



Paper No. CB(2)535/04-05(05)

January 3, 2005

Honorable Member of the Panel on Health Services
Legislative Council
Hong Kong, SAR

Dear Legislator,

Clear the Air is an anti-air pollution group working to provide clean air for all people in Hong Kong, indoor and out.

We offer the following Executive Guide to Smoke-free workplace laws to assist you in understand the issues that will be presented by the Government in the January 10, 2005 meeting of the Panel on Health Services.

All Successful implementations of smoking bans have the following characteristics. Without them, the law will be open to attack and may not protect us.

Clear the Air very much wants to make sure this law once enacted is successful, so that every Hong Kong employee is given their legal right to clean, smoke-free air to breathe at every place of work – without exception.

Smoke free laws must:

1. Give every employee in Hong Kong air unpolluted by tobacco smoke to breathe.
2. Be enforceable.
3. Not require any person, or any Government body to make a subjective decision in order to determine if the law applies.
4. Not be at risk to challenge in court.
5. Treat all employees and businesses equally.

For your information, we also attach a survey Clear the Air has sent to all members of the Hong Kong Hotel Association regarding smoke-free workplace laws and we will release the results in due course.

Best regards,

Annelise Connell
Vice Chairman
Clear the Air

SURVEY FOR THE LEGISLATIVE COUNCIL

November 17, 2004

General Manager
Member of Hong Kong Hotel Association, Hong Kong

Dear Manager,

The Legislative Council recently passed a motion in support of a full smoking ban in workplaces including restaurants, pubs and karaokees. The New Secretary for Health, Welfare and Food, Dr Chow Yat-ngok, said that the Smoking (Public Health) (Amendment) Bill will be introduced within this legislative session. The Bill, when enacted will have little impact on Hong Kong's catering and hospitality industries and will significantly improve employees' health. To lobby officials and LegCo members in favor of the legislation, we would appreciate if you can complete the survey enclosed, and send it by fax, mail or email

Thank you.

*Clear the Air Tobacco Smoke Advisory Panel for
Legislative Councilors (Catering) Tommy Cheung and (Hospitality) Howard Young.*

1. Do you know that tobacco smoke causes lung cancer and that it is estimated that 150 catering workers die each year from second-hand smoke?
 Yes No
2. Do you know that the existing law requires you to provide a safe and healthy work environment for your workers and if you do not, you can be fined \$200,000 and 6 months in jail?
 Yes No
3. Do you want to give your employees a safe and healthy work environment?
 Yes No
4. Do you think your Bar employees' health is just as important as your other hotel employees' health.
 Yes No
5. Do you think the new smoke-free workplace law should provide a level playing field
 Yes No

Thank you for completing this survey.

Please provide information below, which will be kept strictly confidential prior to your approval

Respondent's name _____ Position _____

*Please Send to:
Clear the Air Tobacco Smoke Advisory Panel*

Fax: 2565.9537 or email info@cleartheair.org.hk

Hong Kong

Smoke-free workplace laws

An Executive Guide for
LegCo Members

Hon. Legislative Council Member

Representatives of the
Geographical and Functional Constituencies



www.ClearTheAir.org.hk

Oct 2003
Revised Jan 2005

Principles:

A. No Hong Kong employee should be forced by their employer to breathe air severely polluted by tobacco smoke just to keep their job.

No employee, anywhere, should be subjected to severe levels of air pollution caused by tobacco smoke. This includes bars, karaoke venues and other places of entertainment. It also includes businesses that sell tobacco products.

B. The health risk is severe.

The Hong Kong Environmental Protection Department defines a “high” level of air pollution as between 50 and 180 micrograms of respirable suspended particles (RSP) per cubic meter of air.

A reading of over 180 micro gm/m³ is allowed only once per year according to the Hong Kong Environmental Protection Department’s *Air Quality Objectives*.

