



**built**

BUILDING TRADES  
UNIONS  
IGNITE  
LESS  
TOBACCO

# Tobacco-Free Construction Worksites

**A Labor-Management Guide**



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This guidebook was prepared by

**built**

**BUILDING TRADES UNIONS IGNITE LESS TOBACCO**

*State Building And Construction Trades Council of California in collaboration with  
the Labor Occupational Health Program, University of California, Berkeley*

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# INTRODUCTION

## WHY THIS BOOK?

Work in the building trades can be dangerous. Building and construction trades workers face a higher-than-average risk of cancer, lung disease, central nervous system damage, and other illnesses due to the toxic substances they work with on a daily basis.

When the hazard of tobacco smoke is added to other workplace toxics, workers' risk skyrockets. Building trades workers smoke cigarettes at a rate nearly 60% higher than the general population. They use chewing tobacco at a rate almost double that of white-collar workers.

Over the years, we've improved safety and health on construction jobs by requiring hardhats and other protective gear. We have also educated workers about hazards on the job, including the dangers of drug and alcohol use. Similarly, we're now educating workers about the risks of toxic chemicals, including tobacco, to help prevent the devastating effects these substances can have on them and their families.

Another way we can prevent the harmful effects of tobacco use is by developing tobacco control policies for construction sites. While California's Labor Code bans smoking in indoor workplaces, it does not address smoking at outdoor worksites or the use of other tobacco products (like chewing tobacco) at work. The goal of this labor-management manual is to provide information, discussion points, and a blueprint for labor and management to work together toward adopting voluntary joint tobacco control policies at construction sites that aren't covered by the state law.

In developing tobacco control policies, it is important to focus on tobacco as a health issue, not as a comfort or social issue. Likewise, the focus should be on tobacco use, not on the tobacco user. Tobacco is an addictive substance, and most users would like to quit. It is more likely that the policy will be implemented successfully if it is framed in terms of worker health.



## WHAT IS THE LAW?

### LABOR CODE § 6404.5

California law (Labor Code § 6404.5) says that no one shall smoke, and no employer shall permit smoking, in an enclosed workplace. “Enclosed” means there are four walls and a ceiling. It doesn’t matter whether there are windows, louvers, or sliding doors that open.

All workers, including temporary workers, as well as visitors, customers, etc. are subject to this smoking ban while in an enclosed workplace.

Employers may provide indoor breakrooms for smokers, as long as they meet ventilation requirements and as long as the employer also provides non-smoking breakrooms.

The law permits smoking in outdoor workplaces, such as construction sites, unless an employer or a local ordinance bans it. Similarly, it permits smoking in truck cabs or truck tractors if no non-smoking employees are present, unless an employer or a local ordinance bans it.

If someone smokes at an enclosed worksite and a complaint is filed, both the individual smoker and the employer can be fined. In different cities and counties, different agencies enforce the smoking ban. Generally, fines are \$100 for the first violation, \$200 for the second violation, and \$500 for the third violation. If an employer has had three violations within one year and smoking continues, any worker can file a complaint with Cal/OSHA. Cal/OSHA penalties can range up to \$70,000, depending on the seriousness of the situation.

The entire text of Labor Code § 6404.5 may be found on page 18 of this booklet.



## BENEFITS OF A TOBACCO-FREE WORKPLACE

Since the California law does not address outdoor workplaces, why should employers and unions go beyond the law? Why should they consider adopting tobacco-free policies everywhere on the worksite? There are a number of reasons to consider:

### 1 HEALTHIER WORKFORCE

**A tobacco-free workplace may encourage workers to cut back or quit using tobacco, leading to a healthier workforce.**

- Tobacco use causes heart disease, lung cancer, emphysema, and impotence. Quitting may stop or reverse many harmful health effects.
- Smoking and toxic workplace chemicals are a dangerous combination. Together, they increase the risk of disease many times over. Tobacco smoke damages workers' lungs so the lungs are less able to protect themselves from other hazardous substances found on the job.
- Cigarettes contain many common poisons, including some of the same chemicals found in rat poison, toilet bowl cleaner, and embalming fluid. Even the secondhand smoke inhaled by non-smokers contains more than 4,000 chemicals.
- Smokeless tobacco is **not** a safe alternative to smoking. Chewing tobacco can cause cancer of the mouth, larynx, and esophagus. Chewing tobacco puts many harmful chemicals into the body, including arsenic, cyanide, lead, and benzene.

