



Temporary Restraining Orders and Injunctions in Challenges to Smoke-free Laws

It's not unusual for individuals and groups to bring lawsuits challenging smoke-free laws or regulations passed by states, counties, cities, or boards of health. Typically, instead of seeking monetary damages, people who file such lawsuits try to stop a law from going into effect, halt enforcement of a law, or overturn a law that already is in effect. Their complaints ask a court for a **declaratory judgment** and **injunctive relief**. This Fact Sheet explains the differences between these common pretrial motions, the basic legal processes courts use to address these motions, and requirements that must be met for the courts to grant requests for the most common of these motions: temporary restraining orders or preliminary injunctions.

Q: To begin with, what's a declaratory judgment?

A: Generally speaking, a **declaratory judgment** is a binding court decision that establishes the rights, duties, and responsibilities of the parties involved without awarding any damages or ordering any action. A plaintiff in a smoke-free challenge who asks for a declaratory judgment wants the court to determine (or "declare") that the law or regulation is unconstitutional or otherwise unlawful, or that there is some other legal flaw with implementing or enforcing the law.

Q: What's injunctive relief?

A: **Injunctive relief** commonly is sought in a lawsuit challenging a smoke-free law because it is the mechanism the court uses to order that a particular action be taken or stopped. In other words, the declaratory judgment results in a ruling on the legal issues, while injunctive relief is the action taken based on that ruling. A plaintiff will seek **permanent** injunctive relief. Often, however, a plaintiff also will file one or more motions for **temporary** relief to stop a law or regulation from being implemented or enforced until the court evaluates the request for a declaratory judgment and permanent injunctive relief. Two common types of temporary relief sought in legal challenges to smoke-free laws are **temporary restraining orders** and **preliminary injunctions**.

Q: What's the difference between temporary restraining orders and preliminary injunctions?

A: A **temporary restraining order (TRO)** is a court order that preserves the status quo until the court can review a plaintiff's request for either a preliminary or permanent injunction. Essentially, a plaintiff who brings a motion (or "moves") for a TRO is asking the court to put the law on hold immediately. A TRO is not commonly sought in smoke-free challenges because it tends to offer a plaintiff only short-term assistance – a TRO lasts until a court decides to lift the order or rules on the request for injunctive relief. Because almost every plaintiff in a smoke-free challenge asks for a preliminary injunction, it usually is unnecessary to request a TRO also.

A **preliminary injunction** (also called a temporary injunction in many states) is a court order requiring or preventing an action and is issued before or during trial to prevent an injury from occurring before the court can decide the merits of the case. A plaintiff who brings a motion for a preliminary injunction is asking the court to delay a smoke-free law from going into effect or to suspend enforcement of the law while the court case is pending. As mentioned above, in nearly every challenge to a smoke-free law, parties seek a preliminary injunction.

Example: *D.A.B.E., Inc. v. Toledo-Lucas County Board of Health*¹

A group of Ohio bar and restaurant owners sued a board of health, alleging that the Clean Indoor Air Regulation that it had adopted was unlawful and unenforceable. After the plaintiffs filed motions for a TRO and a preliminary injunction, the parties agreed to the federal district court's suggestion that the motions be combined and heard together because the standards are similar. The court's order granted a preliminary injunction, and did not need to address the motion for a TRO.

Q: How do you file a motion for a TRO or preliminary injunction? Then what happens?

A: While legal procedures may vary between jurisdictions, the general process by which pre-trial motions move through the court system is fairly standard:

- **Step 1:** The person challenging the law (the plaintiff) files a complaint with the court. The complaint contains factual information about the case, legal theories upon which the case is based, and a statement that the plaintiff is seeking a declaratory judgment and injunctive relief. The injunctive relief sought via the complaint is presumed to be permanent injunctive relief.
- **Step 2:** At the same time or shortly thereafter, a plaintiff will often file a motion for a preliminary injunction. The plaintiff may also, or alternatively, file a motion for a TRO, but such motions are less common. In addition to

filing an answer in response to the complaint, the defendant usually will file a brief arguing that the preliminary injunction (and/or TRO) should not be granted.

- **Step 3:** The court hears arguments from the plaintiff and the defendant.
- **Step 4:** The court decides whether to grant the motion(s). Decisions concerning TRO motions might take a few days and decisions on preliminary injunction motions might take a few weeks. However, a court may immediately grant or deny the motion(s) through a verbal order and later issue a written order consistent with the verbal order, elaborating on the legal bases for the court's decision.

Example: *Ohio Licensed Beverage Association v. Ohio Department of Health*²

Ohio voters approved a ballot initiative to enact a law prohibiting smoking in public places and workplaces. As required by the law, the defendant drafted rules for implementation and enforcement. The plaintiff filed an initial and an amended complaint with a trial court, seeking a declaratory judgment and injunctive relief, alleging that the rules created a loophole for private clubs that the law did not intend. The plaintiff then filed a motion for a TRO and a preliminary injunction.

