

Frequently Asked Questions About the Utah Indoor Clean Air Act May 2010

General

1. What does the Utah Indoor Clean Air Act Cover?

Generally speaking, the Utah Indoor Clean Air Act prohibits smoking, the possession of a lit tobacco product in any form, in all enclosed places of public access and publicly owned buildings. Places of public access are any enclosed indoor place of business...whether publicly or privately owned, to which persons not employed at the place of public access have regular and general access or which the public uses. More recently the Act also has included any workplace that is not a place of public access or publicly owned building or office, but has one or more employees who are not owner-operators of the business. Smoking is also not allowed in vehicles used for work if they are occupied by a non-smoker. §26-38-3(1); §26-38-2(1); §26-38-2(3); §26-38-2(1)(n); R 392-510-6(4).

Simply put, in almost all cases anymore smoking is no longer permitted in any building or otherwise enclosed structure. When in doubt business, agency, or organizational leaders are encouraged to contact their local health department for guidance.

2. Can I get an exception for my business?

In order to get an exception from the smoking prohibitions of the UICAA your business would have to be eligible for one of the exemptions allowed by the Utah State Legislature.

They are:

- Single proprietor types of businesses, e.g.- shoe cobbler, welder, where the owner/operator is the only person present.
- Designated guest rooms in hotels, motels, and “bed and breakfast” lodging facilities, but smoking is prohibited in the common areas, e.g.- lounges, lobbies, dining areas.
- Separate and enclosed areas in the Salt Lake International Airport §26-38-3(2)(a),(b),(c).

3. I have a private business but the UICAA states in Section 26-38-3(1) that smoking is prohibited in all enclosed indoor places of public access and publicly owned buildings and offices. Does that mean I can allow smoking in my private business?

No. The Utah Indoor Clean Air Act defines places of public access in Section 26-38-2(1) to include places, whether publicly or privately owned, to which persons not employed at the place have regular and general access or which the public uses.

4. How does the UICAA apply to vehicles that are used for work?

While smoking may be allowed in vehicles, (whether company or privately owned), that are used for conducting work-related assignment. However, smoking is not allowed at any time if a non-smoking person is present. The no smoking requirement is in effect even if the non-smoking person says it is okay to smoke and the vehicle being used for work is a privately owned vehicle. R 392-510-6(4).

5. My trucking firm operates both line and sleeper operations. How are my drivers affected by the UICAA?

R 392-510-6(4) does not allow smoking at any time if a non-smoking person is present in the truck or other work-related vehicle.

There have been reports by drivers and others using vehicles that they experience health related problems associated with having to work in a vehicle where a previous driver or worker has smoked. While not covered by the UICAA, the Federal Americans with Disabilities Act lists breathing as a protected class under the Act that may require a business, if a complaint is lodged, to make a reasonable accommodation to alleviate situations that may be causing breathing problems. As a result your firm may want to consider a total ban of smoking at any time in vehicles used for work. For more information about the ADA go to: <http://www.ada.gov/> .

6. What about break rooms in my business to which we only allow our employees to access. Are we still prevented from allowing smoking?

Yes. The UICAA prohibits smoking in publically accessible places, whether publicly or privately owned, to which person not employed at the place have general and regular access or which the public uses. In addition the Act prohibits smoking in any workplace that is not a place of public access or a publicly owned building or office, but has one or more employees who are not owner-operators of the business. §26-38-3(1); §26-38-2(1) and (1)(n).

7. Can we provide a structure where smoking is allowed on our premises other than in our buildings?

Yes. While there is no requirement to provide smoking permitted areas, if your company decides to provide one you may do so. It is important to note that these structures must not be built in such a way as to be defined as an enclosed place of public access. Enclosed means “Space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows, or similar structures (exclusive of doors and passageways) which extend for the floor to the ceiling.” These structures would also have to be located a minimum of 25 feet from any entry way, exit, open window, or air intake of buildings where smoking is prohibited. The 25 foot requirement applies to employee only entrances and exits as well as public entrances to buildings. R 392-510-2(6); R 392-510-9.

An example of a structure that may be acceptable are the traditional types of bus stop kiosks which are not enclosed. Any structure with doors or windows and floor to ceiling walls should be suspected of not complying with the requirement. When in doubt contact your local health department for guidance.

8. What are the penalties for violating the Utah Indoor Clean Air Act?

Civil monetary penalties can be assessed by state and local health departments on those person who violate provisions of the UICAA. For the first violation of Section 26-38-3 a

civil penalty of up to \$100 may be imposed. For a second or subsequent violation the individual is subject to a penalty of not less than \$100 and not more than \$500. §26-38-8.

