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STOMP OUT SMOKING...STOMP OUT CLAIMS...

Over the last few years, Pennsylvania, New Jersey, and Delaware have passed laws banning smoking in public places. While the exact provisions of the law differ among the states, several provisions are similar. One of the overlapping issues deals with the potential link between smoking, more importantly secondhand smoke, and workers' compensation claims.

Why have all three states passed smoke free laws? Why did New Jersey and Pennsylvania delay the establishment of such a law compared to New York and Delaware? Why have specific industries, such as gaming halls, fought feverishly against inclusion in the law?

States passed the laws for a simple reason; smoking, as well as secondhand smoke, kills. This is a well established point. According to the American Lung Association, secondhand smoke is responsible for approximately 3,400 lung cancer deaths and 46,000 heart disease deaths in adult nonsmokers annually in the United States.¹

New Jersey and Pennsylvania's delay in the establishment of a ban was mostly tied to legal provisions concerning the detailed list of included and excluded establishments. Our citizens wanted to protect themselves; the delay was created by approval of the structure. Actually, 93 percent of New Jersey adults support restricting smoking in casinos, including three out of four smokers.²

Secondhand smoke has received the same level of health concern. In June 2006, the Surgeon General of the United States declared that there was no safe level of secondhand smoke. Secondhand smoke is a carcinogen classified in the same league with asbestos, formaldehyde and radon.³

The concern for workers' compensation claims related to secondhand smoke is growing. Research has found that servers are almost 4 times more likely to die of lung cancer compared to workers in other fields, and bartenders face a fifty percent (50%) greater risk of dying from lung cancer, other cancers, and heart disease than other workers.⁴

Gaming facilities also benefit from smoke-free indoor environments. Gaming industry workers typically suffer higher occupational exposure to secondhand smoke, putting them at greater risk for lung and heart disease.⁵

¹ American Lung Association, "Secondhand Smoke and Your Family," September, 2008.
<http://www.lungusa.org/site/pp.asp?c=dvLUK9O0E&b=39858#4>

² "State Should Protect People's Health in the Workplace," News Transcript, December 10, 2008.

³ The Pennsylvania Smoking Ban, www.nodivisions.com, July 25, 2007.

⁴ Supra.

⁵ "The Effects of Secondhand Smoke on Worker Health," American Cancer Society, August, 2007.

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From a business perspective, many companies have concern that prohibiting smoking will force smokers to find other establishments to take their business. This concern is increased in specific industries where local competition allows smoking. While the economics of potential lost revenue is a motivating force, we should not lose sight of the cost of additional claims. While Atlantic City voted unanimously to ban smoking entirely in all resort casinos in April of 2008, the implementation of the ban was delayed almost 6 months later.⁶

Without a ban, we should be prepared for an increase in secondhand smoking claims. It is well established in most states that a worker may receive compensation benefits for injuries caused by exposure to secondhand smoke in the workplace.

For example, the New Jersey Superior Court affirmed the decision of the Judge of Compensation that the petitioner established a nexus between his tonsil cancer and his place of employment. However, the only connection between the petitioner, a physical education teacher, and smoking was his co-worker, with whom he shared an office for 26 years during which time he was exposed to secondhand smoke on a continuous basis. The Judge found that it was probable that petitioner's cancer arose out of and in the course of his employment and was due in a material degree to causes and conditions which were characteristic of or peculiar to his particular place of employment. Magaw v. Middletown Board of Education, 731 A.2d 1196, (N.J. Super 1999).

This case is just one example of a secondhand smoke claim and what should be a wake-up call for all employers. Although workers' compensation cases only affect employees who have already been injured, successful claims will raise an employer's insurance premiums; thus, encouraging employers to voluntarily adopt smoking restrictions before further claims are filed.

Yes, the casino industry is very important to the success of Atlantic City. However, it should be noted that more than two dozen states nationwide regulate smoking inside casinos, eight ban smoking altogether inside the gambling halls, and two others were scheduled to impose a total ban just last year, according to Karen Blumenfeld, policy director of the New Jersey Group Against Smoking Pollution.⁷

Yes, some level of business may be lost given the current economic conditions and the growth of New York and Pennsylvania slot parlors. However, we must keep in mind that with smoking comes the dangers of secondhand smoke and the cost of associated claims by workers.

⁶ "12 Months Later, Smoking Ban No Longer Hot Topic in Atlantic City," Press of Atlantic City, April 19, 2009.

⁷ "No Smoking in Atlantic City Casinos," The Associated Press, April 23, 2008.

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