

**DELAWARE DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS**

1. Regulations for Public Consideration.: Title 16- Health and Safety, Chapter 29-Clean Indoor Air Act, affecting places of employment within the jurisdiction of the Delaware Department of Labor as authorized by 16 Del. C. § 2906.
2. Department of Labor Policy: The legislative intent of the Clean Indoor Air Act is to protect nonsmokers from involuntary exposure to environmental tobacco smoke, not only in most indoor public places which fall within the jurisdiction of the Department of Health and Social Services, but also indoor places of employment which fall within the jurisdiction of the Department of Labor. Generally, the Act restricts smoking in any indoor workplace not exempt by statute, regulation or waiver.
3. Department of Labor Jurisdiction: The Department of Labor is charged with the enforcement of this Act as it applies to employers, employees, places of employment and the workplace. The Act authorizes the Department of Labor to impose administrative penalties of \$100 dollars for the first offense but not less than \$250 for subsequent violations when appropriate. The Department shall cite such penalties against the employer, owner, operator, manager or other individual having control of the workplace, who knowingly permits smoking therein.
4. Acknowledged Workplace Exemptions: In attempting to provide clarification on exempt status, the Department may propose regulations acknowledging additional workplace exemptions consistent with the legislative intent under the Act at 16 Del. C. § 2904. The Department hereby proposes to recognize “Private Clubs” as defined herein, as beyond the jurisdiction of the Department of Labor as inapplicable or exempt from enforcement under the Act.
5. “Private Club Exemption” means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:
 - a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
 - b. Limits access and use of facilities, services, and activities of the organization to members and guests of the members;
 - c. Is controlled by its membership and operates solely for the benefit and pleasure of its members; and
 - d. Advertises exclusively and only to its members, excluding membership drives.
6. “Workplace” means a “work area” as defined by the statute.

7. Enforcement by the Department of Labor: The Department's administrative process is as follows:

a) Complaint: Any employee alleging a workplace violation of the Clean Indoor Air Act, shall report such violations which has or is occurring, in writing to the Office of Labor Law Enforcement, Division of Industrial Affairs, 4425 North Market Street, Wilmington, DE 19802.

b) Enforcement Actions: The Department shall investigate all written complaints to determine if a violation has or is occurring. The Department may investigate alleged violation from any source. The Office of Labor Law Enforcement may conduct an inspection of any workplace where there is a suggestion of an employer's non-compliance with the Clean Indoor Air Act. The Department shall take such steps as is necessary to bring about immediate correction and future compliance.

c) Administrative Penalties: If the Office of Labor Law Enforcement determines that the employer knowingly failed or refused to comply with the Act's workplace restrictions, the Officer shall provide written notice of such determination. The notice shall include a date certain for compliance with future monitoring of the workplace with inspections. If prompt corrective action is not taken in accordance with the Department's notice, the Department shall serve a citation for payment of the administrative penalty upon the person having control of the workplace where the violation occurred.

d) Right of Appeal of the Penalty: Upon receipt of a citation with assessment of administrative penalties, the person named and served, shall have thirty days from service to appeal the determination to the Secretary. The appeal must be in writing to the Secretary of Labor, 4425 North Market Street, Wilmington DE 19802.

8. Severability: If any provision of these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of these Regulations shall not be affected by such holding and shall remain in full force and effect.

Approved this day of , 2003

Harold E. Stafford
Secretary of Labor