INTRODUCTION

These Rules and Regulations Pertaining to the Workplace Smoking Pollution Control Act [R23-20.7-WS], as amended (1994), are promulgated pursuant to the authority conferred under section 23-20.7-5 of the General Laws of Rhode Island, and are hereby adopted for the purpose of establishing a unified procedure for regulating smoking in the workplace.

Pursuant to the provisions of Section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given in arriving at the regulations to: (1) alternative approaches to the regulations; (2) duplication or overlap with state regulations, by referencing all applicable law; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the General Laws, which could result from the regulations. No alternative approach, no known overlap or duplication, nor any significant economic impact was identified.
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WORKPLACE SMOKING  
[R23-20.7-WS]

Section 1.0 Definitions

Wherever used in these rules and regulations the following terms shall be construed as follows:

1.1 "Atmospheric environment" means the air breathed by employees within any enclosed area used as a workplace.

1.2 "Designated smoking area" means any enclosed area in which smoking is permitted by the persons who own or operate the enclosed area in conformance with the General Laws of Rhode Island.

1.3 "Eating facility" means any building, structure, room, or area maintained as, or held out to the public as, an enclosure where meals are served for consideration of payment; excluded, however, are bars, nightclubs, lounges, dance clubs, and privately sponsored social affairs.

1.4 "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wage or profit.

1.5 "Employer" means any person who employs the service of an individual person.

1.6 "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress and is not intended to mean areas commonly described as public lobbies.

1.7 "Legislature" means the general assembly of the state of Rhode Island.

1.8 "Nursing facility" means a place, however named, or an identifiable unit or distinct part thereof that provides 24 hour inresident nursing, therapeutic, restorative or preventive and supportive nursing care services for two (2) or more residents unrelated by blood or marriage whose condition requires continuous nursing care and supervision, and licensed as such by the Department of Health.

1.9 "Passive tobacco smoke" means any smoke released into the atmospheric environment of an enclosed area by smoking.

1.10 "Person" means any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

1.11 "Public place" means any place used by or open to the public.

1.12 "School or schools" means any non-residential school building, public or private, of any city or town or community educational system regulated, directly or secondarily, by the Rhode Island Board of Regents for Elementary and Secondary Education or the Rhode Island department of elementary and secondary education or any other state education board or local city or town school board or school committee or other
legal educational sub-division acting thereunder. As used herein, the term "school or schools" shall also include but not be limited to school playgrounds, school administration buildings, indoor school athletic facilities, school gymnasiums, school locker rooms, school buses, other school vehicles, other school buildings whose use is not primarily residential, and outside areas within twenty-five (25) feet of any school building.

1.13 "Smoking, to smoke, smoke" means and includes the inhaling, exhaling, burning, or carrying of any lighted smoking equipment or paraphernalia for tobacco or any other weed or plant.

1.14 "Workplace" means any enclosed area of a structure or portion thereof intended for occupancy by business entities which will provide primarily, but not exclusively, clerical, professional, or business services of the business entity, or which will provide primarily, but not exclusively, clerical, professional, or business services to other business entities or to the public, at that location. The workplace includes, but is not limited to, office spaces in office buildings, office spaces in all state and municipal office buildings, office spaces in all federal office buildings where other than federal employees are present, medical office waiting rooms, all factory or manufacturing plant areas, libraries, museums, hospitals, nursing homes, other medical treatment facilities, and in all the aforementioned.

Section 2.0 Regulation of Smoking in the Workplace

2.1 Each employer who operates a workplace in this state shall by July 22, 1993 adopt, implement, and maintain a written smoking policy which will contain, at a minimum, a plan which is designed to protect the health and atmospheric environment of the nonsmoker and to ensure a comfortable environment for all employees, and the requirement that any nonsmoking employee may object to his or her employer about the smoke hazard or discomfort in his or her workplace.

2.1.1 Using existing means of ventilation or separation or partition of the work space, the employer shall attempt to reach a reasonable accommodation to protect the health and atmospheric environment of the nonsmoking employees and to ensure a comfortable environment for all employees.

2.1.2 The employer shall either make such an accommodation or completely prohibit smoking in those areas of the workplace where nonsmoking employees may reasonably be expected to be adversely affected by passive cigarette smoke.

2.1.3 The employer's smoking policy shall be announced by July 22, 1993 and posted conspicuously in all workplaces under the employer's jurisdiction.

