Title 09
MARYLAND DEPARTMENT OF LABOR

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

Chapter 23 Prohibition on Smoking in an Indoor Place of Employment

Authority: Labor and Employment Article, §§2-106(b)(4), 5-312, and 5-608(b), Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Indoor place of employment" includes, but is not limited to:

(a) An indoor work area;

(b) A vehicle other than a private vehicle as used in Health-General Article, §24-505(1), Annotated Code of Maryland, when an employee uses it in the course of employment;

(c) An employee lounge or restroom;

(d) A conference and meeting room;

(e) A classroom;

(f) A cafeteria operated by an employer for use by its employees;

(g) A hallway;

(h) A restaurant;

(i) A bar or tavern;

(j) A sleeping room in a hotel or motel; and

(k) An assembly, conference, convention, or meeting establishment or enclosed portion of the establishment.

(2) "Private vehicle", as used in Health-General Article, §24-505(1), Annotated Code of Maryland, means:

(a) An individual's own vehicle being used for nonemployment purposes; or

(b) An individual's own vehicle, when used in the course of employment and occupied by only one individual.

(3) "Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

.02 Exclusions.

This chapter does not apply to:

A. Private homes;

B. Residences, including residences used as a business or place of employment, unless being used by a person who is licensed or registered under Family Law Article, Title 5, Subtitle 5, Annotated Code of Maryland, to provide day care or child care;

C. Private vehicles, unless being used for the public transportation of children, or as part of health care or day care transportation;

D. A hotel or motel room rented to one or more guests as long as the total percent of hotel or motel rooms being so used does not exceed 25 percent;

E. A retail tobacco business that is a sole proprietorship, limited liability company, corporation, partnership, or other enterprise, in which:

(1) The primary activity is the retail sale of tobacco products and accessories; and

(2) The sale of other products is incidental;

F. Any facility of a manufacturer, importer, wholesaler, or distributor of tobacco products or of any tobacco leaf dealer or processor in which employees of the manufacturer, importer, wholesaler, distributor, or processor work or congregate; or

G. A research or educational laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

.03 Employer Requirements.

An employer shall:

A. Ensure that in an indoor place of employment there is no smoking; and

B. Post at each entrance to an indoor place of employment a sign stating that smoking is not permitted.

.04 Interpretation.

This chapter may not be construed to prevent an employer from prohibiting smoking in areas not covered by Labor and Employment Article §5-608(a), Annotated Code of Maryland.

Administrative History

Effective date: August 1, 1994 (21:15 Md. R. 1304)

Chapter revised as an emergency provision effective September 17, 2007 (34:21 Md. R. 1910); revised permanently effective February 25, 2008 (35:4 Md. R. 513)

Regulation .01B amended effective February 9, 2009 (36:3 Md. R. 208)

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Annotation: On July 22, 1994, judicial action stayed the enforcement of COMAR 09.12.23. H & G Restaurant, Inc., et al. v. William A. Fogle, et al., Case No. CG 2460, Circuit Court for Talbot County. On February 24, 1995, the Court of Appeals vacated the stay. William A. Fogle, et al. v. H & G Restaurant, Inc., et al., Case No. 69, September Term. At the time this supplement went to press, subject to additional legislative or judicial action, these regulations are scheduled to take effect on March 28, 1995.