's Workplace Smoking Act of 1985, was enacted to protect the employer and employees from the detrimental effects of smoking by others. Maine's Workplace Smoking Act applies to all enclosed business facilities or portions thereof, including vehicles used in the course of work and outdoor areas where employees perform services under the control of the employer.

All areas of a business facility into which members of the public are invited or allowed are governed by Maine's Public Smoking Act, which states that smoking is prohibited in all areas of public places, outdoor eating areas as provided in section 1550 and all rest rooms made available to the public.

BY LAW, EVERY EMPLOYER IN MAINE:

- Shall establish a written policy that prohibits smoking throughout the business facility, rest rooms, meeting rooms and private offices.
- Shall post and supervise policy implementation.
- May only permit employer and employees to smoke outside in a designated smoking area, which must be at least 20 feet away from the business facility.

WHAT DOES BUSINESS FACILITY INCLUDE?

Enclosed location or portion thereof, including vehicles used in the course of work and outdoor areas where employees perform services under the control of their employer. A "business facility" is where employees are physically present conducting work under the control of an employer. A private or personal residence or unit or apartment, or a personal residence or unit or apartment in a residential facility is a "business facility" during the period of time that an employee is physically present to perform work.

WHAT DOES "INCLUDES VEHICLES USED IN THE COURSE OF WORK" MEAN?

Employer owned or leased vehicles used by employees. Employee owned vehicles used in the course of work, whenever another employee or person is in the vehicle of work related purposes. Examples include construction equipment or vehicles, driver education, mail delivery, or transportation vehicles.

WHAT DOES "OUTDOOR AREAS, WHERE EMPLOYEES PERFORM SERVICES FOR THEIR EMPLOYER" MEAN?

All outdoor, off-site locations and private residences during the period of time that an employee is physically present to perform work there. Examples include commercial and private construction sites, commercial and private technology services, home healthcare aid, home healthcare delivery services, landscaping, public work vehicles, road construction and maintenance areas and traffic controller locations. A Designated Smoking Area at an off-site construction zone shall be modified when applicable, to ensure smoking is prohibited where employees perform services under the control of the employer.

WHAT IS A PUBLIC PLACE?

Any place not open to the sky into which the public is invited or allowed. Examples include, airport, business facilities, dental offices, educational facilities, grocery stores, healthcare facilities, financial institutions, fitness center, hospitals, indoor sport arenas, laundromats, libraries, office buildings, pharmacies, mail carrier offices, membership clubs, retail stores, salon and spas, shelters, taxi vehicles, vehicle sales, repair and maintenance garages, and veterinary hospitals and offices.



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HOW IS SMOKING DEFINED AT A PUBLIC PLACE OF BUSINESS?

Smoking includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. Smoking includes the use of an electronic smoking device, which means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen (*See*, 22 M.R.S. §1541).

HOW IS SMOKING DEFINED AT A NON PUBLIC BUSINESS?

Does your business facility permit delivery of goods, mail delivery entry, member of the public, or vending personnel into your business? If so, your business is a public place and shall comply with Maine's Public Smoking Act (*See*, 22 M.R.S. §1542). If not, your business is not required to prohibit the use of an electronic smoking device, such as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen (*See*, 22 M.R.S. §1541).

WHERE CAN EMPLOYERS PERMIT SMOKING?

Smoking by employer and employees shall only occur outdoors at least 20 feet away from the "business facility" windows, entryways, vents, doorways or other openings and does not allow circulation of environmental tobacco smoke into the enclosed areas of the business facility, or a public place, in any way, e.g. ventilation system, open windows, and open doors, or any outdoor area where smoking is prohibited by law.

HOW IS MAINE'S WORKPLACE ACT ENFORCED?

The Attorney General may bring action to enforce 22 M.R.S. §1580-A. Any violation is a civil violation where a fine of \$100 to \$1,500 may be adjudged.

CAN EMPLOYERS CREATE POLICIES THAT ARE MORE STRICT THAN WHAT IS REQUIRED BY LAW?

Yes, Employers can prohibit the use of all tobacco/nicotine containing products including smokeless tobacco. Employer may also decide to not allow any smoking or tobacco use anywhere on their property, including outdoor and off-site locations where employees perform services under the control of the employer.

CAN EMPLOYERS REFUSE TO HIRE TOBACCO USERS?

No, Employers cannot require prospective employees to refrain from tobacco use when they are not at working on behalf of the employer or discriminate against employees who use tobacco products outside of work.

A POLICY IS REQUIRED, ARE SAMPLE POLICY TEMPLATES AVAILABLE?

Yes, the Maine Center for Disease Control and Prevention has been authorized to assist businesses in developing written smoking policies and to enforce provisions of Maine's Workplace Smoking Act of 1985. To download sample policy templates and order free print materials and signs for your employees, please visit: www.maine-preventionstore.com

WHERE CAN I SEE THE ACTUAL LAW?

Title 22, Chapter 263 §1580-A Smoking in Places of Employment and 10-144 Chapter 250 Rules Relating to Smoking in the Workplace are both available on the Maine Legislature Maine Revised Statutes website, please visit: www.legislature.maine.gov

HOW CAN A COMPLAINT BE FILED?

To report a violation or file an electronic complaint please visit: <https://preventionforme.org/retailer-workplace> or call the Maine CDC Tobacco and Substance Use and Prevention at 207-287-4627



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