



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

State Smoking Ban--Questions and Answers

The Wisconsin Legislature recently enacted 2009 Wisconsin Act 12, which prohibits smoking in several enclosed places. The Act takes effect on July 5, 2010. A summary of Act 12 is available at the Legislative Council Web site at: http://www.legis.state.wi.us/lc/publications/act/2009/act012_sb181.pdf. This Information Memorandum addresses questions that have been asked about Act 12. If further questions arise, an updated version of this Memorandum will be issued.

What is considered an enclosed place under the law?

Act 12 prohibits smoking in a number of enumerated places that are enclosed and in other enclosed places that are places of employment or public places (with certain limited exceptions). The Act also prohibits smoking in limited outdoor areas, such as near dormitories or the State Capitol, and in sports arenas, bus shelters, and public conveyances.

For purposes of this prohibition, “enclosed place” is defined as a structure or area that has a roof and more than two substantial walls. A substantial wall is a wall with an opening that may be used to allow air in from the outside that is less than 25% of the wall’s surface area.

How does the law treat local ordinances?

Act 12 does not change the current general authority of a local unit of government to enact ordinances regarding smoking other than to limit its ability with respect to outdoor smoking. Local units of government will have the same authority to regulate indoor smoking that they had prior to Act 12. Namely, they can enact ordinances (or school districts can adopt policies) that, complying with the purposes of the state law, “protect the health and comfort of the public.”

The new law allows local ordinances or school district policies that regulate smoking outside only with respect to public property under the jurisdiction of the county, city, village, town, or school district. However, even with respect to that property, a restaurant, tavern, private club, or retail establishment may designate an outside area that is a reasonable distance from the entrance where customers, employees, or persons associated with the facility may smoke. An ordinance may not define “reasonable distance” or set any specified measured distance as being a reasonable distance.

Local units of government may determine the amount of forfeitures for violations of their ordinances, as long as the ordinance, complying with the purpose of the state law, protects the health and comfort of the public.

How are vehicles that are used in employment treated under the law?

Act 12 defines “place of employment” as any enclosed place that employees normally frequent during the course of employment, and then lists several places that are included in the definition. The definition explicitly includes vehicles, so those are considered to be a place of employment.

The term “enclosed place” means a structure or area that has a roof and more than 2 substantial walls. While the interior sides, front and back of a vehicle are not typically referred to as walls, the only way to give meaning to the listing of vehicles in the definition of “place of employment” is to treat them as walls.

However, most vehicles will not be covered since the two sides will have doors and windows that exceed 25% of the surface area of the side and those sides would therefore not be substantial walls. If only the front and back of the interior of the vehicle are substantial walls, the vehicle is not an enclosed place and therefore not subject to the prohibition on smoking.

Does the law require rule-making by a state agency?

The only rule-making provided for in current law and Act 12 are: (1) the requirement that the Department of Commerce promulgate a rule that specifies uniform dimensions and other characteristics of the signs relating to smoking; and (2) the requirement that the Department of Administration promulgate a rule that specifies what constitutes “the area directly adjacent to the state capitol building”, for purposes of the prohibition on smoking in that area.

What types of lodging establishments are covered by the smoking ban?

Act 12 prohibits smoking in several enumerated enclosed places, including lodging establishments. The term “lodging establishment” is defined to mean a bed and breakfast establishment, a hotel or motel, or a tourist rooming house, all of which are defined in current law. All of these types of facilities are regulated by the Department of Health Services. Rental cabins are regulated by the Department of Health Services since they fall within the current definition of “hotel” or “tourist rooming house” and are therefore “lodging establishments” under Act 12.

How are outdoor sporting venues treated under the law?

While Act 12 specifies several enclosed areas in which smoking is prohibited, it also prohibits smoking in a sports arena, regardless of whether all or part of the arena is enclosed. The term “sports arena” is defined as any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

When does the law take effect?

Act 12 takes effect on July 5, 2010. Prior to that date, existing laws on smoking remain in effect and local ordinances that are in compliance with existing laws remain in effect.

The only date that is different in Act 12 is the date for determining whether a facility is “grandfathered-in” as either a retail tobacco store or a tobacco bar. Starting on July 5, 2010, a retail tobacco store or a tobacco bar that existed on June 3, 2009 (the day after publication of Act 12) may permit smoking, but only smoking of cigars and pipes. In retail tobacco stores and tobacco bars that begin after June 3, 2009, smoking is prohibited.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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