Laws Protecting Nonsmokers

So far, no state bans smoking in all public places

by Fran Du Melle

For more than 40 years, the American Lung Association has fought to eliminate air pollution from both outdoor and indoor environments. In recent years, environmental tobacco smoke—or ETS—has become a major focus.

To understand why a pollutant such as ETS can be so harmful, think about your lungs. For all practical purposes, they are an external organ exposed to the atmosphere as surely as is your skin. If spread out end-to-end, the gossamer-thin membrane lining of your lungs would cover an area the size of a tennis court. Even minute amounts of air pollution can damage this intricate breathing system, especially in infants and young children.

Right now, according to the Centers for Disease Control, 25.7 percent of all adults in the United States smoke. They consume nearly one trillion cigarettes each year. That many people smoking that many cigarettes mean a lot of ETS assaulting our lungs.

The health effects of ETS were first reviewed 20 years ago in the 1972 U.S. Surgeon General's report on smoking and health. Since that time, public health advocates like the American Lung Association have urged adoption of laws and regulations making public places, workplaces, and schools smoke free. Release of EPA's January 1993 assessment of the health risks of exposure to ETS provided a new framework for encouraging policy makers at the federal, state, and local levels to take action to protect everyone—smokers and nonsmokers alike—from the dangers of ETS.

Exposure to ETS needn't be very large to translate into a significant public health hazard. The risk assessment indicates that the dangers from exposure to ETS are dose-response related—the greater the exposure, the greater the risk of injury. Thus, policy makers can focus on banning or at least restricting smoking in places where people spend most of their time. For adults, that means the workplace; for children, it means day-care centers and schools.

Many state and local governments as well as private organizations and companies have responded to the EPA risk assessment by evaluating their own laws, regulations, and policies on smoking. The American Lung Association has been pleased by this response. However, much remains to be done. Laws protecting nonsmokers remain inconsistent from state to state and from city to city.

Today, 46 states restrict smoking in public worksites to one extent or another, but many still allow smoking in designated areas with or without separate ventilation systems. The EPA risk assessment has already spurred several states, including Vermont and Missouri, to enact new restrictions. However, in a majority of states, workers remain unprotected from ETS in private worksites. California, for example, responded to the EPA report by issuing an executive order banning smoking in all state buildings. Yet that state failed to pass legislation providing the same protection in private worksites. North Carolina has a new law declaring that state buildings cannot be totally smoke-free—each must have an area designated for smoking.

When it comes to protecting children from ETS, state action has been very

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Restrictions on Smoking in Public Places

limited. Where steps have been taken, they are frustratingly inconsistent. Although 39 states and the District of Columbia have laws restricting smoking on school property, only a few states—Hawaii, Kansas, Minnesota, New Hampshire, New Jersey, Washington—ban tobacco use by both students and faculty in school buildings at all times.

For infants and toddlers—children with the tiniest, most vulnerable lungs—there are no significant state-level protections from ETS. Alaska and Michigan are among only a very few states that prohibit smoking in day-care facilities. Other states have some restrictions but allow smoking in designated areas or at times when children are not present. Few states regulate smoking for day-care centers located in private homes.

The EPA risk assessment provided an incentive to the American Lung Association and its partners in the Coalition on Smoking OR Health, the American Cancer Society, and the American Heart Association to re-evaluate the way we assess laws or regulations to protect individuals from ETS. In the past, we simply examined the number of places covered by a law. The Coalition now examines, in detail, the actual provisions of each law restricting smoking in public workplaces, private workplaces, schools and day-care centers, health-care facilities, and public places and restaurants.

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Our new rating system is presented in State Legislated Actions on Tobacco Use, an annual Coalition publication. We found that although 46 states have restrictions on smoking in public places, 19 have laws we consider "minimal" and 22 we consider "moderate."

States with "minimal" restrictions require employers to establish a written smoking policy. Details of the policy are determined by the writer of the policy—the employer, building owner, etc. In some states, designated smoking areas may be required. In other words, a worksite could not be declared completely smoke free. In a worst-case scenario, an entire building could be designated as a smoking area.

States with "moderate" restrictions are likely to ban smoking outright in a few places, such as retail stores, public transportation, hospitals, and elevators, and these states call for mandatory designated smoking areas in many places.

States with "extensive" restrictions ban smoking more widely in public places but still permit some designate smoking areas. Only three states—Minnesota, New Hampshire, and New York— received "extensive" ratings.

States with "comprehensive" restrictions—the Coalition's top rating category—ban smoking in all public areas. No state has achieved this status—yet.

The inequities of this "patchwork quilt" must be corrected to protect everyone from exposure to ETS in public places or at work. The America Lung Association is certain that, as public awareness and concern about ETS grow, policy makers will heed the concerns of the people they serve. In the coming years, more states and localities will move into the "extensive and "comprehensive" categories.

(To obtain a copy of State Legislated Actions on Tobacco Use, contact the Coalition on Smoking OR Health, 115 Connecticut Avenue, NW, Suite 820, Washington, DC 20036; telephone: 202/452-1184.)