

Determining Your Dealbreakers

Why smokefree workplaces? Everyone deserves the right to breathe smokefree air. The purpose of passing a smokefree law is to fully protect employees, residents, and visitors from dangerous exposure to secondhand smoke in workplaces and public places. When drafting and debating the language of a proposed law, keep this purpose in mind. Your lawmakers may attempt to weaken the bill. Pay close attention to the text of any proposed amendments to prevent unwanted changes that defeat the purpose of fully eliminating secondhand smoke exposure.

Key Principles:

Discuss potential amendments and determine where you will stand. Document your decisions in writing. It is essential to sit down with your partners at the initial stages of your campaign to discuss *all* potential amendments and exemptions and as a group determine where you will draw the line.

Introduce strong language. The goal is to fully protect all workers. Therefore, it is ideal to introduce smokefree law language that will provide complete smokefree protection to *all* workers without exception. The science on the dangers of secondhand smoke is no longer up for debate and all workers deserve 100% smokefree air.

Be prepared to walk away. Never support a law that includes exemptions or loopholes that make it more difficult to strengthen the law in the future. For example, if a law includes a provision allowing ventilated smoking rooms, it will become extremely difficult to remove that provision and pass an effective law later. **It is always better to walk away from a bad law, than to be stuck with it and further be prevented from passing an effective law later. In such cases, *nothing* is better than *something*.**

For a comprehensive summary of troubling policy provisions and lessons learned, please consult ***Fundamentals of Smokefree Workplace Laws***, which is on the ANR website at http://www.no-smoke.org/pdf/CIA_Fundamentals.pdf or can be obtained by contacting ANR at 510-841-3032.

Dealbreakers:

Determine your dealbreakers. Review the language of the proposed law closely and determine where you will draw the line. The following provisions are unacceptable and should be actively opposed, as they create unnecessary exemptions and loopholes that both allow unwarranted exposure to secondhand smoke and impede progress toward comprehensive smokefree protections.

Ventilation systems and/or Smoking Rooms are [ineffective and costly](#). Ventilation cannot remove the harmful constituents of secondhand smoke and smoking rooms put employees who work in them at risk. See ANR's *Ventilation* page for more information, at <http://www.no-smoke.org/getthefacts.php?dp=d20>.

Hardship Provisions allow for an exemption if a business can demonstrate economic hardship after going smokefree. These exemptions are unnecessary and are based on the false premise that a negative economic impact results from smokefree air laws.

Signage or “Red Light/Green Light” Provisions allow businesses to simply post signs indicating that an area allows smoking. These do nothing to protect employees and patrons in those areas.

Grandfather Provisions exempt certain existing businesses from the smokefree regulations, which is unfair to both employees and patrons. There is no legitimate economic argument for permitting older establishments to avoid a health regulation. Such exemptions also create the risk of an equal protection legal challenge.

Consent Provisions allow smoking if all employees in a business consent. Employees are then pressured into “consenting” to work in smoke-filled areas either voluntarily or contractually (by signing a contract as a condition of employment). Employees should never be put in a position where they must sign away their rights and potentially provide legal immunity to employers if they get sick.

Hours Provisions restrict smoking only during certain hours of operation. These provisions are not only ineffective at protecting employees or patrons, but create confusion and are difficult to enforce.

Licensing Fees allow businesses to permit smoking on the premises upon payment of a licensing or other fee. This arrangement is completely ineffective and does not protect the public health.

Minors Only Provisions allow smoking if minors are not allowed on the premises. These provisions do not protect employees or patrons. Smokefree laws are important for everyone, not just minors.

Opt-Out Provisions allow communities (within a county or a state) to “opt-out” of a stronger county or state law. These provisions are unacceptable. They undermine public health and cause implementation challenges.

Tax Incentives for smokefree businesses merely reward businesses for doing something that they should be required to do – providing a safe and healthy workplace for their employees and customers.

Small Workplace Exemptions allow small workplaces (with 1-3 employees, for example) to be exempt from the law. This is a serious problem for people working in small offices with bosses or coworkers that smoke. The provisions are unnecessary and are rarely strengthened down the line.

Bar, Bowling Alley, and Gaming Exemptions may be contentious. But smoking should be completely eliminated in these and other venues for all the usual reasons. The health hazards of secondhand smoke are exceptionally high in these establishments. For more information, please see *Smoking and Bars*: www.no-smoke.org/pdf/smokingandbars.pdf, *Bowling Center Quotes*: www.no-smoke.org/document.php?id=266, and ANR’s casinos page at www.no-smoke.org/goingsmokefree.php?id=104.

Private Club (or “Membership Association”) Exemptions are not recommended. Restaurants and bars may try to establish themselves as private clubs in order to avoid compliance with the law. Private clubs usually function as a type of public place that has employees and patrons and should be included in the smokefree protections like other public

places. If private clubs are exempted, the definition of a private club must be clear, and include only not-for-profit clubs with no paid employees. The exemption should not apply when a club is open to the public.

(Long) Phase-in Provisions delay health protections. Laws typically become effective within 30-90 days of enactment, which allows ample time to inform business owners and residents of their responsibilities. Longer periods simply allow time for possible weakening or repeal of the law.

Trigger Scheme means that a provision of a smokefree law will only go into effect when another neighboring jurisdiction goes smokefree. These provisions do not protect workers and there's no timeline or guarantee of when the "trigger" will go into effect.

Electronic Smoking Device (ESD) Exposure Exemption because these products expose bystanders to a chemical aerosol known to contain heavy metals, as well as their popularity among youth, ESDs should be included in smokefree laws. Use of these products in smokefree places can cause confusion and difficulty in enforcement.

Marijuana Secondhand Smoke Exposure Exemption with more places allowing for medical and recreational marijuana use, your smokefree law could be vulnerable if marijuana secondhand smoke is not addressed. Using model language that includes marijuana in the definition of smoking will guarantee the integrity of the law will be protected if public consumption becomes allowable.

Cigar or Hookah Bars Exemption should be carefully considered as cigars and hookahs both pose significant health risks to users and bystanders. Allowing cigar or hookah use in a bar-like setting not only exposes workers and patrons but can also create enforcement challenges. Secondhand smoke from these venues cannot be contained and will seep into neighboring businesses.

Retail Store Exemption where tobacco products, e-cigarettes or marijuana products are sold are also places of employment and do not have to allow for product sampling exposing workers and patrons. In many venues, you are not allowed to sample alcohol, soda, or snacks before purchase.

Other exemptions

Brainstorm with your coalition about other potential exemptions that may come up. Determine where you will stand on each provision and put it in writing. Other provisions to discuss include outdoor patios, truck stops, tobacco retailers, cigar bars, trigger clauses and more. See the Fundamentals of Smokefree Laws or contact ANR at 510-841-3032 for more information.

Contact ANR at (510) 841-3032 for additional information, including provisions not listed here.

May be reprinted with appropriate attribution to Americans for Nonsmokers' Rights, © 2019.