

Questions for Restaurants, Bars, and Establishments with Liquor Licenses about the MA 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 (including DPH Regulation 105.CMR 661.000) are available at www.mass.gov/dph/mtcp.

Can a restaurant or a bar have 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.

What if the outdoor space has a ceiling?

If the outdoor space has a ceiling (including substantial covering by an umbrella or an awning), no more than half of the walls (vertical boundaries) can obstruct the flow of air into the space. If this criteria is met, smoking is permitted as long as smoke does not migrate back into the workspace.

What if the outdoor space has walls and no ceiling?

If the outdoor space does not have a ceiling, but it has 2 or more walls, then no more than 2 of the walls can exceed 8 feet in height.

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. Establishments should follow all local building, zoning, and liquor laws.

Is this the only law regarding smoking?

The Massachusetts Smoke-Free Workplace Law does not prevent cities and towns from passing stricter laws. The majority of cities and towns also have regulations, by-laws, or ordinances on secondhand smoke. The state law permits cities and towns to pass stricter laws than the state law. If there is a difference between the state law and a local law, the stronger law prevails. For example, some cities and towns have banned smoking in all private clubs while the state law is not as strict.

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).

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

Please refer to the fact sheet "Membership Association Exemptions" at www.mass.gov/dph/mtcp for additional information. 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.

Can full 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 full members, the invited guest of a member, and the employees of the membership association." The association must ensure that members of the public do 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.