



West Virginia Division of Personnel

SMOKING RESTRICTIONS IN THE WORKPLACE

DISCLAIMER: This policy shall not be interpreted or construed to permit smoking where it is otherwise restricted by applicable federal, State, or local law or ordinance, or appointing authority policy.

I. PURPOSE: The purpose of this policy is to establish procedures to ensure the right to a smoke-free environment for each State employee and the public as they transact business with or receive service from the State. Studies regarding the effects of passive smoke inhalation by non-smokers conclude that exposure to secondhand smoke is harmful to one's health. The working environment should present no unnecessary risk of physical harm or discomfort from secondhand smoke. Residents of State facilities, applicants, clients, and visitors should not be exposed or expose others to environmental tobacco smoke. Therefore, it is necessary to implement a policy setting forth smoking restrictions in all places of employment operated by the State.

II. DEFINITIONS

- A. **Adjacent Non-Smoking Space:** Outdoor area within 15 feet, or a greater distance established as a non-smoking space by the local board of health or the appointing authority, adjacent to any entrance, exit, operable window, or ventilation intake for any State-owned or State-leased office building and other facility that is commonly used by State employees and the general public.
- B. **Appointing Authority:** The executive or administrative head of an agency, or his or her designee, who is authorized by statute to appoint employees in the classified or classified-exempt service.
- C. **Electronic Cigarette (also known as e-cigarettes and personal vaporizers):** Battery powered device that allows consumption of nicotine by way of a vaporized solution.
- D. **Entrances and Exits:** The established arrival and/or departure areas and routes leading thereto, including sidewalks, within the non-smoking space as well as the entire length of accessible ramps or stairs; not limited to the actual doors for all places of employment.
- E. **Place of Employment:** Any area under the control of an appointing authority where employees normally frequent during the course of employment, including, but not limited to: indoor and outdoor work areas; employee lounges and break, lunch, and restrooms; public waiting rooms; receiving areas to include loading docks and delivery areas; conference and classrooms; employee cafeterias; hallways; and any other work area, including any office, facility, building, structure, elevator, stairwell, automobile, truck, trailer, other vehicle, and parking garage, whether owned, leased, or operated by the State or its agent(s).
- F. **Secondhand Smoke:** Environmental tobacco smoke, also known as passive or sidestream smoke, which could be voluntarily or involuntarily inhaled by individuals who did not generate that smoke.
- G. **Smoking:** Burning or vaporizing tobacco products or other substances in a cigarette, cigar, pipe, electronic cigarette, or by other means or equipment to inhale and exhale the smoke or vapor.

III. POLICY

- A. It is the responsibility of the appointing authority to ensure that all State places of employment maintain a smoke-free environment and to make both State employees and the public aware of their responsibility to ensure this smoke-free environment. Appointing authorities shall implement progressive discipline for employee violation of this policy. Such disciplinary action shall be based on violation of this policy and not imposed in a discriminatory manner as a result of the employee's status as a tobacco user.
1. Appointing authorities shall establish a smoke-free environment in their places of employment in accordance with this policy and any properly promulgated regulations of local boards of health.
 2. Appointing authorities shall prohibit smoking at work sites by employees and the public to limit the exposure of individuals to the harmful effects of secondhand smoke.
 3. Smoking by employees of the State is prohibited at their places of employment and at adjacent non-smoking spaces.
 4. Appointing authorities may restrict smoking for employees while engaged in outdoor work activities.
 5. Appointing authorities are not required to make accommodations for outdoor smoking areas.
 6. Certain State government jobs may require work in an environment where an employee may be subjected to secondhand smoke. The appointing authority shall notify all applicants of this potential work environment and make every reasonable effort to provide a smoke free environment. Employees do not have the unfettered discretion to refuse to perform duties which may expose them to secondhand smoke.
 7. In the application of this policy, anytime there is a conflict between the rights of smokers and non-smokers, the appointing authority shall protect the health of the general public and employees by minimizing exposure to secondhand smoke.
- B. Public waiting rooms and receiving areas to include loading docks and delivery areas shall be smoke-free, and smoking restrictions shall be actively enforced by the individuals responsible for those areas.
1. The appointing authority shall clearly and conspicuously post "No Smoking" signs in accordance with the regulations of local boards of health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar diagonally across it) at every entrance to and exit from buildings and facilities or other areas where smoking is prohibited.
 2. At the expense of the appointing authority, receptacles should be placed outside all buildings to encourage persons to extinguish and to properly dispose of smoking products before entering. Receptacles shall be placed beyond the adjacent non-smoking spaces. All ashtrays and other smoking paraphernalia (including e-cigarettes/other smoking devices) shall be removed from any area where smoking is prohibited. The Smoking Restrictions in the Workplace Policy shall be available for review, if requested, in all waiting rooms and reception areas.



