**This sample policy complies with Maine’s Workplace Smoking Act of 1985.**

# **Maine’s Workplace Smoking Act of 1985**

Maine’s Workplace Smoking Act of 1985 was enacted to protect the employer and employees from the detrimental effects of smoking by others. Each employer within Maine shall establish a written policy that prohibits smoking within the business facility, which includes vehicles used in the course of work, outdoor and off-site areas under the control of an employer at which employees perform services for their employer. Smoking means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke (*See*, M.R.S.§1580-A). Smoking shall only be permitted outside in Designated Smoking Areas, which must be at least 20 feet from windows, entryways, vents, doorways or other openings and must prevent smoke escaping into an enclosed area of a business facility, public place or other areas where smoking is prohibited. Designated smoking areas shall be described within the written policy. The employer shall post and supervise the implementation of the written policy. The employer shall provide a copy of the policy to any employee upon request. All areas of a business facility into which members of the public are invited or allowed are governed by the provisions of Maine’s Public Smoking Act (*See*, 22 M.R.S. §§ 1541-1548 and 10-144 CMR c. 249). Maine’s Public Smoking Act further defines smoking to include carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. Smoking includes the use of an electronic smoking device (*See*, M.R.S.§1541). The employer’s written policy may prohibit smoking throughout the entire business facility.

Pursuant to 22 M.R.S. §1580-A (9), a **qualifying club** may negotiate through the collective bargaining process to permit smoking within the business facility, after implementing written policies and procedures ensuring that only the employer and employees, members and invited guests accompanied by a member are allowed entry to the premises and the qualifying club demonstrates by a written secret ballot vote taken at least once every three years that the majority of members voting have voted to allow smoking. A qualifying club means a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004) that is not open to the public or to any other club that was not open to the public and that was in operation prior to January 1, 2004. (Insert qualifying club name here) meets the definition of qualifying club and may allow smoking only if:

1. Policies concerning smoking have been mutually agreed upon by the employer and **all the current employees**.
2. The qualifying club has implemented written policies and procedures ensuring that it is not open to the public, meaning only the **employer and employees, members, and invited guests accompanied by a member** are allowed entry to the premises; and
3. The qualifying club demonstrates by a written secret ballot vote taken **at least once every three years** that a **majority of the members voting** have voted to permit smoking.

# **Definitions (*See*, 22 M.R.S. §1580-A)**

Club: a reputable group of individuals, including a veteran’s service organization chartered under 36 United States Code, Subtitle II, Part B (2004), incorporated and operating in a bona fide manner solely for purposes of a recreational, social, patriotic or fraternal nature and not for pecuniary gain, which by indicia of permanent status has:

1. Been in continuous operation and existence;
2. Regularly occupied, as owner or lessee, a suitable clubhouse or facility for use of members;
3. Held regular meetings;
4. Conducted its business through regularly elected officers;
5. Charged and collected dues from members;
6. Adopted a charter and bylaws clearly defining the purpose of the organization; and
7. Operated with selective membership criteria.

Designated Smoking Area: an outdoor area where smoking is permitted, which must be at least 20 feet from windows, entryways, vents, doorways or other openings and must be designed to prevent smoke escaping from the designated smoking area into an enclosed area of a workplace or public place or other areas where smoking is prohibited.

Employer: a person who has one or more employees. Employer includes an agent of an employer and the State or a political subdivision of the State

Employee: a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied. Employee includes a person employed by the State or a political subdivision of the State.

Enclosed area: a space between a floor and a ceiling that is demarcated on all sides by walls, windows, shutters, doors or passageways. A partition or partial wall is a demarcation of an enclosed area if it extends from the floor to within 4 feet of the ceiling or from the ceiling to within 4 feet of the floor.

Invited guest: an individual who is a relative or established acquaintance of a member of a club and who is continuously accompanied by the member; or a relative, established acquaintance, or friend or relative of an established acquaintance of the host of a private function.

Member: a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member

Not open to the public: open only to: 1) employees; 2) invited guests of private functions, e.g., wedding receptions; and 3) members or invited guests of members, accompanied by a member, of a club. Note: A club holding a public function is considered to be open to the public.

Places of employment: any area or portion of an area where people work including, but not limited to, correctional facilities, storage rooms in restaurants: and vehicles used in the course of work.

Protect the employer and employees from the detrimental effects of smoking by others: to prevent the involuntary exposure to environmental tobacco smoke of employees and employers within the business facility from any source except in a Designated Smoking Area.

