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**WORKSAFE**

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WS301

OCCUPATIONAL SAFETY AND HEALTH ACT 1984  
OCCUPATIONAL SAFETY AND HEALTH AMENDMENT  
REGULATIONS (No. 2) 1997

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

**Citation**

1. These regulations may be cited as the *Occupational Safety and Health Amendment Regulations (No. 2) 1997*.

**Commencement**

2. These regulations come into operation on 1 August 1998.

**Principal regulations**

3. In these regulations the *Occupational Safety and Health Regulations 1996\** are referred to as the principal regulations.

[\* *Published in Gazette 27 September 1996, p. 4837-5080.*  
*For amendments to 9 July 1997 see Gazette 10 June 1997,*  
*p. 2670-1.*]

**Subdivision heading inserted in Division 3 of Part 3**

4. After the heading to Division 3 of Part 3 of the principal regulations the following Subdivision heading is inserted —

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*Subdivision 1 — Atmosphere and respiratory protection generally*

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**Regulation 3.37 amended**

5. Regulation 3.37 of the principal regulations is amended by deleting "Division" and substituting the following —

" Subdivision ".

**Subdivision 2 inserted in Division 3 of Part 3**

6. After regulation 3.44 of the principal regulations the following Subdivision is inserted —

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*Subdivision 2 — Protection from tobacco smoke*

**Definitions**

**3.44A.** In this Subdivision —

"designated smoking area" means an area of a workplace designated under regulation 3.44C (1) to be an area in which persons may smoke;

"enclosed", in relation to a workplace, means a workplace that has a ceiling or roof and walls or other vertical covering so that when the existing closeable windows and doors and other passageways are closed, the workplace is completely or substantially enclosed; and the fact that an existing closeable window, door or passageway is open at any particular time does not determine whether or not the workplace is enclosed for the purposes of this Subdivision;

"smoke" means to smoke, hold or otherwise have control of ignited tobacco, whether by way of —

- (a) a cigarette, cigar or any other product the main, or a substantial, ingredient of which is tobacco; or
- (b) an implement containing tobacco or any other product the main, or a substantial, ingredient of which is tobacco.

**Smoking prohibited in enclosed workplaces except in designated smoking areas**

**3.44B.** (1) A person who, at an enclosed workplace, is an employer, a self-employed person or an employee must not smoke in the enclosed workplace.

Penalty: \$5 000.

(2) A person does not commit an offence under subregulation (1) if, proof of which is on the person —

- (a) the person smokes in a designated smoking area;
- (b) the person is not working at the time he or she smokes; and
- (c) in the case of an employer, no employee is working in the designated area when the employer is smoking.

**Designated smoking areas**

**3.44C.** (1) A person who, at a workplace which is enclosed, is an employer or a person having control of the workplace may, subject to subregulation (2), designate an area of the workplace to be an area in which persons may smoke.

(2) A person who, at a workplace which is enclosed, is an employer or a person having control of the workplace must not designate an area of the workplace to be an area in which persons may smoke unless —

- (a) the area is designed or arranged so that tobacco smoke from the area does not enter any other part of the workplace; and
- (b) there is provided an exhaust system that effectively extracts tobacco smoke from the area and which is arranged so as to prevent circulation of the extracted tobacco smoke into any part of the workplace.

Penalty applicable to subregulation (2): \$25 000.

#### **Notice to be given as to restrictions on smoking**

**3.44D.** A person who, at a workplace which is enclosed, is an employer or a person having control of the workplace must ensure that notice is given or displayed to persons working in the enclosed workplace to the effect that smoking by those persons is prohibited in the enclosed workplace.

Penalty: \$25 000.

#### **Persons not to work in designated smoking areas when persons are smoking in that area**

**3.44E.** (1) A person who, at a workplace which is enclosed, is an employer must ensure that no employee is required to work in a designated smoking area when a person is smoking in that area.

Penalty: \$25 000.

(2) A person who, at a workplace which is enclosed, is a self-employed person must not work in a designated smoking area when a person is smoking in that area.

Penalty: \$25 000.

#### **Inspectors may require persons to stop smoking**

**3.44F.** (1) If an inspector has reasonable cause to believe that a person is smoking in contravention of regulation 3.44B the inspector may require the person to extinguish the cigarette, cigar or other tobacco product that the person is smoking.

(2) A person must comply with a requirement of an inspector made under subregulation (1).

Penalty applicable to subregulation (2): \$5 000.

By Command of the Lieutenant-Governor and deputy of the Governor,

J. PRITCHARD, Clerk of the Executive Council.