

Massachusetts Smoke-Free Workplace Law and Membership Association/Private Club Exemption

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.

What is a membership association (private club)?

Membership associations, frequently known as private clubs, are defined in the law as not-for-profit entities that have been established and operate for charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreational or similar purposes. Places of worship and veterans' organizations are included in the definition of membership associations for the purpose of this law.

When may smoking be permitted at private clubs or membership associations?

Smoking may be permitted if the club's enclosed space is occupied solely by:

- 1) Individuals with a full membership to the association;
- 2) Salaried employees of the association;
- 3) Invited guests; and
- 4) Visiting members of an affiliate chapter or branch of a fraternal lodge organization.

When is a membership association considered open to the public and required to be smoke-free?

Smoking shall be prohibited in an enclosed indoor space of a membership association when:

- 1) The association is located in a municipal-owned building;
- 2) The public is invited (*e.g. advertisements, signs, invitations*) to attend an event (*e.g. bingo in a church or private club*);
- 3) The enclosed indoor space is occupied by a non-member that is not a guest;
- 4) The enclosed indoor space is rented to the public for a fee, tickets are sold, or for any other form of compensation (*e.g. a wedding and hires a bartender, wait staff, and/or a disc jockey*); and
- 5) If a temporary, contract employee, or independent contractor is hired to perform an employed service in the enclosed indoor space (*e.g. bartender, caterer, disc jockey*).

Can members of the membership association smoke while the facility is open to the public?

Only if the membership association provides a designated enclosed indoor space that is separate from the area open to the public and "*the space is restricted by the association to admit only members, the invited guest of a member, and the employees of the membership association.*" The association must ensure that the public does not enter the enclosed space where smoking is permitted.

CAUTION: The sale of alcoholic beverages to the general public by a private membership association holding a *club* type of alcoholic beverages license violates the terms and conditions of that *club* type license and can result in suspension or revocation of that license by the local licensing authorities or the Massachusetts Alcoholic Beverages Control Commission.

What is a full member?

A person whose membership entitles him/her to all privileges of a full membership of the association, and there are no differences in cost or duration of the membership then what is required in the associations charters.

What is an invited guest?

Invited guests of a member must meet three conditions:

- 1) Be accompanied by a member;
- 2) The full member must remain on the premises while the guest is present; and
- 3) A guest register is signed that clearly specifies the name and address of the guest and the inviting member.

What is a salaried employee of the association?

A salaried employee of a private club is a W-2 employee. However, an independent contractor, temporary employee or contract employee that is hired to work in a private club is not considered a salaried employee. As stated above, smoking is prohibited when an independent contractor, temporary employee or contract employee is present.