Qualifying club: a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004) that is not open to the public or to any other club that was not open to the public and that was in operation prior to January 1, 2004.

Written policy: a written statement in which the employer states how the employees and employer will be protected from involuntary exposure to environmental tobacco smoke within the business facility from any source and specifically describes the location of any permitted Designated Smoking Area(s) and outdoor areas designated for smoking.

# **Employee Voting – Procedures Required**

Before providing a vote to members of (Insert qualifying club name here), the qualifying club must adopt and implement written policies and procedures that provide a for a secret ballot vote of employees. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied. Employee includes any volunteer who accepts tips.

An individual shall be appointed to oversee the secret ballot vote. The overseer may be an officer, manager, member or non-member of (Insert qualifying club name here),

Written notice of the secret ballot vote shall be provided to each employee that:

* Is printed in a legible type with a font size of at least 12;
* Is neutral with respect to the subject matter of the vote;
* Clearly states the time and place of the voting, and the time and place of counting of votes;
* Provides clear instruction on how to mark the ballot; and
* Provides clear description on proposed location of smoking area

The secret ballot votes shall:

* Assure that each employee casts a single vote;
* Assure the anonymity of each vote;
* Assure the voting process is free of any attempt to influence any individual vote or voter;
* Allow all employees to observe conduct of the voting and the counting of the ballots;
* Provide for posting or other notice of the result of the vote; and
* Provide a procedure for employees to challenge individual ballots for cause.

The (Insert qualifying club name here), shall provide the result of the employee vote to be posted and/or given notice by (insert means in which club shall provide results of the vote).

The (Insert qualifying club name here) permits employees to challenge individual ballots for cause by notifying (insert overseer, designee, committee, board, etc.) or (insert means; writing, oral, etc.) within (insert specific timeframe).

Written notice shall be provided to the Maine Center for Disease Control and Prevention of the results of the employee vote **within 30 days of the vote** (Refer to enclosed Maine CDC Voting Form, or visit: <https://preventionforme.org/retailer-workplace/#resources>). All employee ballots shall be kept on file for **at least three years** and made available to the Maine Center for Disease Control and Prevention upon request.

The smoking policy must be reviewed **within 60 days** of the hiring of new employees or at the time a complaint, oral or written, is received by the employer or the employee’s agent to ensure mutual agreement by **all** employees.

If the qualifying club has not demonstrated the agreement of **all** current employees on the smoking policy by the written secret ballot in accordance with requirements of employee voting procedures (*See*, **Employee Voting – Procedures Required**), the qualifying club shall comply with Maine’s Workplace Smoking Act of 1985 and prohibit smoking throughout the entire business facility (*See*, 22 M.R.S. §§ 1541-1548 and 10-144 CMR c. 249). The employer and employees of the qualifying club may only be permitted to smoke within an outdoor designated smoking area. Members and invited guests accompanied by a member may only be permitted to smoke outside the qualifying club, which may align within the designated smoking area requirements for the employer and employees (*See*. **Outdoor Designated Smoking Area**).

If the qualifying club has demonstrated the agreement of **all** current employees on the smoking policy by the written secret ballot in accordance with the requirements of the employee voting procedures (*See*, **Employee Voting – Procedures Required**), the qualifying club shall continue to conduct a vote by the members before the qualifying club may file for exception of Maine’s Workplace Smoking Act of 1985 to permit smoking for up to three years from the date of the member vote (*See*, **Member Voting – Procedures Required**).

# **Member Voting – Procedures Required**

If the qualifying club has demonstrated the agreement of **all** current employees on the smoking policy by the written secret ballot in accordance with the requirements of employee voting procedures (*See*, **Employee Voting – Procedures Required**), the qualifying club shall continue to conduct a vote by the members before the qualifying club may file for exception of Maine’s Workplace Smoking Act of 1985 to permit smoking for up to three years from the date of the member vote (*See*, **Member Voting – Procedures Required**).

The date of the member vote must be announced to all members as provided below **at least 30 days** prior to the vote. “Member” means a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member.

An individual shall be appointed to oversee the secret ballot vote. The overseer may be an officer, manager, member or non-member of (Insert qualifying club name here),

Written notice of the secret ballot vote shall be provided to each member that:

* Is printed in a legible type with a font size of at least 12;
* Is neutral with respect to the subject matter of the vote;
* Indicates that any member may request and cast an absentee ballot that will be included in the final vote count;
* Clearly states the time and place of the voting, and the time and place of counting of votes;
* Provides clear instruction on how to mark the ballot;
* When the notice and absentee ballots are provided in one mailing provides an absentee ballot and other materials that assure anonymity;
* Is sent in sufficient time to be received by the member for the return of absentee ballots prior to the due date for submission of votes; and
* Provides clear description on proposed location of smoking area.

