

# Massachusetts Smoke-Free Workplace Law and Questions About Workplace Buffer Zones and Outdoor Spaces

For All Business Types Except for Restaurant, Bar, and Establishments with Liquor Licenses

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 (including DPH Regulation 105.CMR 661.000) are available at [www.mass.gov/dph/mtcp](http://www.mass.gov/dph/mtcp).

## **Can a workplace allow smoking on an outdoor patio or deck?**

Smoking is allowed in an outdoor space if the outdoor space is:

- 1) Physically separated from the enclosed workspace;
- 2) Open to the air at all times; and
- 3) Smoke does not migrate back into the workspace (e.g. through a door or window). Any smoke that migrates back into the workspace is considered a violation of the law.

Some municipalities may have local laws that are stricter than the state law. For more information, contact your local Board of Health or Health Department. For restaurant, bar, and establishments with liquor licenses, see the fact sheet titled *Massachusetts Smoke-Free Workplace Law and Common Questions for Establishments with Liquor Licenses*.

## **When does an outdoor space have to be smoke-free?**

Any outdoor space that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or covers in place, shall be regarded as an enclosed space.

## **Does the law require a smoker to stand a specific distance away from building entrances?**

No, the state law does not require smokers to stand a specific distance (or to implement a buffer zone) from outside of a workplace building. However, smoke cannot migrate back into any enclosed workplace. Any smoke that migrates into an enclosed workplace is a violation of the law. Check with your local board of health since some municipalities have local regulations, ordinances, or bylaws that require smokers to stand a specific distance from buildings.

## **Can an employer or an establishment, construct a smoking shelter or build a deck or patio for smoking?**

Yes, if the space is not totally enclosed (as described above) and as long as no smoke migrates from the outdoor area into the enclosed workspace.

## **Are there any additional conditions I need to meet before constructing or renovating an outdoor space for smoking?**

If the construction requires the permission of the local building department or license authority, the local BOH must be notified in writing. Additionally, establishments must also follow all local building, zoning, and liquor laws.

## **Are employers required to establish a smoking policy?**

Employers are not legally obligated to establish a smoking policy. However, the Boston Public Health Commission (BPHC) requires all workplaces located in the city of Boston to have a smoke-free policy. The BPHC model policy is located at <http://www.bphc.org/bphc/pdfs/modelpolicy.pdf>.

## **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.