

Complaints, Penalties, and Enforcement of The Massachusetts Smoke-Free Workplace Law

The Smoke-Free Workplace Law, M.G.L. Ch. 270, §22, mandates that enclosed workplaces with one or more employees must be smoke-free. The state law's intent is to protect workers in enclosed workplaces from secondhand smoke exposure. The full text of the law and additional information is available at www.mass.gov/dph/mtcp.

What are the procedures for filing a complaint?

Complaints can be filed by contacting your local board of health/health department, or the Massachusetts Department of Public Health at 1- 800-992-1895. Complaint forms are available online at www.mass.gov/dph/mtcp. Completed forms can be faxed to 617-624-5921 or mailed to the Massachusetts Tobacco Control Program, 250 Washington Street, 4th Floor, Boston, MA 02108.

What happens once a complaint is made to the Department of Public Health?

If the complaint appears to be a violation of the state law, a copy of the complaint will be sent by fax to the local board of health/health department. If the board of health/health department has a funded tobacco control program, the program will also receive a copy of the complaint. The workplace will receive a letter from DPH informing the workplace that a complaint has been filed and that the local board of health/health department has been notified. All complaints are entered into a database.

What are the penalties for smoking violations for business owners, operator, managers, or persons in charge?

The first offense for permitting smoking in a workplace is \$100. The second offense occurring within 2 years of the first offense is \$200, and the third or subsequent offense occurring within 2 years of the second offense is \$300. Individual smokers can also be fined \$100 for each offense. Some municipalities may have local laws with stricter penalties. For more information, contact your local Board of Health or Health Department.

What if a patron refuses to stop smoking?

The owner, operator, manager or person in charge should make an effort to obtain compliance. If the patron refuses to stop smoking or becomes disorderly, the patron may also be in violation of other laws, such as trespassing or disturbing the peace; therefore, the local police should be contacted. Patrons can be fined \$100 for each violation of the smoke-free law.

Where does the fine get paid?

The violation notice will indicate where to send the payment. Generally, tickets issued by cities and towns will be paid to the clerk's office and go into the general fund.

Who enforces the Smoke-free Workplace Law?

The law requires that the owner, operator, manager or person in charge to ensure that employees and the general public comply with the law. The local health department/board of health can respond to complaints received and may conduct periodic inspections. A local health department/board of health, a local inspection department, a municipal government or its agent, the Massachusetts Department of Public Health and the Alcoholic Beverage Control Commission can enforce the law. The Massachusetts Department of Public Health has established a complaint and information line at 1-800-992-1895.

Does the enforcement officer have to witness smoking to take enforcement action?

The enforcement officer does not have to witness the actual smoking, however credible evidence (*e.g. used ashtrays or cigarette butts on the floor*) that smoking occurred inside the workplace must be provided.

Can a municipality use non-criminal disposition procedures (civil tickets) without an enabling ordinance or bylaw?

Yes, the state law allows municipal government and its agents (*e.g. board of health*) to use non-criminal disposition procedures to ticket any violations of this law. Permission to use this ticketing procedure is not required from either a city council or a town meeting.