

## Countdown to the smoking ban

With just under a week to go, at 6am on Sunday 1 July 2007 it will become illegal to smoke in public places or enclosed work places in England. Sejal Raja considers the legislation and sets out some advice for employers in England.

### What the law says

Legislation set out in the Health Act 2006 and secondary legislation provides that it will be unlawful to smoke or permit smoking in a designated smoke-free place. These places will be enclosed or substantially enclosed premises which are:

- Open to the public; or
- Used as a place of work for more than one person; or
- Used as a public place of work where members of the public might enter for the purpose of seeking goods or services from those working there.

Place of work includes work vehicles unless the vehicle is only ever used by one driver and not used for work by anyone else whether as driver or passenger.

Employers will be under a legal obligation to display 'No Smoking' signs of specific size and words together with the international no smoking symbol at the entrance to smoke-free premises. The signs will also need to be displayed in work vehicles.

It will be illegal for employers to have smoking rooms and/or to segregate smokers and non-smokers within the building. There are various exemptions applicable which include Care Homes, Mental Health Units and Hotels.

The ban applies not just to employees in the workplace but to any customers, clients and suppliers visiting the premises.

An employer who controls or manages a smoke-free area will be under a legal duty to take reasonable steps to prevent anyone smoking in that area.

### Consequences of non-compliance

A failure to prevent smoking in a smoke-free place will be a criminal offence punishable by a fine of £2,500. A failure to display the correct signage will be an offence punishable by a fine of up to £1,000.

In addition employers who fail to adhere to the new laws could be exposed to civil or employment tribunal claims from their staff for possible breach of health and safety, constructive dismissal, personal injury or whistle-blowing related claims.

A defence to any criminal action will be available if it can be shown that the employer took all reasonable steps to prevent smoking or they did not know or could not reasonably have known that a person was smoking.

Employers will need to follow their disciplinary procedures for employees who ignore the ban as communicated to them by their employer.

## What should employers be doing now?

Employers should be doing the following in anticipation of the ban to ensure compliance on 1 July:

- Obtaining no-smoking signs for all relevant entrances and vehicles\*;
- Informing employees that indoor smoking rooms will be closing on or before 1 July;
- Taking steps to make employees, workers, volunteers, customers and suppliers aware that vehicles and premises will be smoke-free;
- Amending disciplinary policies and procedures to provide that a breach of the no-smoking requirements could lead to disciplinary action;
- Considering what advice or support might be offered to employees seeking to quit smoking;
- Preparing or amending a smoking at work policy (see below); and
- Training managers on the requirements of the ban and what action they should take where employees contravene the ban.

## Smoking at work policy

Employers should think about introducing or amending an existing policy on workplace smoking. Where a new policy is being introduced or significant changes are being made to an existing one, the details should be communicated to staff as soon as possible before 1 July.

ACAS has produced some key features of a smoking policy. These are as follows:

- Set out the reasons for the policy in a preamble stating that it has been developed in consultation with workers to provide a healthy, safe and comfortable environment in accordance with the new smoking legislation;
- Confirm that it applies to all workers at all levels;
- Name those responsible for implementing and maintaining the policy, usually senior managers with overall responsibility and line managers with day-to-day responsibility;
- Provide information about the arrangements for smoking which are in place, for example smoking outside and permitted breaks; and
- The disciplinary action and penalties in place for a breach of the smoking restrictions.

This may be the perfect opportunity to deal with performance issues arising from people taking smoking breaks.

If you have any questions regarding employers' obligations under this legislation or would like assistance in drafting and implementing a smoking policy then please contact Sejal Raja on [sejal.raja@rlb-law.com](mailto:sejal.raja@rlb-law.com).

© RadcliffesLeBrasseur  
25 June 2007

If you would like any information on any of these or other employment matters, then please contact Sejal Raja ([sejal.raja@rlb-law.com](mailto:sejal.raja@rlb-law.com)) or Lara Crane ([lara.crane@rlb-law.com](mailto:lara.crane@rlb-law.com)) or telephone on 020 7222 7040.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

---

\* No smoking signs can be ordered free of charge at [www.smokefreeengland.co.uk](http://www.smokefreeengland.co.uk)