

# VERMONT

## Title 18: Health

### Chapter 28: OCCUPATIONAL HEALTH

#### § 1416. Definitions

As used in this chapter:

- (1) "Director" means the director of occupational health;
- (2) "Division" means the division of occupational health;
- (3) "Employee" means any person engaged in service to an employer for wages, salary or other compensation, excluding an independent contractor;
- (4) "Employer" means a person, as hereinafter defined, who employs one or more persons;
- (5) "Health hazard" means any material, including biological material, and/or energy in any form from any source which can adversely affect the health of any employee, or can adversely affect the health of any person exposed in a place of employment or any person adversely exposed from a source in a place of employment;
- (6) "Occupational disease" means a disease caused by exposure to an occupational health hazard;
- (7) "VOSHA Code" means this chapter and subchapters 4 and 5 of chapter 3 of Title 21;
- (8) "Person" means a natural person, corporation, partnership, trust, society, club, association or other organization, including municipalities and the state;
- (9) "Place of employment" means any work place or place where an employee is engaged in performance of his work or duties, or which is used in connection with an employee's employment. It includes structures, buildings, machinery, equipment, tools, appliances and materials used in connection with the employment. It also includes land and premises where an employer is carrying on any activity or business involving the use of one or more employees;
- (10) "Rules" means rule or regulation.

#### § 1421. Definitions

As used in this subchapter:

(1) "Smoking area" means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.

(2) "Workplace" means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located. Except for schools, workplace does not include areas commonly open to the public nor any portion of a structure which also serves as the employee's or employer's personal residence. For schools, workplace shall include any enclosed location at which instruction or other school-sponsored functions are occurring and students are present.

### **§ 1422. Smoking policy**

Each employer who operates a workplace shall establish, or shall negotiate through the collective bargaining process, a written smoking policy. The policy shall prohibit smoking throughout the workplace or restrict smoking to designated enclosed smoking areas. For purposes of determining smoking policy for schools with school boards, the employer shall be the school board.

### **§ 1423. Exceptions**

(a) As an alternative to section 1422 of this title an employer may establish a smoking policy that permits smoking in designated unenclosed smoking areas if the layout of the workplace is such that smoking will not be a physical irritation to any nonsmoking employee in the workplace and three-fourths of the employees in the workplace agree.

(b) The requirement that the smoking policy be reduced to writing shall only apply to employers who regularly employ at least ten employees who work more than 15 hours per week.

### **§ 1424. Posting; supervision**

(a) The employer shall post a copy of the smoking policy established under this subchapter in a conspicuous location at the place of employment. Copies shall be provided to an employee upon request.

(b) A summary of the provisions of this chapter shall be prepared by the department of health and distributed to employers with the assistance of the department of employment and training. The summary shall be posted in a conspicuous location at the place of employment.

(c) The employer shall be responsible for implementing the smoking policy.

### **§ 1425. Assistance**

The department of health shall accept inquiries from employers and employees and shall, when requested, assist employers in developing a smoking policy.

### **§ 1426. Enforcement**

(a) An employee aggrieved by an employer's failure to comply with the provisions of this subchapter may file a complaint with the department of health.

(b) If the complaint is based on an employer's alleged failure to establish a smoking policy or post the policy and summary as required under section 1424 of this title, the department shall not initiate an action under this section until it has given the employer written notice of the alleged violation and ten days to come into voluntary compliance with the provisions of this subchapter.

(c) The commissioner of health or a hearing officer designated by the commissioner may, after notice and an opportunity for hearing, impose an administrative penalty of \$100.00 against an employer who violates a provision of this chapter. The hearing before the commissioner shall be a contested case subject to the provisions of chapter 25 of Title 3 (Administrative Procedure Act).

### **§ 1427. Employee rights**

(a) An employer shall not discharge or discipline or otherwise discriminate against an employee because that employee assisted in the supervision or enforcement of this chapter.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against in violation of this section may, within 30 days after such violation occurs, file a complaint with the commissioner of health alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as the commissioner deems appropriate. If upon investigation, the commissioner determines that the provisions of this section have been violated, he or she shall bring an action in superior court against such person. In any such action, the court shall have jurisdiction, for cause shown to restrain violations of subsection (a) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his or her former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of the determination under subsection (b) of this section.

### **§ 1428. Municipal ordinances**

Nothing in this subchapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as the provisions of this subchapter.

## **Chapter 37: SMOKING IN PUBLIC PLACES**

### **§ 1741. Definitions**

- (1) "Tobacco products" shall have the meaning given in 7 V.S.A. § 1001.
- (2) "A place of public access" means any place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses, including buildings, offices, means of transportation, common carrier waiting rooms, arcades, restaurants, bars and cabarets, retail stores, grocery stores, libraries, theaters, concert halls, auditoriums, arenas, barber shops, hair salons, laundromats, shopping malls, museums, art galleries, sports and fitness facilities, planetariums, historical sites, and common areas of nursing homes, hospitals, resorts, hotels and motels, including the lobbies, hallways, elevators, restaurants, restrooms and cafeterias.
- (3) "Publicly-owned buildings and offices" means enclosed indoor places or portions of such places owned, leased, or rented by state, county or municipal governments, or by agencies supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county or municipal taxes. (Added 1993, No. 46, § 2.)

### **§ 1742. Restrictions on smoking in public places**

The possession of lighted tobacco products in any form is prohibited in the common areas of all enclosed indoor places of public access and publicly owned buildings and offices.

### **§ 1743. Exceptions**

The restrictions in this chapter on possession of lighted tobacco products shall not apply to:

- (1) buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function;
- (2) workplace smoking areas designated under chapter 28, subchapter 2 of this title;
- (3) areas not commonly open to the public of owner-operated businesses with no employees;

(4) areas designated as smoking areas under section 1744 of this title.

**§ 1744. Designated smoking areas; privately-owned places of public access; presumption**

(a) The state of Vermont encourages the maintenance of an environment completely free of environmental tobacco smoke. However, a restaurant, bar, cabaret, hotel or motel may allow smoking on the premises until July 1, 1995 by designating all or a portion of the public areas of the facility as smoking areas.

(b) After July 1, 1995, only those businesses issued a "cabaret" license, as cabaret is defined in 7 V.S.A. § 2, may be designated smoking areas. If a cabaret is part of a larger facility, the cabaret may be a designated smoking area provided it is separately enclosed and separately licensed as a cabaret.

**§ 1745. Enforcement**

A proprietor, or the agent or employee of a proprietor, who observes a person in possession of lighted tobacco products in apparent violation of this chapter shall ask the person to extinguish all lighted tobacco products. If the person persists in the possession of lighted tobacco products, the proprietor, agent or employee shall ask the person to leave the premises.

**§ 1746. Municipal ordinances**

Nothing in this chapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as the provisions of this chapter.