

FTR Now

New *Smoke-Free Ontario Act, 2017* in Force July 1, 2018: What Employers Should Know

Date: May 29, 2018

Editor's Note: The coming into force date of the SFO Act was postponed by the new Ontario government – see our [FTR Now of July 3, 2018](#)

On July 1, 2018, the [Smoke-Free Ontario Act, 2017](#) (SFO Act) and accompanying regulation will come into force. The SFO Act was enacted as part of the omnibus Bill 174, [Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017](#).

The SFO Act repeals and replaces the *Electronic Cigarettes Act, 2015* and the *Smoke-Free Ontario Act* (Earlier Acts), consolidating many provisions of those two statutes into one place. It also contains new requirements for employers and others. For example, it specifically addresses the use of medical cannabis and as well sets out updated posting requirements. Learn more in this *FTR Now*.

Prohibitions on Use

The SFO Act expands upon the prohibitions on use found in the Earlier Acts. It states that no person shall smoke or hold lighted tobacco, smoke or hold lighted medical cannabis, use an electronic cigarette or consume a prescribed product or substance in a prescribed manner, in a prohibited place (subject to exceptions).

“Prohibited places” remain substantially the same and include, among other things, enclosed public spaces (as defined), enclosed workplaces (as defined), schools (within the meaning of the *Education Act*), indoor common areas of university or college residences and other prescribed places.

Certain exemptions exist for residential facilities, hotels, motels or inns, scientific research and testing facilities or hospices.

The SFO Act prohibits a person from doing the following in a motor vehicle:

- smoking tobacco or having lighted tobacco where another person less than 16 years old is present
- using an electronic cigarette or having an activated electronic cigarette where another person who is less than 16 years old is present
- smoking medical cannabis, having lighted medical cannabis, using an electronic cigarette containing medical cannabis or having an activated electronic cigarette containing medical cannabis
- consuming a prescribed product or substance, in a prescribed manner, or having a prescribed product or substance.

Employer/Proprietor Obligations

Employer obligations under the SFO Act remain the same, with modifications made for the expansion of the prohibitions on use. Every employer must:

- ensure that no person smokes or holds lighted tobacco, smokes or holds lighted medical cannabis, uses an electronic cigarette, or consumes a designated product or substance, with respect to an enclosed workplace or designated area over which the employer exercises control

- give notice to each employee in the enclosed workplace or designated area of the foregoing prohibitions
- post prescribed signs respecting the prohibitions throughout the enclosed workplace, place or area, including washrooms
- ensure no ashtrays or similar equipment remain in the enclosed workplace or place or area (except for vehicles in which ashtrays have been installed by the manufacturer)
- ensure that a person who refuses to comply with the prohibitions does not remain in the enclosed workplace or place or area
- not retaliate against an employee who has acted in accordance with, or sought enforcement of, the SFO Act (the prohibition on reprisals found in the *Occupational Health and Safety Act* (s. 50(2)) applies with necessary modifications to these situations).

Similarly, proprietor obligations also remain the same, with modifications for the prohibitions on use. Among other things, proprietors must ensure compliance with the prohibitions on use, give notice to each person in the enclosed public place or area of the prescribed prohibitions and post any prescribed signs regarding the prohibitions.

Specific protections remain for home healthcare workers.

Updated Posting Requirements

[O. Reg. 268/18](#) made under the SFO Act comes into force on July 1, 2018 (subject to certain exceptions). The regulation contains considerable detail on the prescribed requirements under the SFO Act (including, among other things, additional places where use is prohibited and requirements for controlled areas).

Of note, it requires employers, proprietors and others to post mandatory signs in a conspicuous manner, unobstructed from view and sets out updated posting requirements.

Employers will be required to post **both** of the signs described in paragraphs 1 and 2 below, **or** the sign described in paragraph 3. The signs must be posted “at each entrance and exit of the enclosed workplace, place or area in appropriate locations and in sufficient numbers to ensure that employees and the public are aware that smoking and the use of electronic cigarettes is prohibited in the enclosed workplace, place or area.”

Paragraph 1. A sign that is at least 10 centimetres in height and at least 10 centimetres in width, and a copy of the sign entitled “Tobacco Sign for Employers”, dated January 1, 2018 and located on the government of Ontario website; **and**

Paragraph 2. A sign that is at least 10 centimetres in height and at least 10 centimetres in width, and a copy of the sign entitled “Electronic Cigarette Sign for Employers”, dated January 1, 2018 and located on the government of Ontario website.

or

Paragraph 3. A sign that is at least 15 centimetres in height and at least 20 centimetres in width, and a copy of the sign entitled “Tobacco and Electronic Cigarette Sign for Employers”, dated January 1, 2018 and located on the government of Ontario website.

Proprietors will also be required to post **both** of the signs described in paragraphs 1 and 2 below, **or** the sign described in paragraph 3. The signs must be posted “at each entrance and exit of the enclosed public place, place or area in appropriate locations and in sufficient numbers to ensure that the public are aware that smoking and the use of electronic cigarettes is prohibited in the enclosed public place, place or area.”

Paragraph 1. A sign that is at least 10 centimetres in height and at least 10 centimetres in width, and a copy of the sign entitled “Tobacco Sign for Proprietors”, dated January 1, 2018 and located on the government of Ontario website; **and**

Paragraph 2. A sign that is at least 10 centimetres in height and at least 10 centimetres in width, and a copy of the sign entitled “Electronic Cigarette Sign for Proprietors”, dated January 1, 2018 and located on the government of Ontario website.

or

Paragraph 3. A sign that is at least 15 centimetres in height and at least 20 centimetres in width, and a copy of the sign entitled “Tobacco and Electronic Cigarette Sign for Proprietors”, dated January 1, 2018 and located on the government of Ontario website.

Specific posting requirements also exist for retail, and for hotels, motels and inns employers/proprietors.

The signs are not yet available on the Ontario government website . We will be monitoring that website and once the signs are posted, we will notify you through our [Human Resources Legislative Update blog](#).

Failure to comply with the provisions of the SFO Act, including the posting requirements, is an offence.

Going Forward

Prior to July 1, 2018, employers, proprietors and other affected parties should become informed of their obligations under the SFO Act and regulation to ensure that they meet the updated posting and other requirements.

Note that this *FTR Now* focuses on key issues for employers and others. It does not deal with all aspects of the SFO Act (e.g. rules for sale, supply and promotion of the various prescribed products, requirements for controlled areas where applicable, prohibitions on outdoor use etc.).

Should you have any questions about the *Smoke-Free Ontario Act, 2017*, please contact your [regular Hicks Morley lawyer](#).

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