After considering the parties' arguments in support of, and in opposition to, the TRO and preliminary injunction, the court determined within two weeks of the filing date of the amended complaint that the plaintiff demonstrated a "substantial likelihood of success on the merits of its declaratory judgment and preliminary and/or permanent injunction claims, that the balance of the harms weigh[ed] in favor of issuing [a TRO], and that the public interest [would be] served by its issuance." The trial court granted the request for a TRO, prohibiting the defendant from implementing and/or enforcing the rule concerning the private club exemption.

Q: What must the plaintiff show to prevail on a TRO motion or a motion for a preliminary injunction? In other words, when do these motions succeed?

A: While the legal tests for both types of motions vary from state to state, the factors that a plaintiff must satisfy for a TRO to be issued often overlap with the factors for a preliminary injunction in that same jurisdiction. In most jurisdictions, for a preliminary injunction to be granted, the plaintiff will need to demonstrate:

- **Substantial likelihood of success on the merits:** First, the plaintiff usually must demonstrate there is a substantial likelihood that, when the court later hears the case in full to decide whether to grant a declaratory judgment, the plaintiff will prevail on the merits of the legal issues in the case.
- **Irreparable harm or injury:** Second, the plaintiff typically must show that if the law is not put on hold while the case is pending, the plaintiff will suffer irreparable harm. Courts generally hold that a showing of “irreparable harm” requires more than lost business profits, and that the harm needs to be imminent and not merely speculative.
- **Balance of harms:** Third, the plaintiff often needs to show that, when the court compares the alleged harms the plaintiff will suffer due to implementation or enforcement of the law with the harms that would result due to delayed implementation or enforcement of the law, the potential harm to the plaintiff outweighs the public health benefits.
- **Public interest:** Lastly, the plaintiff often needs to demonstrate that granting the injunction is in the public’s interest.

Courts typically agree that a preliminary injunction is an extraordinary remedy. As such, some courts are reluctant to grant an injunction at such an early stage in the litigation process, preferring to wait until the case is considered fully at the declaratory judgment and permanent injunction stage.

Example: *U Otter Stop Inn, Inc. v. City of Minneapolis*³

A collection of food and liquor establishments located in the City of Minneapolis filed a motion for a TRO to suspend enforcement of the City’s smoke-free ordinance. The district court denied the motion. On appeal, the Minnesota Court of Appeals affirmed the district court decision. Characterizing the plaintiffs’ motion as one for a preliminary injunction, rather than for a TRO, the court found that the district court did not err when it found that the economic harm the plaintiffs might suffer would be severe, but not irreparable, and that the plaintiffs were unlikely to prevail on the merits of their legal claims.

Example: *Choose Freedom Iowa v. Newton*.⁴

A group of bar and restaurant owners sued the Iowa Department of Public Health and the State of Iowa, alleging that Iowa's Smoke Free Air Act and the rules adopted by the Department violated several provisions of the state and U.S. Constitutions. An Iowa district court, using the terms TRO and preliminary injunction interchangeably, denied the plaintiffs' request for temporary relief. While it found that the plaintiffs had a reasonable chance of success on at least one constitutional claim, it also found no evidence that the plaintiffs had or would suffer substantial or other economic harm, that any speculative economic harm resulting from enforcement of the law was greatly outweighed by the potential harm to public health if the law was not enforced while the case was pending, and that it was in the public's best interest to limit judicial interference and permit the public health law to be enforced.

Q: If a court grants a preliminary injunction in a case, will it generally grant a permanent injunction in the same case?

A: If a court grants a preliminary injunction that does not necessarily mean that the court will later grant a permanent injunction in the same case. The results can and do vary. Yet, a court's discussion of the merits of the case at the preliminary injunction stage might, in some circumstances, be a good indicator as to how the court is thinking about the legal claims at issue.

Q: What law governs preliminary injunctions and temporary restraining orders?

A: Rule 65 of the Federal Rules of Civil Procedures governs TRO and preliminary injunction motions in federal cases. Most states have similar rules, although the procedures and exact legal requirements vary between jurisdictions. A state's case law may also govern the legal tests for granting TRO and preliminary injunction motions in that state.

The information contained in this document is not intended to constitute or replace legal advice. We encourage anyone considering the implementation of any tobacco-related law or policy to seek out local legal counsel to obtain legal advice on these issues.

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¹ *D.A.B.E., Inc, et al v. Toledo-Lucas County Board of Health*, No. 3:01 CV 7334, 2001 WL 1916730, slip op. (N.D. Ohio July 6, 2001).

² *Ohio Licensed Beverage Association v. Ohio Department of Health*, No. 07 CV 005103 (Ct. Comm. Pleas May 14, 2007) (granting temporary restraining order).

³ *U Otter Stop Inn, Inc. v. City of Minneapolis*, A05-1335, 2006 WL 771936, slip op. (Minn. Ct. App. Mar. 28, 2006).

⁴ *Choose Freedom Iowa, et al v. Newton, et al*, Civil No. CE 59509 (Iowa Dist. Ct. Aug. 4, 2008) (denying preliminary injunction).