

Blake Laphorn Tarlo Lyons' nursery and childcare news

July 2007

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smoke-free vehicles

Settings are already required to have a no-smoking policy under the National Standards but the new regulations from July 1 also affect vehicles.

As well as applying to vehicles used by members of the public, the regulations also apply to an enclosed vehicle if it is used in the course of paid or voluntary work by more than one person (even if those people use the vehicle at different times or only intermittently). The determining factor is 'use' not 'ownership,' so a privately-owned vehicle used for work purposes may be required to be smoke-free.

There is an exemption where a vehicle is used for work purposes but is mainly used for the private purposes of the owner or person who has an unrestricted right to use it. So, if a member of staff occasionally uses their own car for taking other members of staff to a staff conference or training, for example, the vehicle is exempt. The same is true if the car is owned or leased by the nursery operator but is provided to a specific member of staff for their use.

Care needs to be taken in identifying which vehicles must be smoke-free. All 'pool' vehicles need to be smoke-free as they are used primarily for work purposes. Company cars which have a primary user and other people with occasional access, can lead to difficulty in classifying its overall use. There is no guidance in the regulations on the meaning of 'primary' use, so operators will have to make a judgment. Consideration could be given to 'business' versus 'private' mileage, for example. However, where use by more than one person cannot be ruled out, operators may wish to consider

adopting a 'no smoking' policy for all vehicles used whilst on company business.

The obligations to ensure that the vehicle is smoke-free are placed on the driver, a person with management responsibilities for the vehicle, and any person responsible for order or safety on the vehicle. Therefore, nursery operators and settings managers may be equally liable.

The international smoke-free sign (70mm in diameter) must be displayed in every compartment of a vehicle where the regulations apply. There is a 'due diligence' defence for those prosecuted for failing to prevent smoking in a smoke-free vehicle. However, it is unlikely that a due diligence defence will succeed if based simply on placing a sticker in a vehicle. Operators and managers should therefore consider updating car policies and sending these to all drivers.

points to note

- consider the use of all vehicles used in connection with the business
- the maximum penalty for failure to display a no smoking sign is £1,000
- the maximum penalty for someone responsible for managing smoke-free vehicles and failing to stop a person smoking there is £2,500



CONTACT

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