Businesses, agencies, organizations, or individuals that do not abide by UICAA requirements and fail to respond to orders by state and local health department to comply may also be subject to a civil penalty of up to \$10,000 (which can be assessed on a per occurrence basis). §26-23-6.

By carefully reviewing the requirements of the UICAA statute and administrative rule, businesses and organizations can avoid being penalized while at the same time providing a healthy environment for workers, customers, and visitors. State and local health departments are readily available to address any questions you may have about the UICAA. For assistance you may also visit the Utah Tobacco Prevention and Control Program website at: <http://www.tobaccofreeutah.org/uicaastat&rule.html> or call 1.877.220.3466.

SPECIAL CIRCUMSTANCES

Child Care Providers

1. I provide child care in my home. Does the UICAA apply to my home?

Yes. If the facility you are providing care in is your home (or someone else's home) no smoking is allowed while children, other than your child, are present. Discuss this with family members and friends so everyone is clear about the requirement. You are also required to post appropriate signage indicating that no smoking is allowed. §26-38-2(1)(j), R 392 510-12.

2. What do I do if someone smokes inside my home or facility where I care for children?

Inform employee(s), parent(s), and visitor(s) that the law prohibits smoking in the facility. If they do not heed the warning, ask them to leave the facility (and the premises if that is your choice as property owner or manager). In the unlikely case that a person fails to leave, consider calling local law enforcement for assistance. §26-38-7.

Public and Private Elementary and Secondary Schools

1. How does the UICAA apply in elementary and secondary schools?

The UICAA prohibits smoking in public and private elementary and secondary school buildings and educational facilities and the property on which those facilities are located. §26-38-2(1)(k).

2. What are we required to do at our school?

One of the most important steps administrators can take, if they have not already done so, is to develop and disseminate a written smoking (tobacco) policy to all employees to make them aware of the policy and consequences for violating it. In addition, signs are required to be posted that state that no smoking is allowed. From time-to-time It is also important to remind staff and parents who visit the campus about the policy. R 392-510-12(1). For additional assistance you can access the School's Guide to Comprehensive Tobacco

Control at: <http://www.tobaccofreeutah.org/schooguide.pdf>

3. We have a district shop for maintaining and repairing vehicles and other district equipment. How does the UICAA apply to our building since we do not have any students in the facility at any time?

For those facilities or buildings that are located on school property that are not educational facilities, e.g.- district shops for buses, smoking may be allowed (at the discretion of the school district) on the premises but no one may smoke within 25 feet of any entry, exit, open window, or air intake of the building where smoking is prohibited. The 25 foot rule also applies to loading docks or repair bays that typically have large doors for vehicles to access. R 392-510-4; R 392-510-9.

It is important to note that this allowance only applies if there isn't any classroom instruction, trade, craft, computer, or other technical or professional training, e.g.- shop class, automotive classes, taking place in these facilities. If any of these types of events take place then smoking may not be permitted in the building or on the premises. §26-38-1(2)(k); R 392-510-10.

4. What do I do if someone smokes in the school or on the grounds where I work?

If the person smoking is an adult (at least 19 years of age) and you are an administrator, teacher, or employee at the school the Act requires that an owner, agent, or employee of a place where smoking is prohibited to request the person to extinguish the tobacco product. If they fail to do so, the person must be asked to leave the premises. Your school or district may have a policy whereby you would contact the principal, assistant principal, or the school resource officer to carry out this duty. §26-38-7.

It is recommended that the local law enforcement agency be contacted to deal with the unlikely situation in which the person smoking refuses to either extinguish the tobacco product or to leave the premises.

In addition, it is important to note that Utah law prohibits the possession or use of all types of tobacco and E cigarettes at any time by students under the age of 19. This applies to students from adjoining states (whose laws may allow 18 year olds to possess or use tobacco) who are at a Utah school to participate in extracurricular activities. § 76-10-105.

5. Does the UICAA apply to private charter schools?

Yes. Charter schools fall under the same regulations as public schools. §26-38-1(2)(k).

6. Is the football stadium, or baseball diamond, etc., at my school covered by the UICAA?

Yes. The UICAA prohibits smoking at all elementary and secondary school buildings, educational facilities, and the premises on which they are located. Football, soccer, and baseball diamonds fall under these requirements. Posting of appropriate signs and occasional public address announcements at events can help make spectators aware of the policy. This action may be particularly important in those school districts that hold events with out-of-

state schools. §26-38-1(2)(k).

