

Smoking at Work Policy

New Legislation comes into Force on 1st July 2007 in England

Part 1 of Health Act 2006 – Employees Have The Right to Work in Air Free of Tobacco Smoke

- All businesses should have an up to date “Smoking At Work Policy”
- Fixed fines and possible criminal prosecution
- Employee disciplinary offence
 - Smoking will be prohibited throughout the entire workplace
 - Also prohibited near entrances and exits
- Smoking rooms will be banned
- Smoking shelters will be Included in the ban if more than 50% is covered
- Smoking will be prohibited in company vehicles
- If employee receives car allowance, they could be liable if travelling with a colleague on company business
- Duty of employers to display prominent “No Smoking” signs of a certain specified size at each public entrance and on company vehicles
- Best practice – Employers to offer assistance to give up smoking

Introduction:

Smoke free legislation is set out in Part 1 of the Health Act that was passed by Parliament in 2006. The Act sets out the broad provisions for smoke free legislation, and also provides a number of legal powers to enable the more detailed aspects of smoke free legislation to be dealt with in smoke free regulations:

- a. The Smoke-free (Premises and Enforcement) Regulations,
- b. The Smoke-free (Signs) Regulations,
- c. The Smoke-free (Exemptions and Vehicles) Regulations,
- d. The Smoke-free (Penalties and Discounted Amounts) Regulations, and
- e. The Smoke-free (Vehicle Operators and Penalty Notices) Regulations.

With the introduction of the Health Act 2006, employers in England and Wales should ensure that they have a comprehensive Smoking at Work policy that guarantees employees the right to work in air free of tobacco smoke. Scotland became smoke free in all enclosed spaces in March 2006 and Northern Ireland in April 2007.

A smoking at work policy should therefore:

- guarantee the rights of non-smokers to breathe smoke-free air at work
- take into account the needs of those employees who wish to smoke;
- provide smokers with appropriate support to assist in compliance with the policy.

Legal Reference:

The Health Act 2006 prohibits smoking in the work place, if that work place is an enclosed space or substantially enclosed and is used by more than one person. Work vehicles that are used by more than one person are included within this definition.

The ban includes tobacco, cigarettes, pipes, cigars and herbal tobacco. It is also worth noting that the products are prohibited from the moment of lighting even if the substance is not actively being inhaled by someone.

The Act also places a duty on employers to display a prominent "No Smoking" sign, as the very minimum at each public entrance to the premises. These need to satisfy certain specifications in respect of size, symbols and wording. The sign must:

- a) be the equivalent of A5 in area,
- b) display the international no-smoking symbol in colour, a minimum of 70mm in diameter, and
- c) carry the words in characters that can be easily read:

"No smoking. It is against the law to smoke in these premises".

On the sign, the words "these premises" may be changed to refer to the particular premises where the sign is displayed, for example "this hotel" or "this NHS clinic".

The regulations also set out that a no-smoking sign that simply displays the international no-smoking symbol in colour, a minimum of 70mm in diameter is the minimum requirement at entrances to smoke free premises which:

- a) are for staff only (on the basis that the premises displays at least one A5-sized sign with words, as set out above), or
- b) are located within other smoke free premises (for example, a shop within an indoor shopping centre).

Vehicles will also be required to have a sign with the no smoking symbol shown.

Failure to display these signs will mean an employer incurs a fixed penalty of £200. If this is unpaid, an employer faces a further fine of up to £1,000 and a criminal record.

Once the ban is in place it will be illegal for employers to continue with many current practices, such as:

- allowing employees to smoke in 'smoking rooms'
- segregating smokers and non-smokers within the building

A popular solution is to allow employees to go outside the building to smoke. Some employers are building 'smoking shelters' in suitable sites outside their premises. However, bike sheds, porches and other common outside smoking areas could be included in the ban if more than 50% of the area is covered.

If you would like anymore support in creating your Smoking at Work Policy or advice on how to implement and manage this new legislation in your workplace then please do not hesitate to contact the LiquidHR team on;

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