### 2 TAFT-HARTLEY FUND COSTS

**Taft-Hartley Funds increasingly are paying the costs of tobacco use.**

- Building trades workers smoke and chew tobacco at a much higher rate than the general U.S. population.
- An estimated nine million smokers are covered by Taft-Hartley Funds for their health care benefits.

- Treating tobacco-related illnesses adds more than \$3.3 billion per year to the expenses paid by Taft-Hartley Funds.
- Tobacco-related health care accounts for 5-11% of total Taft-Hartley Fund costs. Because many smokers start to have medical problems by their 40s and 50s, these costs must be covered by the Funds. Non-smokers are more likely to stay healthier until their 70s, when Medicare takes over.

### 3 SAVE EMPLOYERS MONEY

#### **Tobacco-free workplaces may save employers money.**

- In 1990, the U.S. Office of Technology Assessment estimated that disability and premature death of employees who smoke cost American businesses \$47 billion a year.
- A 2001 study published in *Tobacco Control*, a publication of the British Medical Journal, showed that smokers not only take more time off for sickness, but also are less productive than non-smokers. The study covered 300 booking clerks at a large U.S. airline. Current smokers were absent from work for sickness for 6.16 days per year on average, compared with 4.53 days among ex-smokers and 3.86 among those who never smoked. The study also showed smokers to be less productive because they took smoking breaks and often felt unwell, which impacted work performance. This study illustrates some of the hidden costs of smoking for an employer.
- Another recent study of 3,000 workers published in *the Journal of Occupational and Environmental Medicine* found that healthy workers have fewer workplace injuries and lower workers' compensation costs. Of all the health risks studied, smoking was the most costly. Annual workers' compensation costs for a smoker averaged \$2,189 compared to \$176 for a non-smoker.

### 4 BOOST MORALE

#### **A tobacco-free policy may boost morale and improve labor-management relations.**

- A written tobacco-free policy is a way to let workers know that management and the union value their health and well-being.
- A written policy provides clear guidelines for everyone..
- A written policy serves to document management and labor's decision. Should organizational leadership later change on either side, the policy remains to inform future leaders of the commitment to a tobacco-free workplace. It establishes a clear precedent.



## ISSUES TO CONSIDER WHEN RESTRICTING TOBACCO USE

**TYPES OF POLICIES** There are various types of tobacco control policies that labor and management may choose to adopt. Following is a brief description of three types.

**A.  
TOBACCO-FREE  
POLICY** This is the most stringent policy. It prohibits tobacco use of any sort (cigarettes, cigars, pipes, chew) anywhere at the workplace.

**B.  
100% SMOKE-FREE  
POLICY** This policy prohibits smoking in all areas of the workplace, indoors and outdoors. It does not address other types of tobacco use, such as chew.

**C.  
RESTRICTED  
TOBACCO-USE  
POLICY** This policy prohibits smoking in all areas of the workplace, indoors and outdoors, except in designated areas. It may or may not restrict the use of other tobacco products, such as chew.

In the “Model Policies” section on page 10, sample language is suggested for each type of policy.

Once you have made the decision to adopt a tobacco use policy, there are a number of issues to discuss and resolve. Following are some key questions to address.

### **1** INFORMED CONSENT

If the construction site is going to be tobacco-free, smoke-free, or have restricted smoking areas, it is essential that prospective employees know this ahead of time and consent to work under those conditions. The job should be advertised as prohibiting tobacco use.

When applicants interview or sign up for the job, they should be informed orally, as well as in writing, of this requirement. Ask whether they understand it or have any questions.



Current workers and job applicants should sign a consent form stating that they understand the tobacco policy and will comply with it. This form should contain wording such as: “I have received and reviewed a copy of XYZ company’s tobacco-free [or smoke-free] policy and I understand and agree to abide by the rules set forth in that policy.” (See page 21 for a sample.)

