

CALIFORNIA CLEAN INDOOR AIR LAW FREQUENTLY ASKED QUESTIONS (FAQ)

BE INFORMED

Q 1: How has California's Clean Indoor Air Law changed?

A: Two laws enacted in 2016 made significant changes to California's Clean Indoor Air Law.

Assembly Bill X2-7 (Stone) closed exemptions in California's Clean Indoor Air Law. This law prohibits "smoking" in the following places: small businesses with five or fewer employees, owner-operated businesses (even if the owner-operator of the business works alone with no other employees, independent contractors, or volunteers), employee breakrooms, warehouses, hotel lobbies, hotel meeting and banquet rooms, 80 percent of guest rooms within a hotel or motel, and covered parking lots (Labor Code Section 6404.5).

Senate Bill X2-5 (Leno) defined "smoking" to include traditional tobacco products such as cigarettes, cigars, and pipes; any plant product; and any electronic smoking device. It prohibits any act of smoking, including the use of electronic smoking devices (also known as "vaping"), in places that cigarette smoking is prohibited under state law (Business and Professions Code Sections 22950.5(c)).

Q 2: What workplaces must be smoke-free in California?

A: State law prohibits smoking in all enclosed workplaces, except for the locations listed below:

- Up to 20 percent of guest rooms within a hotel or motel
- Private residences, except for those licensed as family day care homes
- Retail or wholesale tobacco shops, which are business establishments that have the main purpose of selling tobacco products and smoking accessories
- Private smokers' lounges, which are enclosed areas in or attached to a retail or wholesale tobacco shop, that are dedicated to the use of tobacco products
- Designated patient smoking areas in long-term health care facilities
- Cabs of motor trucks or truck tractors, only if nonsmoking employees are not present
- Medical research or treatment sites, only if smoking is integral to the research and treatment being conducted
- Theatrical production sites, only if smoking is integral to the story (Labor Code Section 6404.5(e)).

September 26, 2016

Local jurisdictions may restrict smoking in some of these locations and in additional locations as well. Contact your [local public health department tobacco control program](#) with questions about local smoke-free laws.

Q 3: How is an enclosed space defined by state law?

A: An “enclosed space” includes the entire space of all indoor workspaces including, but not limited to, covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building (Labor Code Section 6404.5(b)). A space is “enclosed” even if doors and windows are open, so long as it has walls and a roof separating it from the surrounding area (Cal. Att’y Gen. Op. No. 97-1201 (Mar. 17, 1998)).

Q 4: When did the new provisions to California’s Clean Indoor Air law go into effect?

A: June 9, 2016.

Q 5: Does the state law apply only to employees in a workplace?

A: No. Requirements for smoke-free, clean indoor air apply to any person in a workplace including employees, employers, and nonemployees such as contractors, volunteers, owners of owner-operated businesses, visitors, and customers (Labor Code Section 6404.5(c)).

Q 6: Does state law prohibit the use of electronic smoking devices (also known as “vaping”) in an enclosed workplace?

A: Yes. In addition to prohibiting the use of traditional tobacco products in enclosed workplaces, state law prohibits the use of electronic smoking devices in these locations (Health and Safety Code Section 22950.5(c), Labor Code Section 6404.5).

Q 7: May I smoke medical marijuana in the workplace?

A: No. Smoking medical marijuana is prohibited in any place where smoking is prohibited by law, whether state or local, which includes government buildings, public transit systems, airplanes and trains, most workplaces and public places, and youth-sensitive areas such as foster care facilities, licensed family day care homes and day care facilities, motor vehicles when minors under 18 are present, playgrounds, and tot lots. In addition, medical marijuana smoking is prohibited in or within 1,000 feet of schools, recreation centers, or youth centers (unless medical usage occurs within a residence), on a school bus, while a motor vehicle is being operated, and while operating a boat (Health and Safety Code Section 11362.79). Employers are not required by law to make accommodation of any medical use of marijuana on the premises of any place of employment or during the hours of employment (Health and Safety Code Section 11362.785(a)).

Q 8: Does California’s clean indoor air law apply to businesses on tribal lands?

A: No. Federally-recognized tribes are sovereign nations and casinos and other businesses on tribal land are not subject to California’s clean indoor air requirements. This is also true of a casino not located on tribal lands but operated under a Tribal-State Gaming Compact. However, tribes may adopt clean indoor air policies to apply to their own tribal lands.

Q 9: Is smoking permitted by either passengers or the driver of a vehicle ride service such as *Uber* or *Lyft*?

A: Smoking by passengers and/or the driver is prohibited in an *Uber*, *Lyft*, or similar ride service provider while such vehicles are on duty and/or accepting rides (Labor Code Section 6404.5). Smoking is also prohibited in any vehicle if: 1) it is regularly used to transport foster children (Health and Safety Code Section 1530.7) or 2) there is an individual under the age of 18 in the vehicle, regardless of whether the vehicle is in motion or at rest (Health and Safety Code Sections 118947–118949).

TOBACCO SHOPS AND PRIVATE SMOKERS LOUNGES

Q 10: How can I tell if my business meets the definition of a tobacco shop or a private smokers’ lounge?

A: State law defines a “retail or wholesale tobacco shop” as any business whose main purpose is the sale of tobacco products, including but not limited to: cigars, pipe tobacco, and smoking accessories (Labor Code Section 6404.5(e)(2)(B)). The business may not serve or sell food or beverages, must have its own business license separate from any other business license, must have its own entrance to the premises that is separate and apart from any other business, and must have its own separate enclosure (unit, suite, etc.) ([Cal. Att’y Gen. Op. No.09-507 \(Dec. 21, 2011\)](#)).