Social, Fraternal, and Religious Organizations

1. If our fraternal group has a club license can we allow smoking?

No. The UICAA prohibits smoking in all places of public access which includes any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families. In addition, all clubs licensed under Title 32B-1-102 are prohibited from allowing smoking. Finally, if the facility is rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor, no smoking may be allowed as well. §26-38-3(1); §26-38-2(1)(l), (m), (p).

2. Our social organization has a patio where we entertain. Can we allow smoking on the patio?

The UICAA prohibits smoking in buildings that are places of public access to which persons not employed at the place have general and regular access or which the public uses. In addition, smoking is not allowed within 25 feet of any entry, exit, open window, or air intake of these buildings. In order to allow smoking on the patio the smoking permitted area(s) would need to be 25 feet from the above listed instances. Even then, a proprietor of a place has the right to prohibit smoking anywhere on the premises which can include anywhere outdoors on the premises. §26-38-3(1); R 392-510-9; R 392-510-4.

3. We have a meeting room in our building that is not part of our club. Can we allow smoking in the location when weddings or other social gatherings are held there?

No. Smoking is not permitted in any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when it is used solely by the organization members or their guests or families. This also would apply to facilities that are rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor. §26-38-2(1)(l) and (m).

4. Are fraternities and sororities at universities and colleges considered a “fraternal organization” under the law and, if so, is smoking in fraternity and sorority houses prohibited by the UICAA?

Yes, they are considered to be fraternal organizations. Therefore, they are beholden to the requirements of the law prohibiting smoking when conducting social events at their houses by organization members, guests, or their families. §26-38-2(1).

Private Functions

1. What am I required to do to comply with the UICAA if I sponsor or otherwise offer a private function?

If you are sponsoring or holding a private function assure that participants do not smoke inside facilities where the event is taking place. §26-38-2(m)

2. What do I do if someone at my private wedding party or similar event smokes?

You should politely let the person know that the UICAA does not allow smoking inside at the event and ask them to either extinguish their cigarette or cigar or go outside. The UICAA rule also prohibits smoking within 25 feet of entry ways, exits, open windows, and air intakes of buildings so it will be important to inform guests who choose to go outside about this requirement as well. §26-38-2(1)(m); R 392-510-9.

3. Does the restriction on private functions apply if I hold the event in my home?

Probably not. The UICAA applies to facilities that are rented or leased for private functions from which the general public is excluded. If you are renting out your home to someone else to provide a private function, the UICAA would not apply. However, many multiple unit housing complexes (apartments and condominiums) have established their own policies which may prohibit smoking in these locations. §26-38-2(1)(m).

Taverns and Clubs

1. How does the UICAA affect smoking in taverns and clubs?

Beginning in 2006 and ending January of 2009, changes occurred in the Act that resulted in all clubs and taverns that receive licenses from the Department of Alcohol and Beverage Control becoming smoke-free. Smoking is not allowed at any time in these facilities including kitchens, break rooms, and meeting rooms. This restriction also applies to private functions that are held at clubs and taverns. §26-38-2(d), (m), and (p).

2. What are the penalties for allowing smoking in a tavern or club?

Civil monetary penalties can be assessed by state and local health departments on those person who violate provisions of the UICAA. For the first violation of Section 26-38-3 a civil penalty of up to \$100 may be imposed. For a second or subsequent violation the individual is subject to a penalty of not less than \$100 and not more than \$500. §26-38-8.

Businesses, agencies, organizations, or individuals that do not abide by UICAA requirements and fail to respond to orders by state and local health department to comply may also be subject to a civil penalty of up to \$10,000 (which can be assessed on a per occurrence basis). §26-23-6.

By carefully reviewing the requirements of the UICAA statute and administrative rule, businesses and organizations can avoid being penalized while at the same time providing a healthy environment for workers, customers, and visitors. State and local health departments are readily available to address any questions you may have about the UICAA. For assistance you may also visit the Utah Tobacco Prevention and Control Program website at: <http://www.tobaccofreeutah.org/uicaastat&rule.html> or call 1.877.220.3466.

3. What if smoking was allowed before the change in the law? Can we still allow smoking?

No. Smoking at taverns and clubs that were in business prior to the changes in the Act occurring are not grand fathered in regarding their smoking status. Therefore, smoking is prohibited inside the building as well as outside within 25 feet of any entry way, exit, open

window, or air intake. The 25 foot limit also applies to employee entrances and exits to buildings. §26-38-2(1)(d), (p); R 392-510-9.

Note: The information provided in this document is subject to change without notice and is provided for educational purposes only. To keep up-to-date readers are urged to by call the Tobacco Free Utah Resource Line: 1.877.220.3466. or to visit the Utah Tobacco Prevention and Control Program website at: <http://www.tobaccofreeutah.org/uicaastat&rule.html>.