Both workers and job applicants should be given information on resources available to help quit smoking or other tobacco use.

Temporary workers should be given a leaflet about the tobacco policy, along with how-to-quit information, when they pass the guard gate.

Because uniform enforcement is necessary for any tobacco policy to be effective, all contractors and sub-contractors must be informed about the policy prior to bidding and agree to abide by it. They should be given the written tobacco policy and disseminate it to all their workers.

## 2 CLEAR COMMUNICATION

In addition to communicating with everyone ahead of time, there must be ongoing clear communication at the worksite. Signs should be posted prominently stating “This Is a Non-Smoking Construction Site,” “No Smoking,” or “Smoking in Designated Areas Only” as appropriate for the policy.

The policy itself should be clearly written, in language(s) employees understand. The complete policy should be posted prominently and accessible to workers.

The policy should be reinforced at health and safety committee meetings, tailgate meetings, and other regular employee or labor-management meetings. (See page 23 for sample signs in English and Spanish.)

## 3 BREAKS

If the policy permits smoking in designated areas, presumably on employee breaks, a number of issues should be considered. There should also be break areas for non-smoking employees, where they will not be exposed to others’ smoke. Scheduling of smoke breaks should be worked out—will they be at a regular time or when it fits with the work schedule? Finally, breaks should be allotted fairly. Smokers should not be allowed more breaks just because they smoke.

# 4 ENFORCEMENT AND DISCIPLINE

Enforcement of a tobacco use policy is one of the most difficult issues. In establishing a smoke-free workplace, the employer and the union will need to give careful thought to how the policy will be enforced. Will there be a “one strike and you’re out” rule? Or will there be progressive discipline — will those who break the rule be offered a chance to participate in an employee assistance program as an alternative to discipline? Following are arguments for and against a “one strike” rule and progressive discipline

ONE STRIKE RULE	
<p><b>Arguments For</b></p> <ul style="list-style-type: none"> <li>■ Having a “one strike” or “zero tolerance” approach to tobacco use at the workplace sends a clear, unambiguous message to all employees. It is less likely that people will try to get around the rules by finding hidden places to smoke, etc. Fear of such a dire penalty will assure compliance.</li> <li>■ This approach makes enforcement clean and uncomplicated. Either a worker has violated the rule or hasn’t.</li> <li>■ Zero tolerance demonstrates management’s strong commitment to the health of its employees, particularly when combined with offers of resources and incentives to quit.</li> <li>■ The approach of gradually going smoke-free and tolerating violations will not work, because people will not give up smoking this way. It is better to go 100%, both in establishing a completely tobacco-free worksite and in adopting a zero tolerance enforcement policy. This has worked with other safety policies and it can work with tobacco.</li> </ul>	<p><b>Arguments Against</b></p> <ul style="list-style-type: none"> <li>■ Every union workplace is governed by the principle that management has the right to impose discipline or discharge an employee only for “just cause.” Under the “just cause” standard, if a job or workplace is declared smoke-free for compelling safety reasons, harsh penalties, including discharge, may be warranted. The strict approach makes sense, and is accepted by workers, in munitions factories, refineries, and other places where the potential consequences are extremely severe.</li> <li>■ A “one strike” or “zero tolerance” policy makes less sense where the smoking ban is not based on compelling safety considerations. If a primary goal is to promote workers’ health, this kind of enforcement effectively “cures the disease by killing the patient.”</li> <li>■ The penalty of discharge can work extreme hardship. An employee may lose not only a job, but seniority, eligibility for benefits, and reputation. Because the penalty is so serious, arbitrators generally require proof of serious wrongdoing or incompetence before upholding a discharge.</li> <li>■ On many construction sites, smoking has minimal direct impact on others. Except where smoking is a clear safety hazard, the primary victims are smokers themselves. An arbitrator hearing a grievance of a discharge for smoking may be hard-pressed to find justification for such severe discipline, especially if the employer imposes lesser discipline for violations of other workplace rules.</li> <li>■ Zero tolerance may lead to weaker enforcement of the smoking restrictions. Knowing that good workers with a single violation will lose their jobs, management may look the other way.</li> </ul>

