

ADVERSITY & MISINFORMATION

Using history as a guideline, the first few months after a new smoke-free law has passed are sure to produce a number of anecdotal stories from restaurant and bar owners. These stories typically make dire claims that business is down and regular customers are staying away as a result of the new law.

One month after New York City went partially smoke free in 1995, the New York Tavern & Restaurant Association, which has taken hundreds of thousands of dollars in donations from tobacco companies, sent out a news release claiming 41 percent of restaurants responding to its survey reported, “lower gross receipts.”

Five months after the California smoke-free bar law was enacted, a trade group called the American Beverage Institute, which also works closely with big tobacco companies, issued a study claiming “60 percent of 300 establishments questioned in a telephone survey reported a decrease in business.” (*According to a story published on May 1, 1998 in the Los Angeles Times.*)

What is the real outcome? Early on, no one really knows. But when sales tax figures are finally reported, normally a year later, the actual results become quite clear.

As it turns out, once the gross receipts were reported for sales taxes, New York City restaurant sales (adjusted for inflation) grew 16 percent in the first seven years of the law. During the first five years of California’s smoke-free law, sales at eating and drinking establishments grew by between four and 11 percent annually and did not slow down even after the smoke-free bar law was enacted. (*According to sales tax collections.*)

Initially, some loyal customers who smoke will say they will quit patronizing your business and they do. But they rarely stay away more than a few weeks. Those who do stay away are typically balanced out by the new customers you gain.

So the best advice early on, as a new smoke-free law is enacted, is to take a wait-and-see approach and not jump to conclusions too quickly. As in other years, the state of the economy has proven to have a stronger impact on food and beverage sales than any other factor.

This section will give you an idea of how adversarial sentiment flows during the initial stages of a smoke-free workplace law and how to best prepare for these situations.



Customer Complaints:

The best way to handle customer complaints is to head them off before they become an issue. This can be accomplished by posting “Smoke-Free” signs in a highly visible location and removing all ash trays or other accommodations for smoking. You may also want to talk to customers about the new law and remind them how much you value their continued business. Focus on the smoke, not the smoker.

While fears of enforcement are always uppermost in management’s mind when a new smoke free law is enacted, fortunately, most people obey the law and it isn’t a big problem. In fact in most cases the complaints are reduced when compared to the previous problem of negotiating customer preferences between smoking and no smoking sections.

(For more information on how to train employees to enforce the law with the customer’s best interest in mind, please see the “Training Employees/Enforcement” section of this handbook.)



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Media attacks:

Upon enactment of a new smoke-free law, you should not be surprised to find stories popping up almost instantly calling the ban a failure. They will claim that sales are down, customers have started driving to other towns where they can smoke, or that smokers are no longer eating out at all.

As you read these, remember the motive behind such stories often comes from outside the industry. In a news conference held in Los Angeles shortly after California bars went smoke free, one bar owner acknowledged that she had been sent to a convention in Las Vegas that was sponsored by a major cigarette manufacturer and was told ways to publicly protest the smoking ban.

In fact, plans to use the media in order to announce economic hardships of smoking bans are often conceived well before the ban is even enacted. In one of America's first cities to go smoke free, Beverly Hills, CA, the tobacco industry repeatedly claimed that restaurants suffered a 30% decline in sales during the first five months that the smoke free ordinance was in effect. Yet when actual sales tax figures were later reported to the state, it turned out that sales had actually increased. *(According to a June 6, 1994 letter stating the testimony of Barry Fogel, Jacopo's Restaurant group owner and president of the Beverly Hills Restaurant Association, before the New York City Council)*

So there may be considerable negative news on the airwaves and in newspapers and it is often hard to determine who the messenger behind it all really is. Knowing this beforehand can help you anticipate what to expect, and allow you to make up your own mind about what customer reaction really is. Early on in the enactment process, it is better to trust your own instincts and determine what is actually happening with your own operation, rather than rely on information fed to you from someone else.



Lawsuits and Counter Legislation:

As a last resort, tobacco companies will often try to achieve in court or at the capitol what they were not able to achieve the first time around. Rarely do these lawsuits succeed, and with 31 percent of the country's restaurants under smoke-free laws at the end of 2003, the likelihood these laws will be overturned in court grows even slimmer.

In California, for example, tobacco producers tried to take the teeth out of the state's workplace smoking ban, by introducing their own watered-down version on the ballot. Despite a \$19 million budget to pass it, the tobacco-led proposition lost on election day with 71 percent of the voters rejecting it.

Counter legislation, either through elected officials or voter referendum, may succeed in a few cases, but again, it is an up-hill battle that is getting steeper every day. The public's desire for smoke-free workplaces has become increasingly intense.

Thus, looking to reverse new smoke-free laws through these methods is always a long shot. More likely, a change in the law will occur only if it is too weak and needs to be strengthened to include any workplaces it may have exempted, thereby creating a level playing field.

Misleading Economic Studies:

Be wary of who is producing the studies that claim a negative impact from smoking bans. Researches recently conducted a review and analysis of 97 studies on the economic impact of smoke-free policies on the hospitality industry. They concluded that all of the best designed studies report either no impact, or a positive impact of smoke-free restaurant and bar laws on restaurant sales and employment.

These researchers found that poorly-designed, low-quality studies were much more likely to conclude that smoke-free regulations adversely impacted the hospitality industry, and that those poorly-designed low-quality studies were much more likely to be funded by the tobacco industry, which obviously has a direct fiscal stake in this matter.

In fact, all of the studies that found a negative impact were funded by the tobacco industry. Ninety-four percent of the tobacco industry-supported studies found a negative economic impact compared to none of the non-tobacco supported studies.

For further evidence, just look at the cities and states where smoke-free policies have been in place for a few years. Once the complete economic impact becomes clear, through collection of sales tax data and other means, the arguments claiming economic catastrophe suddenly cease.

Sales tax receipts, from the state Board of Equalization, or equivalent state agency, are the only data which measure restaurant sales in an unbiased, accurate fashion. Surveys measure restaurant owners' impressions; they generally do not provide data to back up those impressions. Although restaurant owners may perceive a downturn in sales, only sales tax receipts tell the real story.



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Less Disagreement Than Years Past:

Fortunately, disagreements about the dangers of secondhand smoke are diminishing.

In 1988 a tobacco industry memo describes how Big Tobacco spent “vast sums of money” paying researchers to “stimulate controversy” regarding the science of secondhand smoke.

More recently, in a Philip Morris brochure entitled “Raising Kids Who Don’t Smoke”, the tobacco producer acknowledges “secondhand smoke contains 43 chemicals that are known to cause cancer.”

So as the evidence about secondhand smoke becomes more clear, clean air controversies will hopefully find more common ground too.



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Philip Morris USA