The secret ballot votes shall:

* Assure that each member casts a single vote\*;
* Assure the anonymity of each vote;
* Assure the voting process is free of any attempt to influence any individual vote or voter.
* Allow all members to observe conduct of the voting and the counting of the ballots.
* Provide for posting or other notice of the result of the vote; and
* Provide a procedure for members to challenge individual ballots for cause.

\*Upon request of any member, an absentee ballot and other materials shall be provided, when such were not included with the notice required above, that ensures anonymity and is mailed or delivered in sufficient time to be received by the member for the return of absentee ballots prior to the date of the member vote.

The (Insert qualifying club name here), shall provide the result of the member vote to be posted and/or given notice by (insert means in which club shall provide results of the vote).

The (Insert qualifying club name here) permits members to challenge individual ballots for cause by notifying (insert overseer, designee, committee, board, etc.) or (insert means; writing, oral, etc.) within (insert specific timeframe).

Written notice shall be provided to the Maine Center for Disease Control and Prevention of the results of the member vote **within 30 days** of the vote (Refer to enclosed Maine CDC Voting Form, or visit: <https://preventionforme.org/retailer-workplace/#resources>). All ballots cast in the vote must be kept on file for at least three years and made available to the Maine Center for Disease Control and Prevention upon request.

If the qualifying club has not demonstrated the agreement of the **majority of voting members** on the smoking policy by the written secret ballot in accordance with requirements of member voting procedures (*See*, **Member Voting – Procedures Required**) then the qualifying club shall comply with Maine’s Workplace Smoking Act of 1985 and prohibit smoking throughout the entire business facility (*See,* 22 M.R.S. §§ 1541-1548 and 10-144 CMR c. 249). The employer and employees of the qualifying club may only be permitted to smoke within an outdoor designated smoking area. Members and invited guests accompanied by a member may only be permitted to smoke outside the qualifying club, which may align within the designated smoking area requirements for the employer and employees (*See*. **Outdoor Designated Smoking Area**).

If the qualifying club has demonstrated the agreement of the **majority of voting members** on the smoking policy by the written secret ballot in accordance with the requirements of the member voting procedures (*See*, **Member Voting – Procedures Required**) then the qualifying club may file for exception of Maine’s Workplace Smoking Act of 1985 for up to three years from the date of the member vote (*See*, **Indoor Smoking Requirements**). When the qualifying club is open or available to members of the public then smoking is prohibited throughout the entire business facility (*See,* 22 M.R.S. §§ 1541-1548 and 10-144 CMR c. 249).

# **Indoor Smoking Requirements**

Smoking is permitted within the qualifying club, only if:

* All policies and procedures above are followed (*See*, **Employee Voting – Procedures Required** and **Member Voting – Procedures Required**);
* The outcome of the votes was in favor to permit smoking; and
* The club is not open to the public. “Not open to the public” means open only to: 1) employees; 2) invited guests of private functions, e.g., wedding receptions; and 3) members or invited guests of members, accompanied by a member, of a club. Note: A club holding a public function is considered to be open to the public.

**Outdoor Designated Smoking Area**

Maine’s Workplace Smoking Act of 1985 permits employers to designate an area outdoors for smoking., The (Insert qualifying club name here) may provide an outdoor area where smoking is permitted.

* The designated smoking area must be a minimum 20 feet from windows, entryways, vents, doorways or other openings and must be designed to prevent smoke escaping from the designated smoking area into an enclosed area of a workplace or public place or other areas where smoking is prohibited.
* An area for smoking outdoors may be constructed to protect employees from the weather as long as it is not an “enclosed area” which means a space between a floor and a ceiling that is demarcated on all sides by walls, windows, shutters, doors or passageways. A partition or partial wall is a demarcation of an enclosed area if it extends from the floor to within 4 feet of the ceiling or from the ceiling to within 4 feet of the floor.

