Tobacco-Free Policies and Non-Traditional Campuses

Opportunities and Considerations

As evidence of the dangers of tobacco use keeps mounting, more and more communities, businesses and other organizations look for ways to limit exposure to secondhand smoke, as well as the serious health risks associated with tobacco use more generally. In Minnesota, the Clean Indoor Air Act\(^1\) prohibits smoking in virtually all *indoor* public places and *indoor* places of employment. Now, more and more attention is being focused *outdoors*.

Comprehensive tobacco-free policies restrict tobacco use both indoors and outdoors. A growing number of colleges and universities are adopting smoke- or tobacco-free campus policies which regulate tobacco use on outside grounds such as parking lots and related properties. As of October 5, 2012, at least 826 colleges or universities in the U.S. have adopted 100% smoke-free campus policies that eliminate smoking in indoor and outdoor areas across the entire campus, including residences.\(^{ii}\)

While once focused on more “traditional” four-year colleges and universities, public health advocates are expanding their efforts to include “non-traditional” schools. These two-year, technical, for-profit, or trade schools play a significant role in higher education, but might be different, either in appearance or operation, than the more stereotypical college or university.

Given the growing interest in tobacco-free policies for the “non-traditional” campus, this brief guide provides basic information\(^{iii}\) for institutions to consider when implementing such policies. We encourage you to consult with local legal counsel before attempting to implement any measures.

**Tobacco-Free Benefits**

*Public Health*

Exposure to second-hand smoke is linked to a wide range of serious and life-threatening health problems including heart disease, cancer, asthma, and other respiratory problems.\(^{iv}\) While most scientific evidence
relates to indoor exposure, more recent studies have found that secondhand smoke exposure levels can be significant outdoors, particularly when smokers are in close proximity to one another.\textsuperscript{v}

In addition to preventing secondhand smoke exposure, outdoor smoke- or tobacco-free policies help individuals who are trying to quit by eliminating the sight and smell of tobacco products.

\textbf{Environmental Impact}

Discarded cigarette butts are a non-biodegradable form of litter that can take decades to break down. Several trillion discarded cigarette butts litter sidewalks, beaches, and other outdoor areas each year.\textsuperscript{vi} Tobacco-related litter is unattractive, expensive to clear up, and an environmental blight. Tobacco-free campus policies can help reduce the amount of cigarette litter, as well as maintenance and cleanup costs. Discarded cigarettes are also a significant cause of outdoor fires, accounting for hundreds of millions of dollars in environmental damage, personal property loss, firefighting expenses, and restorative efforts each year.\textsuperscript{vii}

\textbf{Policy Elements – In General}

The best smoke- or tobacco-free campus policies are explicit in what they cover, how they will be implemented, and who will be responsible for enforcement. While academic institutions have a tremendous amount of discretion to shape policies to meet their specific circumstances, successful policies will generally include the following elements:

- **Purpose – Findings of Fact**
  
  Findings are brief statements of the facts or statistics that outline the issues being addressed through the policy, support the need for the policy, and help clarify the policy’s goals. Smoke- or tobacco-free policies often include current data documenting the health risks associated with exposure to tobacco use, or studies measuring exposure to smoke in outdoor areas.

- **Definitions**
  
  Smoke- or tobacco-free campus policies should define, with as much clarity as possible, both the locations and the types of products the institution or organization wants to regulate. Some policies prohibit outdoor tobacco use within a “reasonable” distance (perhaps 15 to 20 feet) from all entrances, exits, or vents into enclosed areas. Others define outdoor space by indicating that their policy covers all property within certain boundaries, or all property owned, leased, or in any way controlled by the organization adopting the policy. Some policies prohibit tobacco use at “off-campus, school sponsored” events, or when an individual is otherwise representing the school. It is important to be both explicit and practical, including any exemptions or exceptions to the policy.