## PROGRESSIVE DISCIPLINE

### Arguments for:

- There is a case for corrective action rather than severe discipline. If a major goal of the smoke-free policy is to help smokers become non-smokers, those who violate the rule are ideal candidates for an effective employee assistance program.
- Instituting some form of progressive discipline will retain good workers and give those addicted to tobacco an opportunity to quit.
- Progressive discipline makes enforcement more likely, because management has less fear of losing good workers.
- Providing an opportunity for violators to enter a tobacco cessation program demonstrates management's commitment to employees' health and shows how seriously management views the health effects of tobacco use.
- In the long run, the solution to workers' addiction is not to fire them from good union jobs. Unions and employers can work together to create programs that will aid workers who want to quit for the benefit of themselves and their families. These programs can be jointly run through a labor-management trust fund, such as the existing multi-employer health and welfare funds sponsored by the different crafts.
- The benefits of reduced absenteeism, increased productivity, and lower health and welfare costs will reward employers who take an intelligent, proactive approach to reducing employees' tobacco use.

### Arguments against:

- More people will violate the tobacco use prohibition, because they will not fear the penalty.
- There is no clear message that management is committed to controlling tobacco use.

## 5 WHICHEVER APPROACH YOU CHOOSE

It is essential that the rules be consistently applied and enforced. For the policy to be implemented successfully, all employees must view enforcement as fair and consistent. If no-smoking rules are widely violated but only a few people are singled out for disciplinary action, this discriminatory enforcement provides grounds for an arbitrator to overrule the employer if a worker files a grievance.



## TIPS FOR MAKING TOBACCO CONTROL POLICIES SUCCESSFUL

- INVOLVE • **Involve both union and management in planning and implementing the policy.** Establishing a special labor-management committee will help ensure that all views are heard and that the policy ultimately will be successful. If there already is a joint labor-management health and safety committee, that may be a useful forum for discussion.
- EDUCATE • **Educate everyone about the health hazards of tobacco use.** Even though we assume people know how harmful tobacco is, many don't realize the severity of the hazard.
- FRAME POLICY AS A HEALTH ISSUE • **Frame the tobacco policy as a health issue, not a comfort or social issue.** It is easy to get bogged down in discussions of individuals' rights to use tobacco. The point is that the policy is being enacted to protect and promote employees' own health.
- COMMUNICATE • **Communication is key.** Inform everyone about the new policy. Notices should be prominent and written in language(s) that everyone understands.
- ALLOW TIME • **Allow time for the transition.** People respond more favorably if given time to adjust to a new policy.
- FOCUS ON USE • **Focus on tobacco use, not tobacco users.** Remember that tobacco is an addictive substance, and the vast majority of tobacco users would like to quit.
- OFFER SUPPORT • **Offer support programs to help motivated employees quit.** See the Resources section for programs that can help.
- BE FAIR • **Make sure enforcement of the policy is consistent and fair.** Everyone should understand what disciplinary action will be taken for violations.
- ASSUME SUCCESS • **Assume success.** Everyone will pick up on an optimistic attitude from top management and union leadership.

## MODEL POLICIES

### TOBACCO-FREE POLICY

Tobacco use is prohibited is prohibited in all areas of the workplace, indoors and outdoors.

Each site shall designate an appropriate individual to assure compliance with this policy.

Signs shall be posted at all entrances to each site stating “Tobacco Use Is Prohibited on This Construction Site.” Similar signs shall be posted at all break areas and restrooms.

All bulletin boards shall have a sign posted stating “Tobacco Use Is Prohibited on This Construction Site.”

All employees and prospective employees shall be informed of this policy and must sign consent forms stating that they understand the policy and will comply with it. (*See page 21 for a sample.*)

Management will make available to employees resources to assist them in quitting tobacco use.

A copy of this policy shall be included in employee handbooks.

Management is responsible for the enforcement of this policy. *See later section for enforcement options.*

### 100% SMOKE-FREE POLICY

Smoking is prohibited is prohibited in all areas of the workplace, indoors and outdoors.

Each site shall designate an appropriate individual to assure compliance with this policy.

