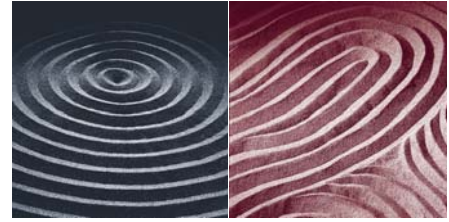


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Ontario cracks down on smoking

Laura Cassiani

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Ontario cracks down on smoking

Strict province-wide legislation targets workplaces

At the end of last month, Ontario became a less friendly place for smokers. On May 31, the Smoke-Free Ontario Act banned smoking in all “enclosed workplaces,” which includes most Ontario workplaces and vehicles used by employees during the course of their employment.

The act defines an “enclosed workplace” as a building or structure that is covered by a roof that employees work in or frequent during the course of their employment. This includes areas where employees hang out during their breaks. While the act does not speak directly to this issue, presumably the prohibition on smoking in work vehicles does not extend to employee-owned vehicles used during the course of their employment.

Subject to a few exceptions, the act will also prohibit smoking in all “enclosed public places” and places such as patios that are covered by a roof and in bars and restaurants generally.

The act brings Ontario in line with initiatives across the country. Nunavut and the Northwest Territories were the first Canadian jurisdictions to enact widespread smoking bans. According to the 2005 *Progress Report on Tobacco Control*, published by the federal minister of health, almost one-half of the population of the Northwest Territories aged 15 years and older are smokers. New Brunswick has the highest provincial smoking prevalence rate — about 24 per cent of the population aged 15 years and older. Generally, however, reports indicate there is a steady decline in the prevalence of smoking.

The act introduces strict prohibitions, most notably the prohibition against designated smoking rooms in workplaces. Under the preceding legislation, the Smoking in the Workplace Act, employers were per-



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mitted to designate up to 25 per cent of the workplace to the creation of a “designated smoking area.”

The following is a brief summary of the key points of the act as it relates to employers and workplaces.

Smoking shelters

While the majority of employers have had smoke-free work environments for some time, a few continue to provide employees with outside shelters for smoking. Under the new legislation, however, these “smoking shelters” may also be prohibited. Smoking will be prohibited if the shelter is not primarily a private dwelling and where the area or place is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time. If such a structure has a roof and more than two walls, smoking inside will be prohibited.

For purposes of the act, a roof includes any physical barrier, permanent or temporary, that covers all or part of the area and that is capable of excluding rain or impeding airflow. This includes tarps, awnings or canvas sheeting. A wall is described as a physical barrier that can exclude rain or is capable of impeding airflow, whether temporary or moveable. Given these broadly defined terms, a smoking shelter

that has a tarp roof and is enclosed with lattice-type siding (such as a gazebo) will likely fall within the definition of a smoking shelter, but shelters that provide only a roof won't.

Controlled smoking rooms

The act also permits “controlled smoking rooms” in certain prescribed places, including residential care and psychiatric facilities. Employees of these facilities and other non-residents, however, will not be permitted to smoke in these areas. A controlled smoking room must be cleaned daily and there must be no smoking for two hours prior to custodial staff entering the room and while these employees are cleaning the room. An employer must also register the room with the minister of health and long-term care and must also ensure the room complies with the act, including the installation of ventilation systems.

Home health-care worker

Home health-care workers now have the right, and the necessary protection to exercise that right, to ask a person not to smoke during their visit and will have the right to leave if a person refuses unless to do so poses an immediate and serious danger to the health of the person. In the event a home health-care worker exercises the right to leave, he must notify the employer within 30 minutes of leaving or as soon as reasonably possible.

Employer obligations

Under the new legislation, employers will be liable for any employee or patron who refuses to comply with the smoking prohibitions. Employers will also be liable for ensuring there are no ashtrays in the workplace and that no-smoking signs are posted at all entrances and exits. The signs must be those specifically prescribed by the government.

Signs are available from local public health units. For a list of health units visit www.health.gov.on.ca/english/public/contact/phu/phuloc_mn.html.

Employee protection

Employees are protected from reprisal for obeying or seeking compliance with the act. All employee complaints arising from a dismissal, a threat or discipline imposed for seeking compliance with the act will be heard by the Ontario Labour Relations Board.

Human rights

The new legislation must be considered in light of an employer's obligation to accommodate a disabled employee. In at least one case, addiction to nicotine was found to constitute a disability for purposes of human rights legislation. In *Cominco Ltd. v. U.S.W.A., Local 9705*, the arbitrator found that a “heavy” addiction to nicotine can be a disability. The arbitrator found that the employer's policy banning employees from using or possessing any tobacco-related products anywhere on the employer's premises was discriminatory.

The medical evidence presented showed that those heavily addicted to nicotine experienced symptoms of withdrawal, depression, anxiety and a certain degree of functional impairment. The evidence also indicated that these employees would not be able to work an entire shift without experiencing some of these symptoms. According to the arbitrator, whether or not an addiction qualifies as a disability “should turn not on whether the disablement is temporary or permanent, but the degree to which normal function is impaired.”

For more information see:

• *Cominco Ltd. v. U.S.W.A., Local 9705*, [2000] B.C.C.A.A.A. No. 62 (B.C. Arb. Bd.)

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