

SMOKING AT WORK

The legal position

From 1 July 2007, when the Smoke-free (Premises and Enforcement) Regulations 2006 come into force in England, all employers will have to provide smoke-free workplaces for employees. The impact of the ban will be monitored closely and a review will be carried out at the end of three years.

In Scotland, the Smoking, Health and Social Care (Scotland) Act 2005 introduced a ban on smoking in public places, including workplaces, from 26 March 2006. Smoking was banned from enclosed public places and workplaces in Wales from 2 April 2007 and in Northern Ireland from 30 April 2007.

What does the smoking ban mean for employers?

- The ban applies in all enclosed or 'substantially enclosed' public places and workplaces, as well as in certain circumstances in vehicles used for work.
- Premises are considered 'enclosed' if they have a ceiling or roof and (except for doors, windows or passageways) are wholly enclosed either on a permanent or temporary basis.
- Premises are considered 'substantially enclosed' if they have a ceiling or roof but have an opening in the walls which is less than half the total area of the walls. The area of the opening does not include doors, windows or any other fittings that can be opened or shut.
- Smoking rooms are no longer permitted.
- The new law requires vehicles to be smoke-free at all times if they are used:
 - to transport members of the public
 - in the course of paid or voluntary work by more than one person – regardless of whether they are in the vehicle at the same time.
- Vehicles that are used primarily for private purposes will not be required to be smoke-free.
- Smoke-free vehicles will need to display a no-smoking sign in each compartment of the vehicle in which people can be carried. This must show the international no-smoking symbol no smaller than 70mm in diameter.
- It is the legal responsibility of anyone who drives, manages or is responsible for order and safety on a vehicle to prevent people from smoking.

There are a number of exemptions from the new law:

- Hotels, inns, hostels, guesthouses and members' clubs that provide sleeping accommodation may designate individual guest bedrooms for smoking but all other parts of the premises must be smoke-free.

- Care homes, hospices and prisons may designate either individual bedrooms or rooms to be used for smoking by persons over 18 years of age.
 - Residential mental health units may designate either individual bedrooms or rooms to be used only for smoking for use by persons over 18 years of age, until 1 July 2008 when they are required to become smoke-free.
 - Offshore installations may designate rooms to be used only for smoking.
- have found that the ban on smoking in the workplace has had an immediate beneficial effect on respiratory health. There has been a 16.7% reduction in reporting of respiratory symptoms of any kind by bar staff in the State since the ban. Furthermore, the presence of nicotine by-products in the saliva of bar workers also dropped by 80 per cent.

What should employers be doing to prepare for the smoking ban?

Employers who don't already have a total smoking ban in place should consult with their employees and change their policies to meet their new legal obligations before the legislation comes into force.

Organisations must decide what their new policy will allow. Are they going to provide an area outside but on the premises where employees can smoke or are they going to ban smoking anywhere on company property? Policies will also have to cover use of company vehicles.

Employers should consult their employees and, where appropriate, trade union and employee representatives about the proposed changes.

Policies should:

- Clearly spell out the reason for the policy and the fact that it has been agreed following consultation with the workforce.
- State that employees breaching the policy are likely to face disciplinary action through the organisation's disciplinary procedure.
- Set out the restrictions apply to visitors and customers
- Be strictly enforced across the organisation at all levels to ensure it is taken seriously.

It is a good idea to provide employees with stop-smoking advice and support in the run up to the change in policy. It is worth remembering that only a minority of people smoke and about three-quarters of these want to give up. Of course, some workforces will have a much higher proportion of smokers than others and, where this is the case, early consultation and clear communication of what is being proposed and why, is particularly important.

Enforcement

Local authorities are responsible for enforcing the new law. Their approach to enforcement will be based on supporting businesses to comply with the new law. However, they will have the legal power to enter premises or board vehicles to determine if the new law is being upheld.

In Wales, a team of 500 local council officers have powers to enter all no-smoking premises to ensure the ban is being enforced. Most of them are existing trading standards or public protection officers. The Welsh Assembly gave £800,000 to councils ahead of the ban and will provide another £2m for the next 12 months.

Penalties

Smoking in a smoke-free place:

- Fixed penalty notice between £30 (if paid in 15 days) and £50 (if paid in 29 days).
- Court awarded fine of up to £200
- Failing to display required no-smoking signs:
- Fixed penalty notice between £150 (if paid in 15 days) and £200 (if paid in 29 days).
- Court awarded fine of up to £1,000.
- Failing to prevent smoking in a smoke-free place:
- Court awarded fine of up to £2,500.