

Smoke-free legislation: the implications for employers

Most employers are aware that it is illegal to smoke or allow smoking in the workplace throughout the UK.

In England, a number of regulations under the Health Act 2006 provide that all workplaces must be smoke-free – with some exceptions, such as specified rooms in prisons and residential care homes. Designated smoking rooms in other workplaces are no longer allowed. Temporary structures such as tents are also subject to the regulations, as are pubs and private members' clubs, with the exception of certain bedrooms in such premises.

What does the smoke-free legislation say?

Under the legislation it is a **criminal offence**:

- for employers or managers to fail to display the required no smoking signs
- for anyone to smoke in a smoke-free place
- for employers or managers to fail to stop a person smoking in a smoke-free place

There are limited defences if it can be shown that the person responsible did not know and could not reasonably be expected to know:

- that the required no-smoking signs were not being displayed
- that the premises were smoke-free
- that a person was smoking in them

It is also a defence to show that the person responsible took reasonable steps to stop a person smoking, or that on other grounds it was not reasonably practicable for the person responsible to comply with their obligations.

Certain vehicles should also be smoke-free. These are any enclosed vehicles that are used by members of the public or by more than one worker – even if the workers use it at different times or only now and then. An exception is made where the vehicle is primarily for the private use of a worker and is either owned by them or their use of it is not restricted to a particular journey. Company cars allocated to an individual employee who can use it all the time are therefore not likely to be covered, except where the employee is driving another worker in the car with them. 'Pool' cars would be covered. Many employers are choosing to operate a smoke-free policy for all company cars, even where they are allocated to only one employee. However each employer needs to consider what is best for them and their workforce, and the impact this may have on existing policies.

It is not only the employer or managers who are responsible for enforcing the smoke-free legislation in a smoke-free vehicle – it also the driver. This means that employees need to be aware of their responsibility to prevent smoking in smoke-free vehicles.

What do employers need to do?

Employers should review their policies and procedures to ensure that they are compliant. Although there is no legal requirement to provide facilities for smokers, policies that include positive steps, such as designated outside smoking areas and support to employees who are trying to quit the habit, will be more likely to ensure employees are 'on board' and minimise infringement.

Practical steps

- A no-smoking policy should be introduced or revised in consultation with employees. Consider whether the business will allow smoking outside the building or 'smoking breaks' for employees and whether this is a transitional arrangement only. You will need to be sure that you are not putting non-smokers at a disadvantage and that any shelters erected outside for smoking do not fall within the definition of 'substantially enclosed' premises.
- Ensure employees are made aware or reminded of the smoke-free legislation and company policy, and that any breaches of the policy or company rules on smoking will be considered a disciplinary offence. Check that the dismissal and disciplinary procedure is consistent with this.
- Take steps to ensure customers and visitors are also aware of the legal requirements and that action is also taken where they are in breach of the legislation.
- Make sure there are no designated smoking rooms.
- Ensure the correct signage is displayed, both in buildings and vehicles. Regulations stipulate the size, words and symbols to be used and where the signs are to be displayed.
- Train managers on the no-smoking policy and what action to take when employees are found smoking in smoke-free premises. Managers need to understand that they themselves may be committing an offence if they fail to enforce the policy.
- Check which vehicles may be affected and display the required signage. Individual letters to employees with responsibility for the vehicles may be appropriate.
- Check and revise any company car policy.

Penalties for non-compliance

Local authorities are responsible for enforcing the smoke-free legislation in buildings and other premises. The following fines apply for non-compliance:

- failure to prevent smoking in a smoke-free place carries a fine of up to £2,500
- smoking in a smoke-free place carries a fixed penalty of £50 (£30 if paid within 15 days) or up to £200 if awarded by a court
- failure to display the minimum no-smoking signs carries a fixed penalty of £200 (£150 if paid within 15 days) or up to £1,000 if awarded by a court

Aside from this, employers who fail to prevent smoking in smoke-free places are likely to be in breach of general health and safety legislation.

Gaining as much input and support from employees at the consultation stage should help to ensure that the implementation of a no-smoking policy is as successful as possible.

Contacts

For further information or guidance on this subject, please contact the Employment law team at employmentinfo@blaw.co.uk or call us:

Southampton

023 8090 8090

Oxford

01865 248607

London

020 7405 2000

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.

Blake Laphorn uses the information it holds about you to contact you where necessary if (for instance) you have registered to attend a seminar that we are hosting or have requested information regarding the services that we provide. We will also use it to administer, support, improve and develop our business and to contact you for your views on our services, as well as to let you know about other products and services which we offer which may be of interest to you. We may send them by post, telephone or fax, email or SMS. If you would rather NOT receive further information by any particular format, or at all, or if your details need updating, please contact Kay Hogg on 01865 258010 or by email at kay.hogg@blaw.co.uk

We will not disclose any of your personal identifiable information to any third parties without your express permission to do so, unless we believe that we should do so to comply with the law.