

Smoking at Work Implementing the Ban

From 1st July 2007, smoking in all public places and workplaces in England and Wales will be banned. This ban will apply to every workplace where more than one person works (paid or unpaid) in an enclosed or substantially enclosed area.

For the purposes of the ban, an enclosed work place is defined as an area “completely enclosed on all sides by solid floor to ceiling walls” and a substantially enclosed work place is said to be “where the openings total less than 50% of the wall areas”. This will therefore cover smoking rooms and any areas within a building that are currently allocated for smokers, as well as all company vehicles. The only public places exempt from this ban are adult hospices, prisons, residential care homes and other places that act as a person’s dwelling, but all other workplaces must comply.

It is important that businesses take careful note of this upcoming ban, as non-compliance can result in penalties ranging from fixed penalty notices for not displaying no-smoking signs, to prosecution for failing to prevent smoking in the working environment. It will be the duty of the Local Authority to enforce this ban and Local Authority staff are currently being trained to go undercover in public places and workplaces to issue on the spot fines to people who are found to be breaching these laws. It is therefore vital that you ensure that your workplace is a smoke-free environment in time for the summer.

Most employers already have a policy on smoking in the workplace, and have taken action to protect their staff from second hand smoke, as it has long been an implied term in any employment contract that an employer will ensure the health, safety and welfare of their employees whilst they are at work.

Some employees may see the ban as an ideal opportunity to give up smoking. Those that cannot or do not want to give up smoking will have to exit the workplace in order to smoke. This raises issues such as:-

- Should employers disallow smoking breaks altogether?
- If not, is it unfair that smokers get breaks outside of the office, and should non-smokers be able to leave the office for breaks also?
- Does having members of staff congregating around the outskirts of the building to smoke reflect badly on the image and public perception of your business?

It is therefore important that if you have not done so already, you consult with your employees to develop a policy that is acceptable to all parties. The views of both smokers and non smokers should be taken into account when drawing up the policy. Employers may also wish to review their disciplinary rules and procedures to ensure that it covers any breach of the no-smoking policy and detail the likely sanctions in the event of a breach. Employees should be made aware of any such changes to the disciplinary policy so that they cannot seek to rely on ignorance of the policy as a defence for their actions.

As well as agreeing and enforcing a non-smoking policy in the workplace, there are other measures that you will need to take in order for your business to comply with this new law. These include clearly displaying no-smoking signs around the workplace and ensuring that clients and customers adhere to the no-smoking policy whilst visiting your premises. Ash trays and smoking bins should also be removed to discourage smokers.

There are of course, many benefits to the business of implementing a non-smoking policy. As well as having a potentially healthier work force it could reduce the time some employees spend away from their desks, the fire risks to your office buildings and the cleaning and maintenance costs of your workplace.

It is a good idea to provide employees with stop smoking advice and support in the run up to the change in policy. You could offer advice and counselling from occupational health services, local GPs or local health education units to those that express a wish to give up smoking.

It is hoped that the policy will be welcomed by most people including employers and employees, given the ever increasing public concerns about the impact of smoking and passive smoking on people's health. However, in order to be a reasonable employer, you need to consult with your employees and carefully consider the impact of the withdrawal of the right to smoke at the workplace on them, before taking the steps required to enforce the ban.

This update is provided for your general information only and does not seek to set out the employment legislation in this area in detail. If you have any queries or wish to discuss specific circumstances, please do not hesitate to contact one of our employment team who will be happy to assist.