

Number 17.4 - STATEWIDE SMOKING POLICY

Effective Date: March 1, 1996

Replaces Statewide Smoking Policy Dated November 1, 1993

Applicable To: All classified employees, as well as exempt, appointed, and temporary, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The State of Vermont and the Vermont State Employees' Association, Inc., (VSEA) in order to comply with the provisions of 18 VSA 1421, et seq., jointly establish this policy to protect workers by prohibiting smoking in the workplace except in designated areas.

It shall be the goal of the State to provide healthy and safe work environments for all Vermont State employees, to ensure that the health hazard created by second hand smoke is removed from the workplace, and to guarantee that regulations restricting workplace smoking are implemented in a timely manner.

DEFINITIONS

SMOKING AREA - an area that non-smoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under 18 VSA 1421. Up to thirty (30) percent of employee cafeteria and lounge areas may be designated as a smoking area.

SMOKING POLICY - a written policy that shall prohibit smoking throughout the workplace or restrict smoking to designated enclosed smoking areas and defines where those areas are located.

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 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.

GENERAL PROCEDURES

STATEWIDE SMOKING COMMITTEE: The State and the VSEA shall establish a Statewide Smoking Committee comprised of an equal number of representatives, not to exceed four (4) members each, who shall be responsible to:

analyze the requirements of 18 VSA 1421, et seq., and 18 VSA 1741, et. seq. in relation to the State worksites;

- establish, publish, and distribute this smoking policy and guidelines for its implementation, which includes the establishment of local worksite committees; and provide on-going administration and application of the Statewide Smoking Policy;
- instruct and assist local worksite committees in the development and implementation of local policy;
- review and approve any and all local policies to ensure that the local policies comply with the Statewide Smoking Policy and the requirements of 18 VSA 1421, et seq. and 18 VSA 1741, et. seq.;
- mediate disputes at local worksites regarding the formation of a local policy by sending a representative of the State and VSEA to the worksite to assist the local committee;
- advise the Commissioner of Personnel and the Executive Director of VSEA of any problems regarding the establishment of a Smoking Policy and/or problems in local worksites;
- perform other related duties as agreed upon by the Commissioner of Personnel and VSEA.

LOCAL WORKSITE COMMITTEES: A Local Worksite Committee (LWC), consisting of fair representation among management, VSEA members, smokers, and non-smokers, shall be established in each worksite. Volunteers from both smoking and non-smoking populations shall be solicited, and the group shall select a chairperson from among its members. The Secretary of Administration or his or her designee shall determine which buildings, or portions of buildings, shall constitute one worksite for these purposes (See Attachment A).

The role of the LWC shall be to propose a smoking policy for the worksite. The LWC will have the option of recommending that smoking be prohibited in the worksite, or recommending a designated smoking area which is consistent with the requirements of the statute and this policy.

The LWC shall review the LWC implementation guidelines (See Attachment B) in relation to the physical setting of the involved worksite, any existing worksite smoking policy, and any other factors outlined in this policy.

The LWC shall consult with and coordinate its proposed smoking policy with other State offices which share space and/or may be affected by the proposed smoking policy.

The LWC should consult with representatives of the Buildings Department if questions about the physical office setting, ventilation, etc., arise. The LWC should determine whether the air in the building is re-circulated as this may affect the establishment of any smoking areas. The LWC shall call upon the Statewide Smoking Committee for other assistance if necessary.

The LWC shall submit its proposed local smoking policy, in writing, to the Statewide Smoking Committee, through the Commissioner of Personnel and the Executive Director of the VSEA, for review and approval.

Any employee may propose a change to a local smoking policy through the LWC. The LWC shall attempt to reach consensus on the proposed change. Any proposal by the LWC to change a local policy must be submitted in writing to the Commissioner of Personnel and the Executive Director of the VSEA. If the LWC is unable to resolve the issue, it shall follow the mediation process outlined below. If the issue is not resolved after 45 days of review and discussion by the LWC, the Commissioner of Personnel may decide to implement the change, provided (s)he first notifies the VSEA, and that said change does not violate this policy or the law. The LWC and the Statewide Smoking Committee shall be encouraged to thereafter continue their efforts to establish, by consensus, a resolution to the issue.

