

Complaint Protocol Guidance (Part 126) Smoke-Free Law Public Act 188

Background

Generally speaking smoke-free laws are “self enforcing”, however to ensure compliance and to protect the integrity of the law, the following graduated protocol will be followed regarding reported violations of the law. **The goal is compliance, not citations.**

1. A complaint is received by the health department staff, and the MDCH “Smoke Free Workplace Violation & Complaint Form” is used to log the complaint. A sample database will be created and provided to local health departments to document complaints for P.A. 188.
 2. Within 5 working days of receiving a complaint, staff determines validity of complaint. (Is complaint related to the enforcement of PA 188? Does the complaint violate provisions outlined in the law?)
 3. If the complaint is valid, staff contacts the business describing the complaint and determines if further investigation is needed. If further investigation is needed, the local health department will follow the complaint protocol.
 4. If the response from the business is determined to adequately resolve the complaint, health department staff will use the “Smoke Free Workplace Violation & Complaint Form” to close the complaint.
 5. If the response does not adequately resolve the complaint, staff will send a letter to the business describing the complaint (Letter A) along with educational information about the ordinance (postcard). The business has 7 working days to respond by telephone or letter with information about how the situation was corrected.
 6. If health department staff has not heard from the owner or manager within the indicated time period, a call would be placed to make sure that the owner/manager received and understood the complaint letter.
 7. If there is still no response from a business that received a phone call, or if new complaints are received, or the original complainant of an open complaint informs staff that violations are continuing to occur after notification, a hand delivered or certified letter with proof of receipt will be sent (Letter B), and the business must contact the health department staff within 10 business days.
 8. If compliance is achieved, the complaint will be closed using the “Smoke Free Workplace Violation & Complaint Form”. If compliance is not achieved, health department staff will work with the business to provide consultation to ensure compliance with the ordinance.
 9. If a response is not received within the indicated time period as indicated on the notice to cite letter, health department staff will conduct a site visit to the business. Staff will note any evidence of violations such as smoking in the building, presence of ashtrays or smoke odors and the absence of no smoking signs. An administrative fee may also be assessed at that time.
 10. Staff will document findings on the “Smoke Free Workplace Violation & Complaint Form” and will initiate enforcement procedures for violations of the law. (Follow the Local Health Department Enforcement Policy to achieve compliance. **Please consult with MDCH/Tobacco Section & The Smoke-Free Environments Law Project before initiating enforcement procedures.**
- **Note: This guidance is not intended to replace the authorities granted to a local health department in Act 188.**

Letter A

**GUIDANCE DOCUMENT
Sample Enforcement letter- P.A. 188 (Part 126)**

(County Letterhead)

(Date)

(Name of Business)

Dear Mr./Mrs.

We have received a complaint regarding (name of establishment)'s compliance with The Smoke-Free Law, Public Act 188.

On December 10, 2009 the Michigan Legislature passed the Smoke-Free Air Bill, and this bill was signed into law by Governor Granholm on December 18, 2009. The law is in effect as of May 1, 2010. The law requires all workplaces and food service establishments to provide a smoke-free environment.

The following complaint(s) described your business or facility as being in noncompliance with the law:

___ Lack of "no-smoking signs" or the international "no smoking" symbol at all entrances to the building.

___ Ashtrays or other smoking paraphernalia found in an establishment where smoking is prohibited.

___ Person in charge not informing individuals that smoking in violation of this law, and that they are in violation of state laws and subject to penalties

___ Person in charge not refusing service to an individual smoking in violation of this act.

___ Person in charge not asking an individual smoking in violation of this act. to leave the facility.

Details of the complaint:

To resolve this situation, please respond by telephone or letter with information about how this issue was corrected by _____. (2 weeks from date letter was sent).

For your convenience and review, attached is a copy of Public Act 188, along with a brochure on smoke-free environments and a checklist to assist in compliance. The (name of health department) is available to work with you to comply with this ordinance/regulation.

Cordially

(Name)

(Health Officer)

(Name of Health Department)

Letter B

**Guidance Document – P.A. 188 (Part 126)
Second Enforcement Letter
(County Letter Head)**

(Date)

(Address)

Dear _____:

We wrote to you on _____, 2010, indicating that we had received a complaint against your facility regarding compliance with Public Act 188, the Michigan Smoke Free Law.

The Smoke Free Law prohibits smoking in most public places in Michigan, which includes worksites and food service establishments.

Our records show: *(one of the following will be marked)*

_____ You have not responded to our request for communication and complaints continue to be filed against your facility.

_____ You have denied the existence of a violation and complaints continue to be filed with our office.

You must contact the _____ health department by letter or phone call by _____ (within 10 business days) to resolve this non-compliance, or administrative action will be taken by the health department.

Please be aware that it is our preference that food service establishments comply with the Smoke Free Law on a voluntary basis. To that end, we offer consultation to assist in achieving compliance. If you have any questions concerning this matter or would like to discuss ways to resolve the complaint(s), do not hesitate to call (name) at (xxx) xxx-xxxx.

Cordially,

(name)
(Health Officer)
(name of health department)