- **Cessation Assistance**
  
  Quitting tobacco is difficult. Tobacco cessation assistance is the single most cost-effective preventive service that employers can provide to employees\textsuperscript{viii} and one of the most critical health services an institution of higher education can offer its students. Comprehensive cessation services can include: behavioral interventions (telephone, Internet, face-to-face or group counseling programs), nicotine replacement therapy (NRT) products, and opportunities for multiple quit attempts (follow-up services to prevent relapses).\textsuperscript{ix}
• Enforcement

Enforcing smoke- or tobacco-free policies can be challenging. While most campus policies rely on cooperation and self-enforcement, successful efforts coordinate the participation of various internal (such as school administration, faculty, staff, and the student body), and external (such as landlords, other tenants, neighboring properties, or other visitors) stakeholders.

• Violations

It is also critical to establish clear consequences for noncompliance. Some smoke- or tobacco-free policies include administrative penalties for violations. Often, the policy will indicate that violations may be cause for disciplinary action under the students’ code of conduct or the employees’ personnel policies. A school generally has the ability to discipline students for misconduct that occurs on campus. Similarly, employers may generally discipline (or even terminate) employees for violating smoking policies, just as they may discipline them for violating any other legitimate workplace policy. Visitors who violate the policy are generally asked to leave.

• Implementation

Institutions should determine how they are going to publicize their new policies (educating the school community and any affected stakeholders) and establish procedures for receiving, tracking, and following up on complaints. Administration should identify other implementation requirements, such where to post “No Smoking” signs or removing ash cans and ash trays from smoke-free areas. As a smoke- or tobacco-free policy will require some members of the community to change their conduct, it is important to set a realistic date for the policy to take effect.

The implementation period is also important to avoid stigmatizing individuals who do use tobacco. While policies should focus on use and not the users, they can be misinterpreted to mean “smoker-free” or “anti-smoker.”

Non-Traditional Campus – Challenges

It can be difficult, if not impossible, to read a tobacco-free campus policy and tell whether it comes from a “traditional” or “non-traditional” source. Comprehensive restrictions tend to rely on similar broad, descriptive terms and definitions to maximize their impact and limit unintended exceptions. Nevertheless, the actual extent to which a policy may be enforced may be limited by factors outside the school’s “control.”

Leased Facilities (common areas and shared spaces)

Non-traditional schools commonly lease space for their classrooms, administrative offices, or other facilities. Sometimes, a school will occupy the entire property. In these situations, the tenant should generally have broad authority to apply and enforce a smoke- or tobacco-free policy to both the internal (such as classrooms, office spaces, elevators, and stairways) and external (such as parking lots, private sidewalks, and green space) areas.
Sometimes, schools will occupy only a portion of a facility (for example one floor of a multi-story office) sharing parking lots, entryways and other common areas with other tenants. Unless the lease restricts smoke or tobacco use on the property, schools interested in a “campus-wide” prohibitions may lack the authority to do so.

**Employee Conduct (smokers’ rights law)**

Because there is no constitutional right to smoke, employers can adopt smoke- or tobacco-free workplace policies and may generally discipline employees for violating workplace policies. However, Minnesota employers may not discipline or discharge an employee because the employee engages in (or has engaged in) the use or enjoyment of a lawful consumable product (such as tobacco), if the use or enjoyment takes place off-premises and during nonworking hours. When an organization leases a portion of a larger facility, it will need to determine whether any outside areas can be considered part of the work “premises” for smoke- or tobacco-free policy purposes.

**Student Conduct**

A school generally has the ability to discipline students for misconduct that occurs on-campus. Sometimes, an academic institution is interested in expanding the scope of their authority to off-campus “misconduct,” which might include students who smoking in areas outside the schools’ control. School administrators struggle determining the type of off-campus conduct that can or should be regulated though the school’s judicial process. As a result, such regulations can become a case-by-case, or school-by-school determination.

**Contact Us**

Please feel free to contact the Public Health Law Center at publichealthlaw@wmitchell.edu with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.
TOBACCO-FREE CAMPUS POLICY

Purpose

(_______) is committed to promoting healthier educational, work, and living environments. (_______) recognizes that the use of tobacco products is a health, safety, and environmental hazard for students, staff, visitors, and facilities. (_______) is acutely aware of the serious health risks associated with the use of tobacco products, both to users and non-users alike, and believes that the use of tobacco products is detrimental to the health and safety of students, staff, and visitors.

Definitions

“All times” means 24 hours a day, seven days a week, 365 days a year.

“Off-campus, school-sponsored event” means any event sponsored by (_______) that is not on (_______) property.