Signs shall be posted at all entrances to each site stating “Smoking Is Prohibited on This Construction Site.” Similar signs shall be posted at all break areas and restrooms.



RESTRICTED  
TOBACCO-USE  
POLICY

All bulletin boards shall have a sign posted stating “Smoking Is Prohibited on This Construction Site.”

All employees and prospective employees shall be informed of this policy and must sign consent forms stating that they understand the policy and will comply with it. *(See page 21 for a sample.)*

Management will make available to employees resources to assist them in quitting tobacco use.

A copy of this policy shall be included in employee handbooks.

Management is responsible for the enforcement of this policy. *See later section for enforcement options.*

Smoking is prohibited in all areas of the workplace, indoors and outdoors, except in designated areas.

Each site shall designate an appropriate individual to assure compliance with this policy.

Signs shall be posted at all entrances to each site stating “Smoking Is Prohibited on This Construction Site Except in Designated Areas.” Similar signs shall be posted at all break areas and restrooms. Signs stating “This Is a Designated Smoking Area” shall be posted at appropriate locations.

All bulletin boards shall have a sign posted stating “Smoking is Prohibited on This Construction Site Except in Designated Areas.”

All employees and prospective employees shall be informed of this policy and must sign consent forms stating that they understand the policy and will comply with it. *(See page 21 for a sample.)*

Management will make available to employees resources to assist them in quitting tobacco use.

A copy of this policy shall be included in employee handbooks.

Management is responsible for the enforcement of this policy. *See later section for enforcement options.*

## ENFORCEMENT LANGUAGE OPTIONS

ONE STRIKE	There is zero tolerance for violations of the tobacco use policy at this worksite. Violation of this policy shall result in termination after the first violation.
PROGRESSIVE DISCIPLINE	<p>An employee's first violation of the tobacco use policy shall result in a written warning.</p> <p>An employee's second violation within six months shall result in a one-day suspension.</p> <p>An employee's third or subsequent violation of this policy within six months shall result in a five-day suspension.</p> <p>Any discipline imposed for the first offense in any 12-month period and any grievance filed in response thereto shall be held in abeyance pending voluntary completion by the employee of a tobacco cessation program mutually agreed upon between the employer and the employee. The cost of the program shall be covered by the employer's group health insurance as any other illness is covered.</p> <p>If the employee successfully completes such a program and is not disciplined for violation of this policy for six months following the initial charge, the discipline shall be revoked and shall not be used as the basis for any other disciplinary action in the future.</p>



## GOING BEYOND RESTRICTIONS: HELPING EMPLOYEES QUIT



The workplace is an ideal environment to encourage smokers to quit. Employees spend so much time at work that smoke-free policies there can provide the incentive they need to succeed.

However, quitting is not easy for most smokers. In fact, many smokers try to quit repeatedly before they succeed. Some may go through long-term "cycles" of not smoking and then smoking again.

Smoking cessation support at the worksite ideally includes a variety of methods and materials to meet the diverse needs of smokers. The American Lung Association, American Cancer Society, health departments, HMOs, and other groups have self-help materials and group behavior-modification programs. Some options are described here.

### SELF-HELP PROGRAMS

Self-help programs are attractive to many smokers because they offer privacy and flexibility. Many of the available self-help materials (booklets, videotapes, and quit kits) are appropriate for use at the worksite. Good self-help materials should provide employees with information to help understand their smoking patterns, set quit dates, identify and resist smoking cues, explore alternatives to smoking, control weight gain, manage stress, and prevent relapse.

### SMOKING CESSATION GROUP PROGRAMS

Although most smokers quit without formal assistance, some employees need the guidance and support provided by structured programs. Members of a group often provide support and counseling to one another. The employer can bring outside providers to the worksite to conduct smoking cessation group programs, or workers can be given a list of programs in the community.

PHARMACOLOGICAL  
AIDS

One important obstacle to quitting is nicotine addiction. Some smokers find drugs such as the anti-depressant Zyban®, nicotine gum, or the nicotine transdermal patch to be helpful. Nicotine replacement has been found to significantly increase the chances of successful cessation for smokers. Some union Health and Welfare Trust Funds offer coverage for nicotine replacement products. If the products are not covered by the Fund, employers may provide nicotine replacement products directly as a self-funded benefit, or may reimburse employees who use the products as part of an effort to quit smoking.

