

# Smoke-Free Ontario Act Tobacco Compliance Protocol



Public Health Units shall support the implementation and enforcement of the Smoke-Free Ontario Act including all the requirements with respect to controls related to smoking tobacco, the sale or provision of tobacco, the display/storage, handling, and the promotion and distribution of tobacco products.

All premises that are required to be smoke-free under the Smoke-Free Ontario Act may be subject to an inspection. Enforcement schedules should be pro-active where resources allow, include risk-based modeling for setting priority among visits, and at minimum should respond to all complaints. Enforcement should be conducted during operating hours, Monday to Saturday, with some Sunday enforcement.

An effective compliance strategy employs a balance of inspection, education and progressive enforcement. Progressive enforcement means the use of more stringent charging options to reflect the frequency and severity of the level of non-compliance.

Enforcement activities include inspections and re-inspections, education visits, and inquiries into complaints. Determination of compliance will be made subject to these types of enforcement activities. For the purpose of uniformity, a response to a complaint and an education visit will be handled in the same manner as an inspection.

The enforcement agency will ensure that all tobacco enforcement officers are trained appropriately with Ministry of Health Promotion sanctioned training courses as soon as practically possible.

Public Health Units are responsible for enforcement of the Smoke-Free Ontario Act at a number of locations including: tobacco vendors, enclosed workplaces, enclosed public places, schools, home daycares, hotels, motels, residential care facilities, hospitals, tobacco wholesalers, tobacco manufacturers, bars and restaurants, condominiums, apartments, college and university residences, patios and shelters, places of entertainment, tobacconists, duty-free shops and/or similar facilities.

## Definitions

a) **Progressive Enforcement:** means the use of more stringent charging options to reflect the frequency and severity of the level of non-compliance.

**Enforcement Agency:** means a Public Health Unit, Regional Health Department, or other agency/organization mandated with enforcement of the Act.

**Enforcement Officer:** means a person appointed as an inspector pursuant to Section 14 of the Act, and also appointed as a Provincial Offences Officer pursuant to the Ontario Provincial Offences Act.

b) **Ministry:** means the Ministry of Health Promotion.

c) **Inspection:** means an examination or assessment conducted by a person appointed as an inspector pursuant to Section 14 of the Act, and also appointed as a Provincial Offences Officer.

d) **Re-inspection:** means a re-examination or re-assessment conducted by a person appointed as an inspector pursuant to Section 14 of the Act, and also appointed as a Provincial Offences Officer pursuant to the Ontario Provincial Offences Act.

e) **Employer:** includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for the employment of a person in it.

f) **Person in Charge:** means someone that exercises control over the activities that take place in and around the school including but not limited to a principal, vice-principal, or other administrative head of the school.

## Administration of Automatic Prohibitions

Public Health Units should inform the Minister of Health Promotion that an automatic prohibition order is required where two or more tobacco sales convictions are registered against any person, owner, partnership or corporation at the same premises address and the circumstances deem this action to be appropriate. A tobacco sales offence involves the following subsections of the Smoke-Free Ontario Act: (Note: registered convictions for sales to minor's offences under the *Tobacco Control Act* may be valid.)

- Section 3(1) or (2)
- Section 5
- Section 6
- Section 7
- Section 16(4)
- Section 8 or 29 of the Tobacco Tax Act

The Tobacco Tax Act is not administered by the Ministry of Health Promotion, and therefore requires information to be compiled from other sources in order to track convictions, in order to determine whether an automatic prohibition applies.

The prohibition period is determined and based on the number of convictions received in a five-year period. For example:

- Two convictions within five years at the same location is a six-month prohibition,
- Three convictions within five years at the same location is a nine-month prohibition,
- Four or more convictions in five years at the same location is a twelve-month prohibition.

Once the tobacco sales and storage order is signed by the Minister of Health Promotion, it is the responsibility of the Public Health Unit to serve and enforce the prohibition order.

## Data Collection and Handling

The Public Health Unit enforcement division/staff will collect data and maintain (in hard copy and/or electronic format) a record of every inspection and re-inspection conducted, in addition to the enforcement officer's notes.

The Tobacco Vendor inspection form established by the Ministry of Health Promotion is to be completed by the tobacco enforcement officer for every inspection and re-inspection conducted, either electronically or in hard copy.

The data collected pursuant to the Smoke-Free Ontario Act shall be provided to the Ministry of Health Promotion according to the established schedule.

## Signs

Public Health Units are required to inspect for compliance with the signage provisions applicable under the Smoke-Free Ontario Act.

### Section 6

#### Age Restriction and Health Warning Sign/Government I.D. Sign

A person who sells tobacco at retail shall post signs at any location where tobacco is sold or offered for sale or supply. The sign must be clearly visible to the person who sells or supplies the tobacco and to the person to whom the tobacco is sold or supplied.

### Section 10

As referenced in ss. 9(3), 10 of the Act and prescribed in s. 15 of the Regulation, signage shall be posted throughout the enclosed workplace, at all entrances and exits, washrooms and other appropriate locations in sufficient numbers to ensure that everyone is aware that smoking is prohibited in the building, and where there is a requirement for a smoke-free perimeter or grounds – in the surrounding area.

## Authority of an Appointed Inspector

The Ministry of Health Promotion administers the appointment of inspectors at the request of Public Health Units. These requests must be made along with supporting documentation as to the person's qualifications, training or planned training, and involvement with the enforcement of the Act.

An enforcement officer may, at any reasonable time, enter any enclosed public place or enclosed workplace in which smoking is prohibited to determine whether the Smoke-Free Ontario Act is being complied with, and for this purpose, may make such examinations and inquiries as are necessary.

Any person who contravenes any provision of the Smoke-Free Ontario Act or who hinders, obstructs or otherwise interferes with an enforcement officer in the conduct of his/her duties is guilty of an offence and, upon conviction is subject to a fine as provided in the Provincial Offences Act or the Smoke-Free Ontario Act. (ss.14 (6))

However, no enforcement officer may enter a workplace that is also a private dwelling without the consent of the occupant, or without obtaining a warrant.