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- C. Smoking restrictions shall be enforced at all conferences, meetings, and training sessions conducted by the State and shall be consistent with all other provisions of this policy.
 - 1. All non-State entities using facilities owned, leased, or operated by the State must conform to this policy.
 - 2. No employees shall be required to subject themselves to the exposure of secondhand smoke in conferences or other gatherings that are conducted by organizations outside of State government.
 - a. Employees may ask the person in charge of such meetings to require a smoke-free environment.
 - b. If the person in charge fails to enforce smoking restrictions, the employees may return to their regular places of employment and report the incident to his or her supervisor and to the facility manager or designated individual(s) who scheduled the event.
- D. Appointing authorities are encouraged to provide support and assistance to employees in the implementation and enforcement of this policy.
 - 1. Appointing authorities are encouraged to provide and/or refer employees to smoking cessation programs.
 - 2. As the establishment of restrictions concerning smoking on the appointing authority's premises and the sale of cigarettes appear to be in conflict, appointing authorities may wish to consider the removal of cigarette vending machines or prohibiting the sale of cigarettes and e-cigarettes/other smoking devices on the premises.
 - 3. For technical assistance, appointing authorities may contact the Division of Personnel or the Bureau for Public Health to ensure that workers' concerns are addressed.
 - 4. Employees who desire to smoke or use e-cigarettes/other smoking devices may do so during their scheduled or any other authorized break period provided they use an outdoor designated smoking space beyond an adjacent non-smoking space and do not exceed their allotted break time to do so.
- E. All related policies shall be enforced by the appointing authorities.
 - 1. This policy does not supersede any State agency policy, local ordinances or federal and State statutes that are more restrictive and applicable to State places of employment.
 - 2. West Virginia Code § 21-3-19 prohibits employers from discriminating in employment against persons who use tobacco products off the premises of the employer during nonworking hours.
 - 3. Enforcement of this policy in or at State-owned, -leased or -operated office buildings, facilities, and vehicles is the responsibility of the appointing authority. Violations of this policy by employees shall be reported to the employee's immediate supervisor or manager.
 - 4. An appointing authority may impose additional or stricter guidelines which employees shall follow within the agency's workplace. Provided such guidelines are implemented with the express mutual approval of the affected appointing authority and the Director of the Division of Personnel.



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5. Managers and supervisors are to enforce for their employees this policy as well as office attendance standards.
 6. Employees who fail to adhere to this policy, and administrative and supervisory staff who fail to enforce it, may be subject to appropriate disciplinary action.
- F. State residential facilities, including but not limited to, hospitals, group homes, prisons and guest facilities shall comply with this policy to the maximum extent possible. The only exceptions will be by the express mutual approval of the affected appointing authority and the Director of the Division of Personnel. All exceptions will be made with public health and safety being the primary consideration.

IV. REFERENCES

- A. West Virginia Code § 29-6-7, Director of Personnel; appointment; qualifications; powers and duties.
- B. West Virginia Code § 21-3-19, Discrimination for use of tobacco products prohibited.
- C. Foundation for Independent Living, Inc., et al. v. Cabell-Huntington Bd. of Health and SER Kanawha-Charleston Bd. of Health v. King, et al., 591 S.E.2d 744 (2003).
- D. West Virginia Division of Personnel's Administrative Rule (143CSR1).
- E. Hartman v. The West Virginia Department of Human Services, Grievance Docket No. DHS-88-033, (February 22, 1989).
- F. Kanawha-Charleston Board of Health Clean Indoor Air Regulation (2007).

V. **EFFECTIVE DATE:** December 1, 1990.

VI. REVISIONS

- A. Previous Revisions: April 15, 2004 and August 1, 2006.
- B. Latest Revision: May 1, 2011.

VII. **POLICY NUMBER:** DOP-P1.

Approved and Issued By:

Sara P. Walker, Director of Personnel

Date Signed: May 1, 2011