Just one cigarette in a 97 cubic metre space (a typical noodle shop or bar) will send the RSP levels to 180 for over a half hour.

“Just two cigarettes in a typical bar or noodle shop create more pollution than the highest outdoor level ever recorded in Hong Kong”

- Clear the Air

C. No exceptions are justifiable.

Hong Kong law requires employers to give employees a “safe and healthy” work environment. Severely polluted air is neither safe nor healthy.

Any exemption will create the risk of legal challenge.

The employee’s health risk is lifelong while the employer’s responsibility is limited. Shifting the health liability from any employer who knowingly pollutes the air, onto the employee is unacceptable.

D. Smokers want to breathe clean air, too.

Tobacco is a delivery system for the addictive recreational drug nicotine. The vast majority of smokers want to smoke less.

A complete ban will not only benefit employees who don't smoke, it will benefit employee who are smokers too.

"we can't defend continued smoking as 'free choice' if the person was 'addicted'."

Confidential legal advice to the US Tobacco Institute in 1980:

E. The law must support business owners who provide clean, healthy air.

Currently, owners of smoke-free establishments are being verbally abused by a minority of tobacco users who claim they have a "legal right" to smoke. This is a widely held misconception by tobacco users and causes many problems for owners.

Owners must have the law on their side so they can keep their air clean. They must be able to tell customers who insist on polluting the air with tobacco smoke that they do not have a "legal right" to smoke.

"...quit rates increase from 5% to 20% when workplace smoking bans are implemented."

- Philip Morris
Tobacco company

Exemptions requests must be denied:

Bars:

The Tobacco funded Catering Lobby has claimed that the industry's success depends on their ability to continue to offer their customers air severely polluted by tobacco smoke. Such a premise has been proven false and must be discarded.

There is no evidence based on actual sales tax figures to support this claim. Rather, the contrary is true. There is either no negative economic consequence, or a positive one after smoking bans in bars are implemented.

Furthermore, restaurants get a lot of income from their alcohol sales. They may lose a portion of the very profitable alcohol sales to bars nearby if the bars are exempt from the ban.

Bars and restaurants compete for the same alcohol dollar. The ban should not create uneven competition between business which hold liquor licenses.

Most importantly, the health risk to bar employees increases if a higher percentage of people in the bar are smoking.

Tobacco sellers:

The air in a "Cigar bar" or tobacco shop is exponentially more hazardous and carcinogenic than other places of business. Hiring anyone to work under such conditions constitutes abuse and does not meet even the most liberal definition of a "safe and healthy" work environment.

The Government would be at risk of litigation if it made exceptions for tobacco sellers because the law would be in contravention of existing law.

Therefore, businesses that sell tobacco should not be exempted.

"First 2 months:

After New York City's ban on smoking in bars... in the first 2 months after their ban was implemented, the number of jobs in the Food and Beverage industry increased."

- New York City
Labor Department

"One year later –

Employment in New York City's restaurants and bars has increased by about 1,500 seasonally-adjusted jobs, amounting to an absolute gain of nearly 10,000 jobs since the implementation of the Smoke Free Air Act of 2003"

- New York State
Department of Labor

Ventilation systems.

Ventilation systems do not work.

They do not reduce the air pollution to healthy levels.

According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers, (ASHRE) whose standards are used worldwide, no ventilation system can reduce RSPs to the healthy level of 50 micro gm/m³. They cannot even reduce it to the unhealthy level of 180 micro gm/m³.

Ventilation is un-enforceable.

No installer or manufacturer will guarantee that their ventilation system will reduce the risk from second-hand smoke.

Systems may not be properly maintained

Systems may not be turned on in order to save on electricity.

Employees may still be forced to go into smoke filled rooms

Most importantly, even if used properly, they do not reduce the air pollution to safe levels.

“...high-quality ventilation systems ... (are) not shown to address the health effects of secondhand smoke”

*- Philip Morris
Tobacco website*