



## **Tobacco Policies up in Smoke:**

### **E-Cigarettes and What Employers Should Know**

The popularity of e-cigarettes has exploded in recent years. For those who haven't heard of them, an e-cigarette is an electronic device that looks like a cigarette, but is smokeless. When inhaled, it contains a mixture of water vapor and nicotine, satisfying the smokers craving for nicotine while at the same time eliminating second-hand smoke. Using an e-cigarette is called "vaping." E-cigarettes have enjoyed much of their success because, in most states, they can be smoked where smoking has been banned such as in bars, theatres, and restaurants. In other words, e-cigarettes have allowed smokers to, in a sense, re-enter society.

This raises some concerns for employers. Most employers have tobacco-free workplace policies in effect. According to the FDA, e-cigarettes are not "tobacco cessation products," meaning that they are not considered therapeutic for the purposes of quitting smoking. Therefore, employers are free to include e-cigarettes in their general tobacco free policies.

There are a number of reasons why an employer should consider banning the use of e-cigarettes in the workplace. For one thing, they contain nicotine and thus can be detrimental to the long term health of your employees. In addition, their use on the job may be a distraction and the vapor that these devices produce can still be an annoyance to non-smoking employees. As a practical matter e-cigarettes look very similar to regular cigarettes, and allowing e-cigarettes in the workplace may render it more difficult to enforce a general cigarette ban. And finally, a number of states already ban the use of e-cigarettes in the workplace including California, Colorado, New Hampshire, and New Jersey. At this time, New York is contemplating such a ban. If you decide to include these devices in your tobacco policy, be sure to specifically mention the use of e-cigarettes. If you need any assistance in revising your anti-tobacco policy, please contact me.



By Alan B. Pearl  
Portnoy, Messinger, Pearl & Associates, Inc.  
Syosset, NY 11791  
516-921-3400  
E-mail: [ABPearl@pmphr.com](mailto:ABPearl@pmphr.com)  
Website: [www.pmphr.com](http://www.pmphr.com)

This article was originally published in the October 2013 ACCA Greater New York Contractor Newsletter. This article is intended for general information only and should not be construed as legal advice. You are urged to contact PMP or your own advisors on your unique situation.

© Portnoy, Messinger, Pearl & Associates, Inc. | [www.pmphr.com](http://www.pmphr.com) | 516.921.3400