INCENTIVES

Special incentives can be very effective in increasing interest in quitting. Even small rewards or recognition, such as in a company newsletter, can help smokers succeed. Incentives give employees a positive focus, reinforce motivation, and encourage cessation program participation. Take care, when offering incentives, to avoid their potential pitfalls: nonsmokers might feel slighted, employers can be outwitted by employees ("false" cessation), and determining the best reward may be difficult.



## LEVELS OF SUPPORT

Employers may choose to offer various levels of support to workers who want to quit — comprehensive support, facilitation, or referral. Each level has its pros and cons.

Level of Support	Pros	Cons
<p><b>Comprehensive Support</b></p> <ul style="list-style-type: none"> <li>• Offer and pay for smoking cessation programs for smoking employees and covered dependents</li> <li>• Provide communication to all employees about changes in smoking policies and support to be offered</li> </ul>	<ul style="list-style-type: none"> <li>• May enhance health status of employees</li> <li>• May help contain health care costs</li> <li>• Allows employer to assess impact of smoking program</li> <li>• More likely to yield changes in smoking behavior</li> <li>• Demonstrates employer’s commitment to helping employees who smoke</li> </ul>	<ul style="list-style-type: none"> <li>• More expensive than other options</li> <li>• Requires a significant effort by the employer</li> </ul>
<p><b>Facilitation</b></p> <ul style="list-style-type: none"> <li>• Work with health care providers to provide smoking cessation to employees</li> <li>• Provide self-help cessation materials</li> <li>• Provide communication to all employees about changes in smoking policies and support to be offered</li> </ul>	<ul style="list-style-type: none"> <li>• May enhance health status of employees</li> <li>• Takes advantage of existing resources</li> <li>• Does not require continuing effort or monitoring by employer</li> </ul>	<ul style="list-style-type: none"> <li>• Requires significant start-up effort</li> <li>• Health care providers may be unwilling to provide support</li> </ul>
<p><b>Referral</b></p> <ul style="list-style-type: none"> <li>• Provide employees with information on community smoking cessation programs</li> <li>• Provide self-help cessation materials</li> <li>• Provide communication to all employees about changes in smoking policies and support to be offered</li> </ul>	<ul style="list-style-type: none"> <li>• Takes advantage of existing resources</li> <li>• Less expensive than comprehensive support</li> <li>• Easier to implement than comprehensive support or facilitation</li> </ul>	<ul style="list-style-type: none"> <li>• Less effect on smoking behavior and health care costs</li> </ul>

Cessation section adapted from *Making Your Workplace Smoke Free: A Decision Maker’s Guide*, produced by the Office on Smoking and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

## RESOURCES

### Information on Smoking and Health

#### **BUILT Project (Building Trades Unions Ignite Less Tobacco)**

An educational program of the State Building and Construction Trades Council of California. It educates and assists union members through local unions, health and welfare trust funds, joint apprenticeship training committees, and labor-management committees. BUILT also provides speakers for union/committee meetings, and information and literature about the health effects of tobacco, secondhand smoke, and the workplace smoking law.

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web site: [www.sbctc.org](http://www.sbctc.org) [about us] [built]

#### **California Smokers' Helpline**

A telephone program that helps individuals quit smoking. Helpline services are free, funded by the California Department of Health. The Helpline has services in English, Spanish, Mandarin, Cantonese, Vietnamese, Korean, and TDD/TTY. There are also services for those who want to quit chewing tobacco. The Helpline provides self-help materials, a referral list of other programs, and confidential one-on-one telephone counseling. Those who use this phone counseling double their chances of quitting for good.

1-800-NO-BUTTS

web site: [www.californiasmokershelpline.org](http://www.californiasmokershelpline.org)

**Your local public health department:** Check the County Government section of your phone book.

### Web Resources

#### TOBACCO AND HEALTH

##### **[www.cdc.gov/tobacco](http://www.cdc.gov/tobacco)**

This is the Center for Disease Control and Prevention's tobacco website. It contains the Surgeon General reports as well as other published studies and reports. Look for "Making Your Worksite Smoke-free – A Decision Maker's Guide" ([www.cdc.gov/tobacco/research\\_data/environmental/etsguide.html](http://www.cdc.gov/tobacco/research_data/environmental/etsguide.html)). There is also a section on cessation.