“Property” means all facilities and property, including vehicles that are owned, leased, rented, contracted, used, or controlled by (_______).

“Staff” means any person employed by (_______) in a full- or part-time capacity, or any position contracted for or otherwise employed, with direct or indirect monetary wages or profits paid by(_______), or any person working on a volunteer basis. The term includes, but is not limited to: faculty, personnel, contractors, consultants, and vendors.

“Student” means any person enrolled in any educational course or program offered by (_______).

“Tobacco product” means any product containing, made, or derived from tobacco that are intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to, cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products exclude any tobacco product that has been approved by the U.S. Food and Drug Administration for use as a tobacco cessation product, a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

“Tobacco use” means the act of smoking any cigarette, pipe, cigar, cigarillo, or other smoking equipment, the use of smokeless tobacco, and any other tobacco product in any form.

“Visitor” means any person subject to this policy who is not a student or staff.
Policy

The use of tobacco products is prohibited at all times:

In or on all property (_________) has the authority to control regardless of location;

At any off-campus, school-sponsored event; or

Whenever off-campus while representing (_________).

Applicability

This policy applies to all students, staff, and visitors.

(_________) commonly leases facilities for educational and administrative purposes and will work with the facility owners to prohibit tobacco-use throughout the property. Whenever (_________) does not have jurisdiction over adjoining streets, sidewalks, parking lots or other common areas, students, staff, and visitors are encouraged to comply with the spirit of the policy.

If local laws restrict certain provisions within this policy, the policy will be modified and/or enforced as is permissible.

Exceptions

It shall not be a violation of this policy for an adult Native American to use tobacco as part of a traditional Native American spiritual or cultural ceremony. A Native American is a person who is a member of a federally recognized tribe.

It shall not be a violation of this policy for tobacco products, tobacco-related devices, imitation tobacco products, lighters, or electronic cigarettes to be included in instructional or work-related activities in or on (_________) property if the activity is conducted by a staff member or an approved visitor that does not include smoking, chewing, or otherwise ingesting the product.

It shall not be a violation of this policy to use a product that has been approved by the U.S. Food and Drug Administration for use as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Dissemination

Signage shall be posted indicating that (_________) is a tobacco-free environment. Members of the (_________) community will be notified through student and staff handbooks.
Opportunities for Cessation Programs

(__________) will identify and/or offer cessation programs and services for students and staff ready to quit tobacco use.

Enforcement

The success of this policy will depend upon the thoughtfulness, consideration, and cooperation of both tobacco-users and non-users. All members of the (__________) community are expected to support this policy and cooperate in its implementation and enforcement.

Students, staff, and visitors acting in violation of this policy should be reminded and asked to comply. Violation of this policy may be cause for disciplinary action in accordance with applicable student or staff codes of conduct. Visitors who violate this policy may be asked to leave.

Evaluation

The tobacco-free policy shall be assessed to determine whether policies, policy enforcement, communication, education, staff training, and cessation programs are effective. Policies and programs will be updated and revised accordingly.

Effective Date

This policy shall take effect in full on ____________.
ENDNOTES

\(^{1}\) Minn. Stat. §§ 144.411-.417.


\(^{3}\) The information contained in this document is not intended to constitute or replace legal advice.


\(^{16}\) Minn. Stat. § 181.938.

\(^{17}\) However, an employer *may* restrict employee’s use of tobacco products during nonworking hours if the restriction relates to a bona fide occupational requirement and is reasonably related to employment activities or responsibilities of a particular employee or group of employees, or is necessary to avoid a conflict of interest or the appearance of a conflict of interest with any responsibilities owed by an employee to the employer. Minn. Stat. § 181.938, subd. 3(a).

\(^{18}\) In worker’s compensation cases, the employer’s “premise” has included parking lots owned, maintained and controlled by the property owner, but available for tenant’s use pursuant to a lease that required tenant to pay pro rata share of lot maintenance. *See* Merrill v. J.C. Penney, 256 N.W.2d 518 (Minn. 1977).

\(^{19}\) J. Wes Kiplinger, *Defining Off-Campus Misconduct that Impacts the Mission: A New Approach*, 4 U. St. Thomas L.J. 87 (2006),