2.1.4 Maintenance of a written smoking policy shall include enforcement of that policy by the employer.

2.2 Pursuant to Section 23-20.6 of the General Laws of Rhode Island, smoking tobacco in any form is prohibited in certain public places, including but not limited to elevators, indoor movie theaters, libraries, art galleries, museums, concert halls,
buses, primary, secondary or post-secondary school buildings, colleges, supermarkets, medical offices, and hospitals, except in areas separated from those used by the general public and identified by signs as smoking areas.

2.2.1 Employers who operate workplaces mentioned specifically in Section 23-20.6 of the General Laws of Rhode Island, including eating facilities, must also comply with Section 23-20.7-5 of the General Laws of Rhode Island.

2.3 Pursuant to Chapter 23-20.9 of the General Laws of Rhode Island, tobacco product use is prohibited in any school or schools.

2.3.1 Employers who operate a school or schools shall be governed by the provisions of Section 23-20.9 of the General Laws of Rhode Island.

2.4 Pursuant to Section 23-17.5-26 of the General Laws of Rhode Island, smoking is prohibited in nursing facilities, except in certain designated smoking areas.

2.4.1 Employers who operate nursing facilities shall be governed by the provisions of Section 23-17.5-26 of the General Laws of Rhode Island and Rules and Regulations Pertaining to Nursing Facilities, R23-17-NF.

Section 3.0 Where Smoking Not Regulated

3.1 Chapter 23-20.7 of the General Laws is not intended to regulate smoking in the following places and under the following conditions within the state:

(1) A private home which may serve as a workplace.

(2) Any office space leased or rented by a sole independent contractor for his or her own use.

(3) A private enclosed workplace occupied exclusively by smokers, even though such a workplace is visited by nonsmokers, excepting places in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation.

Section 4.0 Penalties and Enforcement

4.1 The Department of Health, having received a written and signed letter of complaint from any person citing a violation of Section 23-20.7-5 of the General Laws of Rhode Island, shall enforce Section 23-20.7-5 against violations by either of the following actions:

4.1.1 Serving written notice to comply to the proprietor or other person in charge of the workplace, with a copy of the notice to the complaining person, requiring the proprietor or other person in charge of the workplace to correct within ten (10) days any violation of Section 23-20.7-5 of the General Laws of Rhode Island.

4.1.2 Upon receiving a second complaint at the Department of Health for the same or continued violation in the same workplace, the complaint shall be resolved by calling upon the Attorney General to maintain, without delay, an action
for injunction to enforce the provisions of Section 23-20.7-5 of the General Laws of Rhode Island, to cause the correction of such violation, and for assessment and recovery of a civil penalty for such violation.

4.2 The proprietor or person in charge of a workplace who does not correct within ten (10) days any violation of Section 23-20.7-5 of the General Laws of Rhode Island shall be liable for a civil penalty, not to be less than fifty dollars ($50) nor to exceed five hundred dollars ($500) which shall be assessed and recovered in a civil action brought by the Attorney General in any court of competent jurisdiction. Each day the violation is permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this subsection shall be paid over to the General Treasurer and added to the general fund.

4.3 In undertaking the enforcement of Section 23-20.7-5 of the General Laws of Rhode Island, the state is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 5.0 Severability

5.1 If any provision of these regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the regulations, which can be given effect, and to this end the provisions of these regulations are declared to be severable.
Introduction

Pursuant to the Rhode Island General Laws, 42-35-3, the Rhode Island Department of Health (the Department) has reviewed the anticipated impact to small businesses in Rhode Island from the Workplace Smoking regulations. The regulations were prepared to fulfill the mandates of the Workplace Smoking Pollution Control Act, Chapter R23-20.7-5 of the General Laws, as amended (1994). The proposed regulations define procedures for protecting the atmospheric environment of the workplace from environmental tobacco smoke, according to smoking policies established at individual workplaces pursuant to the Workplace Smoking Pollution Control Act.

It has been determined by the Department that these proposed regulations will not have a significant adverse economic impact on small business in Rhode Island. The proposed regulations implement a statutory mandate and establish a framework for administering enforcement of the law.

Analysis

There are no costs to employers incurred by the Workplace Smoking Pollution Control Act, Chapter R23-20.7-5 of the General Laws, as amended (1994).

Conclusion

There are no costs to employers incurred by the Workplace Smoking Pollution Control Act, Chapter R23-20.7-5 of the General Laws, as amended (1994). The Department has reviewed and considered alternative approaches to the regulations and believes that the proposed regulations represent the most viable approach to protecting the public against environmental tobacco smoke in the workplace.

January 5, 1995