WORKSITE MEDIATION: The LWC shall immediately notify the Commissioner of Personnel and the Executive Director of the VSEA if it is unable to reach consensus on an appropriate smoking policy. The State and VSEA shall each appoint one representative from the Statewide Smoking Committee to meet with the LWC to attempt to mediate the dispute and facilitate the formation of a policy.

Any dispute over the meaning of this policy or statute shall be submitted to the Statewide Smoking Committee for clarification and resolution.

If mediation does not result in consensus on an appropriate local smoking policy, the State and VSEA representatives shall outline the unresolved issues to the Statewide Smoking Committee for resolution.

EMPLOYEE AND EMPLOYER COMPLIANCE: Employees and employers are expected to comply with the smoking policy established in their workplace. The employer is required to post a copy of the smoking policy in a conspicuous location at the workplace. Each employee shall receive a written copy of the policy which shall include the expectations of compliance. Management shall utilize progressive discipline in the case of an employee who fails to comply with the smoking policy. If an employer fails to adhere to the smoking policy, an employee may grieve starting at Step II. If a designated smoking area is established, employees who are smokers shall be permitted a reasonable amount of time during the work day to smoke. The State will not discriminate against smokers who utilize authorized smoking break time. The employee is

expected to fulfill his or her job duties even though (s)he may be absent from the work area on authorized smoke breaks.

Any compliance problems under the smoking policy which cannot be resolved by the employees themselves should be referred to the appropriate supervisor and, if necessary, to the department head or commissioner for review.

EXPENDITURE OF MONIES: Neither the Statewide Smoking Committee nor the Local Worksite Committee shall have the authority to require the State to expend monies in connection with the requirements of 18 VSA 1421.

GRIEVANCES: The VSEA or an employee shall have the right to grieve the State's failure to follow this policy or the process for revising it as outlined herein and under the State/VSEA contract. An employee aggrieved by the State's failure to comply with 18 VSA 1421 shall file said complaint with the Vermont Department of Health in accordance with the provisions of that Statute.

Attachment A – Workplace Designations

The Statewide Smoking Policy requires the Secretary of Administration to designate worksites so that committees can form to determine local smoking policies. Following are the designated worksites as well as general guidance on smoking in areas not assigned to an agency or department.

DESIGNATED WORKSITES:

To ensure consistency of policy and to avoid later conflicts among employees, a general rule has been established that **each building is a worksite**. This will allow for more efficient use of common areas such as cafeterias and any rooms that may be designated for smoking. When more than one agency shares a building, the Local Worksite Smoking Committee (LWC) should include representatives from every affected agency/department.

The following Montpelier buildings are designated as worksites. For each building, a single building-wide smoking policy must be adopted by the LWC. The lead agency listed should impanel the worksite committee:

- 109 State Street (Excepting Attorney General if (s)he desires to be excluded), link to 111 State Street, and that part of 111 State Street assigned to the Department of Libraries - Commissioner of Finance and Management
- 120 State Street - Commissioner of Education
- 133 State Street (Except Treasurer if (s)he desires to be excluded) - Secretary of Transportation

DELEGATION OF AUTHORITY:

For buildings not listed above, if the building is occupied by a single agency, that agency's secretary or commissioner should impanel the committee called for in the Statewide Smoking Policy. In a building or worksite assigned to two or more agencies, any secretary involved should impanel the committee. If two commissioners are involved, the commissioner with longest tenure in office should impanel the committee.

When a worksite is occupied by executive branch employees and employees of the judicial or legislative branches, the appointing authority outside the executive branch should be invited to join the worksite committee, but (s)he retains the right to form a separate worksite committee.

When a department has sole occupancy of more than one building, the commissioner or secretary may create a combined smoking committee to apply to all such buildings.

COMMON AREAS:

Many buildings have hallways, attics and odd spaces which are not formally assigned to a specific department but which may be used to varying degrees. If a department has sole control over such space, it should be included in that department's policy.

A new law that became effective on July 1, 1993, 18 V.S.A. 1741, prohibits the possession of lighted tobacco products in any form in the common areas of all enclosed indoor places of public access and publicly owned buildings and offices. These common areas include lobbies, hallways, elevators, rest rooms and cafeterias. Smoking will not be allowed in any of these areas.

