



West Virginia Department of Transportation Policy: **Smoke-Free Workplace** *Issued by the Secretary of Transportation*

Policy No: DOT 3.19

Issue Date: 12/01/1990

Revised: 04/22/2022

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1.0 PURPOSE

The purpose of this policy is to establish procedures to ensure the right to a smoke-free environment for each West Virginia Department of Transportation (WVDOT) employee and the public as they transact business with or receive service from the State. Studies regarding the effects of passive smoke inhalation by non-smokers conclude that exposure to secondhand smoke is harmful to one's health. The working environment should present no unnecessary risk of physical harm or discomfort from secondhand smoke. Workers in State facilities, applicants, clients, and visitors should not be exposed or expose others to environmental tobacco smoke or other vapor that may contain nicotine. Therefore, it is necessary to implement a policy setting forth smoking restrictions in all places of employment, including vehicles, operated by the WVDOT.

2.0 SCOPE

This policy applies to all WVDOT employees, excluding Parkways Authority employees.

3.0 DEFINITIONS

- 3.1 **Adjacent Non-Smoking Space:** Outdoor area within 15 feet, or a greater distance established as a non-smoking space by the local board of health or the Agency Head, adjacent to any entrance, exit, operable window, or ventilation intake for any State-owned or State-leased office building and other facility that is commonly used by State employees or the general public.
- 3.2 **Agency Head:** Chief executive officer of any agency.
- 3.3 **Electronic Cigarette (also known as e-cigarettes or personal vaporizers):** Battery powered device that allows consumption of nicotine by way of a vaporized solution.
- 3.4 **Entrances and Exits:** The established arrival and departure areas and routes leading thereto, including sidewalks, within the non-smoking space as well as the entire length of accessible ramps or stairs; not limited to the actual doors for all places of employment.
- 3.5 **Place of Employment:** Any area under the control of an Agency Head where employees normally frequent during the course of employment, including, but not limited to: indoor and outdoor work areas; employee lounges and break, lunch, and restrooms; public waiting rooms; receiving areas to include loading docks and delivery areas; conference and classrooms; employee cafeterias; hallways; and any other work area, including any office, facility, building, structure, elevator, stairwell, automobile, truck, trailer, other vehicle, and parking garage, whether owned, leased, or operated by the State or its agent(s).
- 3.6 **Secondhand Smoke:** Environmental tobacco smoke, also known as passive or side-stream smoke, which could be voluntarily or involuntarily inhaled by individuals who did not generate that smoke.

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- 3.7 **Smoking:** Burning or vaporizing tobacco products or other substances in a cigarette, cigar, pipe, electronic cigarette, or by other means or equipment to inhale and exhale the smoke or vapor.

4.0 POLICY

- 4.1 It is the responsibility of the Agency Head to ensure that all WVDOT places of employment maintain a smoke-free environment and to make both WVDOT employees and the public aware of their responsibility to ensure this smoke-free environment. The Agency Head shall implement progressive discipline for any employee in violation of this policy. Such disciplinary action shall be based on a violation of this policy and not imposed in a discriminatory manner as a result of the employee's status as a tobacco user.
- A. The Agency Head shall establish a smoke-free environment in their places of employment in accordance with this policy, definitions included in this policy, and any properly promulgated regulations of local boards of health.
 - B. The Agency Head shall prohibit smoking and use of other tobacco or nicotine products at work sites by employees and the public to limit the exposure of individuals to the harmful effects of secondhand smoke.
 - C. Smoking and use of tobacco or nicotine products by employees of the WVDOT is prohibited at their places of employment and at adjacent non-smoking spaces.
 - D. Smoking and use of tobacco or nicotine products must always be fifteen (15) feet or more from any, State building or facility entrance, including state vehicles and equipment.
 - E. With approval from the Agency Head, District Managers, Division Directors, or appropriate authorities will restrict smoking and use of tobacco or nicotine products for employees while engaged in outdoor work activities. Smoking and use of tobacco or nicotine products must always be fifteen (15) feet or more away from any employee engaged in work-related activities, regardless of outdoor or indoor location.
 - F. The Agency Head is not required to make accommodations for outdoor smoking areas.
 - G. In the application of this policy, anytime there is a conflict between the rights of smokers and non-smokers, the Agency Head shall protect the health of the general public and employees by minimizing exposure to secondhand smoke.
- 4.2 Public waiting rooms and receiving areas to include loading docks and delivery areas shall be smoke-free, and smoking restrictions shall be actively enforced by the individuals responsible for those areas.
- A. The Agency Head shall clearly and conspicuously post "No Smoking" signs

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- in accordance with the regulations of local boards of health or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar diagonally across it) at every entrance to and exit from buildings and facilities or other areas where smoking is prohibited.
- B. At the expense of the Agency Head, receptacles should be placed outside all buildings to encourage persons to extinguish and to properly dispose of smoking products before entering. Receptacles shall be placed beyond the adjacent non-smoking spaces. All ashtrays and other smoking paraphernalia (including e-cigarettes and other smoking devices) shall be removed from any area where smoking is prohibited. This Smoke-Free Workplace policy shall be available for review, if requested, in all waiting rooms and reception areas.
- 4.3 Smoking restrictions shall be enforced at all conferences, meetings, and training sessions conducted by WVDOT and shall be consistent with all other provisions of this policy.
- A. All non-State entities using facilities owned, leased, or operated by the State must conform to this policy.
- B. Employees may ask the person in charge of any external meetings to require a smoke-free environment.
- 4.4 The Agency Head is encouraged to provide support and assistance to employees in the implementation and enforcement of this policy.
- A. The Agency Head is encouraged to refer employees to smoking cessation programs.
- B. Employees who desire to smoke or use e-cigarettes/other smoking devices may do so during their scheduled or any other authorized break period provided they use an outdoor designated smoking space beyond an adjacent non-smoking space and do not exceed their allotted break time to do so.
- 4.5 All related policies shall be enforced by the Agency Head.
- A. This policy does not supersede any State agency policy, local ordinances or federal and State statutes that are more restrictive and applicable to State places of employment.
- B. West Virginia Code §21-3-19 prohibits employers from discriminating in employment against persons who use tobacco products off the premises of the employer during nonworking hours.
- C. Enforcement of this policy in or at WVDOT-owned, -leased or -operated office buildings, facilities, and vehicles is the responsibility of the Agency Head. Violations of this policy by employees shall be reported to the employee’s immediate supervisor.

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- D. Managers and supervisors are to enforce for their employees this policy as well.
- E. Employees who fail to adhere to this policy, and administrative and supervisory staff who fail to enforce it, may be subject to appropriate disciplinary action.

5.0 REFERENCES

- A. West Virginia Code §21-3-19, Discrimination for use of tobacco products prohibited.
- B. Foundation for Independent Living, Inc., et al. v. Cabell-Huntington Bd. of Health and SER Kanawha-Charleston Bd. of Health v. King, et al., 591 S.E.2d 744 (2003).
- C. Hartman v. The West Virginia Department of Human Services, Grievance Docket No. DHS-88-033, (February 22, 1989).
- D. Kanawha-Charleston Board of Health Clean Indoor Air Regulation (2007).

6.0 CHANGE LOG

April 22, 2022 -

- Converted policy from West Virginia Division of Personnel (WVDOP) to WVDOT.
 - WVDOP policy was effective December 1, 1990, and last revised May 1, 2011.
- Added language to include vaping and e-cigarettes.
- Added language to 4.1.E. to include smoking in all locations in regard to fifteen (15) feet distance from work-related activities.

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Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 et seq., and §17-2-1 et seq., waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.