**www.smoke-free.ca**

This is the website for Physicians for Smoke-free Canada. It is an extremely complete website about tobacco issues. Look in “Chemicals” to find out what a poisonous cocktail cigarette smoke is. Do you recognize any of these chemicals from your worksite?

CESSATION

**www.californiasmokershelpline.org**

The California Smokers’ Helpline is a free service for all Californians. Their website explains the ways they help. See page 15 for information on their toll-free telephone line.

**www.quitnet.org**

This is a very interactive and personalized quitting site. It may be the best self-directed computer site.

**www.lungusa.org/tobacco**

The American Lung Association has an effective quit program – “Freedom From Smoking®.”

**www.nicotine-anonymous.org**

For those who are familiar with 12-step programs.

SECONDHAND  
SMOKE

**www.oehha.org/air/environmental\_tobacco**

The California Office of Environmental Health Hazard Assessment issued a report, “Health Effects of Exposure to Environmental Tobacco Smoke,” in 1997. The entire report, including charts and executive summary, are on this website.

**www.no-smoke.org**

Americans for Nonsmokers’ Rights is a non-profit organization that is very “activist” oriented. Their website has much of the basic secondhand smoke information plus information on smoke-free ordinances. It is an excellent resource for keeping up with what is happening in the promotion of smoke-free air.

**www.repace.com**

James Repace is a health physicist who is perhaps the best authority on the health effects of secondhand smoke. The “Fact Sheet on Secondhand Smoke” on his website is basic reading for understanding these effects.



## Appendices

### MODEL LANGUAGE FOR CONSENT TO WORK UNDER TOBACCO CONTROL POLICIES

I am aware that XYZ Company has a policy restricting (or prohibiting) tobacco use on the job.

I have received and read a copy of XYZ Company's workplace tobacco policy.

I understand and agree to abide by the rules set forth in that policy. I understand that I may be disciplined for violation of these rules.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

### LENGUAJE MODELO SOBRE CONSENTIMIENTO PARA TRABAJAR BAJO PÓLIZAS PARA EL CONTROL DEL TABACO

Estoy al tanto que la compañía X,Y, Z, cuenta con una póliza que restringe (o prohíbe) el uso del tabaco en el trabajo.

He recibido y leído una copia de la póliza para trabajadores(as) de la compañía X,Y, Z, para un lugar de trabajo "Libre de Tabaco" (ó, "100% libre de humo").

Entiendo y estoy de acuerdo con obedecer y cumplir con las reglas establecidas en dicha póliza. Entiendo que podría ser castigado por violar estas reglas.

\_\_\_\_\_  
Firma – Trabajador(a)

\_\_\_\_\_  
Fecha

\_\_\_\_\_  
Firma – Contratista

\_\_\_\_\_  
Fecha

THE SMOKE-FREE  
WORKPLACE LAW  
(§ 6404.5 OF THE  
LABOR CODE)

§6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern.

It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions.

It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions.

Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace. For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. An establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this

paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible



exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation.

An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

(l) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable.

## Worksite Signs

Ongoing clear communication is necessary to ensure that tobacco restriction policies are followed. Here are sample signs in English and Spanish that you may copy and post around the worksite. Be sure to use only the appropriate signs for the policy you set.

If you need signs in any other languages, contact BUILT at 916-443-3302 to arrange for translations.



**This construction site is**

**100%**

**TOBACCO FREE**





**Este lugar de construcción es**

**100 %**

**LIBRE DE TABACO**





**NO SMOKING**  
**ALLOWED**

**on this construction site**







**NO SE PERMITE  
FUMAR**

**en este lugar de construcción**





**NO SMOKING**  
**ALLOWED**  
**except in designated areas**





**NO SE PERMITE  
FUMAR**

**excepto en áreas designadas**



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