Attachment B – Local Worksite Committee Implementation Guidelines

This document is intended to assist in the interpretation of 18 VSA 1421, and 18 VSA 1741, relating to smoking in the workplace. The law provides that a smoking policy establish either a smoking ban in the worksite, or a designated smoking area consistent with the parameters set forth in the law.

If a Local Worksite Committee (LWC) considers establishing a smoking area, the law outlines three possible avenues for doing so.

1. The law allows for designated enclosed smoking areas. These areas may include a room with floor to ceiling partitions which is not a common work area, or a private office, provided that the room has a floor to ceiling partition. The LWC should consider whether the designated enclosed smoking area is sufficiently enclosed or ventilated to ensure that smoke will not affect nearby non-smoking areas.

If a private office is a designated smoking area, smoking shall not be permitted during meetings with other people in that setting unless the others present consent. A private office may not be designated a smoking area unless it can be established that the smoke can be confined to and ventilated from that area.

In buildings where the heating/cooling/ventilation system recirculates the air within the building, it is inconsistent with the overall purpose of the law to permit smoking in a designated area unless that area has a ventilation capability which will ensure that smoke does not affect non-smoking areas in the building.

The smoking area must be an area that non-smoking employees are not required to visit on a regular basis. Those areas which employees are "required to visit on a regular basis" include, but are not limited to: (a) any work area that has commonly used equipment, such as a photocopying room, a computer room, a file room; (b) an area, or private office space to which employees must normally report in order to review and/or discuss work assignments with their supervisor; (c) other areas which an employee can demonstrate must be visited on a regular basis. Smoking is not permitted in meetings at which non-smokers are present, nor if the meeting area is a non-smoking area.

2. The law allows for designated unenclosed smoking areas if: (a) the layout of the workplace is such that smoking will not be a physical irritation to any non-smoking employee in the workplace; and (b) three-fourths of the employees in the workplace agree. This narrow exception outlines two criteria which must be met. With regard to the physical irritation to non-smokers, the law provides that if any reasonable claim of physical irritation resulting from smoke in an area designated as a "smoking area" is established, then the area may not be designated as a smoking area. There is no question but that the law requires regulation in favor of the non-smoking employee.

3. Up to 30% of an employee cafeteria or lounge area may be designated as a smoking area. In the case of the cafeteria setting, it will be imperative to discuss this matter with representatives from the Buildings Department. Wherever possible, the LWC should devise methods to physically separate and ventilate the smoking and non-smoking areas. This may be easier to achieve in the cafeteria setting than in a lounge area. Since an employee lounge area is generally small, the LWC should consider whether the area is, or could be, sufficiently ventilated to ensure that smoke does not affect nearby non-smoking areas and non-smokers using the lounge. If a cafeteria or lounge area is so small that smoking in 30% of the area would, as a practical matter, preclude non-smokers from comfortably using the area, it may not be appropriate to approve smoking there. However, if it is the only area in the worksite which would permit you to designate a smoking area, that consideration may favor allowing smoking in the area.

WORKPLACE AND PUBLIC AREA:

The term "workplace", as defined in 18 VSA 1421, describes two types of physical settings. One, "an enclosed structure", references a building setting in which employees work in a layout similar to a factory floor or a large clerical-pool room. This section of the definition encompasses those situations in which the workplace is not divided into separated, sub-unit settings.

"A structure where the unit to which employee assigned is located" references situations similar to many State office buildings. For example, in the AHS complex in Waterbury, a single building houses many separate employee "units". The first floor of the Osgood Building, for example, has the Office on Aging, Corrections, Office of Economic Opportunity, etc. The law contemplates smoking policy development by employees in the "workplace", which, in many State work settings, will be smaller work areas housing a specific group (department or "unit") of State employees, setting smoking policies which comply with the law, but reflect the sentiments of the employees in that work setting.

AREAS OPEN TO THE PUBLIC:

A place of public access includes buildings and offices that the general public has access to or which the general public uses. The public would not have access to a State office beyond the lobby/reception area unless as an invitee to the office, and, therefore, these areas should not be considered commonly open to the public. The fact that the public may frequently be invited into the workplace as clients of a department does not transform the inner-office area to one which is commonly open to the public.

An area is not a "workplace" if the area is commonly open to the public. As stated previously, smoking is prohibited in all common areas of enclosed indoor places of public access.