A “private smokers’ lounge” is defined as a separate, enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products and meets the criteria identified for a “retail or wholesale tobacco shop” above (Labor Code Section 6404.5(e)(2)(A)). Food or beverages may not be sold or served in the lounge; the lounge can only be used for the consumption of tobacco products ([Cal. Att’y Gen. Op. No.09-507 \(Dec. 21, 2011\)](#)), Labor Code Section 6404.5).

Q 11: I own a restaurant that is also a hookah bar. Can my patrons continue to smoke hookah at my restaurant?

A: No. Businesses that serve or sell food or beverages do not qualify as a tobacco shop or private smokers’ lounge. Therefore, a hookah lounge that serves food and beverages to customers may not permit smoking inside ([Cal. Att’y Gen.](#)

[Op. No.09-507 \(Dec. 21, 2011\)](#), Legis. Counsel of Cal. Op. No. 0824950, at 2-3 (September 15, 2008)).

Q 12: Does the California Clean Indoor Air Law prohibit smoking non-tobacco herbs, including herbal shisha?

A: No. State law prohibits smoking *tobacco products* in most enclosed places of employment-(Labor Code Section 6404.5). Tobacco product includes any electronic smoking device, whether or not it contains nicotine. However, shisha and herbs that are not made of, do not contain, or are not derived from tobacco or nicotine are not prohibited from being smoked in an enclosed workplace since these products do not meet the definition of “tobacco product” in state law (Business and Professions Code Section 22950.5).

OUTDOOR WORKPLACES

Q 13: Does state law cover outdoor workplaces like construction sites?

A: No. The California Clean Indoor Air law only applies to *enclosed* workplaces, which include covered parking lots and stairwells that are a structural part of a building. However, numerous local California communities have adopted smoke-free laws that are stronger than the state law and include requirements for smoke-free environments such as outdoor workplaces and public places. Some examples of local smoke-free laws include prohibitions on smoking near building entrances, in service lines, on patio dining areas, and at parks and beaches. Contact your local public health department with questions about local smoke-free laws.

Q 14: Does California state law restrict smoking in outdoor dining areas at bars or restaurants?

A: No. however, many local jurisdictions have passed laws that prohibit smoking in outdoor dining areas and other outdoor public places. Contact your local public health department for more information about local outdoor smoke-free laws.

ENFORCMENT AND COMPLIANCE

Q 15: As an employer or owner-operated business, what steps do I need to take to bring my workplace into compliance with California’s Clean Indoor Air law?

A: The law states that an employer may not knowingly or intentionally permit anyone to engage in smoking in an enclosed workplace. To avoid a violation, employers and owner-operated business should post clear and prominent signs:

September 26, 2016

1. Where smoking is prohibited throughout the building or structure, a “No Smoking” sign must be posted at each entrance.
2. Where smoking is permitted in designated areas of the building or structure, a sign stating “Smoking is prohibited except in designated areas” must be posted at each entrance (Labor Code Section 6404.5(d)).

Q 16: How will this law be enforced?

A: Cities and counties are authorized to enforce the state smoke-free workplace law. Local enforcement agencies may include: police or sheriff departments, health departments, fire departments, code enforcement, city attorney, district attorney or other agency designated by the county or city. Local enforcement agencies may issue citations to businesses that are not in compliance with state law. If the owner of a business is found to have violated the smoke-free workplace law on three occasions, the case can be referred to the California Division of Occupational Safety and Health (Cal/OSHA), who can then conduct an inspection and issue significant fines (Labor Code Section 6404.5(i); See [AB-13 Fact Sheet—California Workplace Smoking Restrictions, Cal/OSHA Consultation Service 1997](#)).

Q 17: What are the penalties for violating California’s Clean Indoor Air Law?

A: A first violation is punishable by a \$100 fine, a second violation within one year by a \$200 fine, and a third violation and for each subsequent violation within one year is punishable by a \$500 fine. A violation of this law is considered an infraction (Labor Code Section 6404.5(i)).

LOCAL SMOKE-FREE LAWS

Q 18: My city/county already has a local smoke-free workplace law in place; does this new state law supersede the local law?

A: California’s Clean Indoor Air Law provides a uniform statewide minimum standard for prohibiting smoking in enclosed places of employment and owner-operated businesses. Local governments may enact laws to additionally prohibit smoking in places where smoking is permitted by state law, such as 20 percent of a hotel’s guest rooms, cabs of motor trucks, skilled nursing facilities, and outdoor public places. For example, if a local jurisdiction enacted a policy to prohibit smoking in all hotel and motel guestrooms, the local law would be enforceable. Contact your local public health department with questions about local smoke-free laws (Labor Code Sections 6404.5(a), (f)-(h), [City of San Jose v. Department of Health Services, No. H016744. Court of Appeal, Sixth District, California. Aug. 18, 1998.](#))

Q 19: Could my business take steps to make our smoke-free workplace rules stronger than state or local laws for our employees?

September 26, 2016

A: Yes. A business may adopt a smoke-free policy that is more restrictive than state or local laws (Labor Code Section 6404.5 (g)). For example, a hotel may make 100 percent of its guest rooms smoke free.

EXEMPTIONS

Q 20: Where is smoking allowed under California's Clean Indoor Air Law?

A: Under this law, assuming that there is not a stricter local ordinance and that the owner or employer has not instituted stricter policies, smoking is still allowed in:

- Up to 20 percent guest rooms within a hotel or motel
- Private residences, except for those licensed as family day care homes
- Retail or wholesale tobacco shops, which are business establishments that have the main purpose of selling tobacco products and smoking accessories
- Private smokers' lounges, which are enclosed areas in or attached to a retail or wholesale tobacco shop, that are dedicated to the use of tobacco products
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