

The Smoke-Free Workplace

At 6am on 1 July 2007, enclosed public spaces and work places in England became smoke free. Smoking bans have already been introduced in Scotland, Wales and Northern Ireland. Whether you are for or against the new legislation, the implications of the change will be enormous. This section focuses on the employment law issues which both employers and employees will have to deal with.

The New Law

The new act states that premises are to be smoke free if they are enclosed or substantially enclosed and are: open to the public; used as a place of work by more than one person; or a place where members of the public might attend for purposes of receiving goods or services from persons working there. The effect of this is that virtually all indoor work places will become smoke free, including any existing designated smoking rooms. However, the ban goes even further. "Substantially enclosed" covers premises which have a roof or ceiling and which are at least 50% surrounded by walls. Therefore, stadiums, bus shelters, tents or marquees will be included within the definition, together with covered smoking shelters located outside offices. The ban also applies to work vehicles and vehicles used by members of the public.

No Smoking Signs

Anybody who occupies or manages smoke free premises must ensure that No Smoking signs are displayed in a prominent position at each entrance. The law specifies that they must be no smaller than an A5 piece of paper, display the No Smoking symbol and the following words:

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

Failing to display a No Smoking sign is an offence and carries a fixed penalty notice of £200 with a maximum fine on conviction in the Magistrates Court of £1,000.

Other Smoking Offences

There are two other key offences referred to in the Act:

- i) Smoking in a smoke-free place; and
- ii) failing to prevent smoking in a smoke-free place.

Both are punishable by a fine.

The first of these is committed by anyone who lights a cigarette, cigar or pipe. There is a fixed penalty fine of £50 with a maximum fine on conviction in the Magistrates Court of £1,000.

As regards the second offence, the Act states that the managers of smoke-free premises must cause people to stop smoking. A failure to do this carries a maximum fine of £2,500.

Employers will be relieved to hear that there are three possible defences available to them. These are as follows:

- (a) that they took reasonable steps to cause the person in question to stop smoking;
- (b) that they did not know, or could not reasonably be expected to know, that the person in question was smoking; or
- (c) that on other grounds it was reasonable for them not to comply with the duty.

A Court or tribunal will have to decide whether the actions of the employer have been reasonable. It is obviously important for all employers to have clear smoking policies in place, together with defined sanctions which will help to convince a Court that they are taking their responsibilities seriously.

Other Potential Pitfalls

Whereas the primary concerns of employers and employees are set out above, there are other related issues to consider:

- 1) If an employer wants to restrict smoking to a designated area outside the work place, a clear policy setting out where and when smokers may smoke will be essential.
- 2) If an employer wishes to impose a total ban on smoking on its premises, whether they are enclosed or not, this may be possible. However, given that there is likely to be opposition to such a rule from employees who have always been able to smoke, the employer should consult with the workforce and give advance warning before introducing such a policy. Again, the policy should be clear and the sanctions for breaching it, explicit.
- 3) The issue of smoking breaks needs to be addressed. The fact that employees are no longer entitled to smoke on the premises might mean that they would have to take longer over such a break because they need to get to the designated area off the premises. This could cause resentment amongst other members of staff.
- 4) Disciplinary action against staff who flout a smoking ban will clearly be essential. However, whether somebody could or should be dismissed for a first offence is debatable. This issue must be considered and clear guidelines set down in writing.]

It is evident from the above that the smoking ban will have wide ranging ramifications for both employers and employees. If you need advice as to where you stand, please contact [Richard Stephens](#) either or telephone: 020 8370 2875.