**Overall Vote Outcome–Non-Smoking**

**(Delete this section, if the employee vote and member vote both resulted to permit smoking).**

The (Insert qualifying club name here) held an employee secret ballot vote on (insert date) with the vote outcome of (provide count numbers) votes from **all** current employees to **prohibit** smoking. The (Insert qualifying club name here) provided employer and employees to observe the conduct of the voting and the counting of the ballots and a procedure to challenge individual ballots for cause. The (Insert qualifying club name here) provided written notice to the Maine Center for Disease Control and Prevention of the vote results on (date), which was within 30 days of the vote. (Insert qualifying club name here) shall keep all ballots cast in the vote on file for at least three years and make available to the Maine Center for Disease Control and Prevention upon request. The (Insert qualifying club name here) shall comply with Maine’s Workplace Smoking Act of 1985 and prohibit smoking throughout the entire business facility (*See*, 22 M.R.S. §§ 1541-1548 and 10-144 CMR c. 249). The (Insert qualifying club name here) may only permit smoking by employer and employees outdoors within a designated smoking area located (describe outdoor designated smoking area). Members and invited guests accompanied by a member may only be permitted to smoke outside the qualifying club (describe outdoor designated smoking area), ***Reminder****:* the designated smoking area may align with the employer and employee designated smoking area. The employer shall protect the employer and employees from the detrimental effects of smoking by others. Permitting members and invited guest to smoke within 20 feet of the business facility may permit smoke to recirculate back into the qualifying club or in areas where the employer and employees are under the control of the employer performing services for the employer). The success of this policy will depend on the courtesy and cooperation of both tobacco smokers and nonsmokers. Each of us is responsible for following and helping enforce this policy. Problems should be brought to the attention of (insert qualifying club overseer, designee, committee, board, etc.). Violations of this policy will be handled through the established qualifying club procedures and may be referred to the Maine Center for Disease Control and Prevention and/or the Maine Office of the Attorney General Tobacco Enforcement Coordinator.

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(Insert Club Representative, Title, etc.) Date

**Overall Vote Outcome–Smoking**

**(Delete this section, if the employee vote and or member vote was to prohibit smoking (e.g., all current employees voted to prohibit smoking; or all current employees voted to permit smoking. However, the majority of voting members voted to prohibit smoking, requiring smoking prohibition).**

The (Insert qualifying club name here) held an employee secret ballot vote on (insert date) with the vote outcome of (provide count numbers) votes from **all** current employees to **permit** smoking. Smoking means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke (*See*, M.R.S.§1580-A). The (Insert qualifying club name here) provided employer and employees to observe the conduct of the voting and the counting of the ballots. The (Insert qualifying club name here) provided employer and employees a procedure to challenge individual ballots for cause. The (Insert qualifying club name here) then held a member secret ballot by providing written notice to members on (date), which was at least 30 days prior to the member vote date of (date of member vote). The (Insert qualifying club name here) provided each member the ability to casts a single vote. The (Insert qualifying club name here) allowed all members to observe the conduct of the voting and counting of the ballots and provided members a procedure to challenge individual ballots for cause. The member vote outcome of (provide vote count numbers) votes from the majority of members, (count of members who voted) out of (total number of all active members) voted to **permit** smoking. The (Insert qualifying club name here) provided written notice to the Maine Center for Disease Control and Prevention of the vote results on (date), which was within 30 days of the vote. (Insert qualifying club name here) has implemented written policies and procedures ensuring that only the employer and employees, members, and invited guests accompanied by a member are allowed to the premises. All areas of a (Insert qualifying club name here) into which members of the public are invited or allowed are governed by the provisions of Maine’s Public Smoking Act (*See*, 22 M.R.S. §§ 1541-1548 and 10-144 CMR c. 249). Maine’s Public Smoking Act further defines smoking to include carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. Smoking includes the use of an electronic smoking device (*See*, M.R.S.§1541). The (Insert qualifying club name here) shall keep all ballots cast in the vote on file for at least three years and make available to the Maine Center for Disease Control and Prevention upon request. The success of this policy will depend on the courtesy and cooperation of both tobacco smokers and nonsmokers. Each of us is responsible for following and helping enforce this policy. Problems should be brought to the attention of (insert qualifying club overseer, designee, committee, board, etc.). Violations of this policy will be handled through the established qualifying club procedures and may be referred to the Maine Center for Disease Control and Prevention and/or the Maine Office of the Attorney General Tobacco Enforcement Coordinator

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(Insert Club Representative, Title, etc.) Date

**Disclaimer:**

The Maine Center for Disease Control and Prevention has been authorized by 22 M.R.S. §1580-A to assist businesses in developing written smoking policies and to enforce provisions of Maine’s Workplace Smoking Act of 1985. This sample policy is a sample and may be modified by the workplace. Modifications to this policy or amendments to this law, does not ensure compliance (*See*, 22 M.R.S. §1580-A).