

SMOKING IN THE WORKPLACE

(Consultation on the draft regulations on smoke-free premises and vehicles ends on 9 October 2006. However it is unlikely there will be major changes to the draft recommendations before implementation and employers are already asking what action they need to consider now.)

What does the legislation cover?

The legislation will come into effect in Summer 2007 and bans smoking in all workplaces that are 'enclosed' or 'substantially enclosed'.

'Enclosed' premises have a ceiling or a roof and, except for doors, windows or passageways are wholly enclosed, whether on a permanent or temporary basis.

'Substantially enclosed' premises have a ceiling or a roof, but the openings in the walls are less than half of the total area of the walls. No account can be taken of openings in doors, windows or other fittings that can be either opened or shut.

Smoking rooms will no longer be allowed. The employer can provide a dedicated smoking shelter in the open air that has at least half of the total area of the walls open.

What signage will I need to display?

There will be a requirement to display a no smoking sign at each public entrance to the premises. It must be a flat, rectangular sign - minimum size 148mm x 210mm (A5), display the international no smoking symbol at least 75mm in diameter and carry the following words, in characters that can be easily read 'No smoking. It is against the law to smoke in these premises.'

(Quote from the draft legislation 'To assist with compliance of signage requirements, the Department of Health has undertaken to make signs that will meet the requirements set out in the regulations readily available during the lead-up to implementation of smoke free legislation.')

What about smoking in vehicles?

Vehicles will be classed as a workplace if used by more than one person, regardless of whether or not they are in the vehicle at the same time or whether as a driver or passenger. Even if your drivers argue that they generally use the same vehicle every day, because the vehicle may be allocated to another employee when the driver is on leave or off sick, the vehicle will have to be smoke-free. All vehicles will have to display at least one sign consisting of the international no smoking symbol at least 75mm in diameter in a position that is prominently visible to a person entering the vehicle.

Are there any exemptions?

Private accommodation, hotels, guest houses, hostels, care homes, hospices, mental health units and prisons have certain exemptions. Contact Cope Safety Management for more information.

What about enforcement?

The enforcing authorities will be county councils, district councils and the London borough councils.

Failing to prevent smoking in a smoke-free place will attract a fine to the employer of up to £2500.

Smoking in a smoke-free place will attract a fine to an individual of up to £200 or a fixed penalty notice of £50.

Failure to comply with the signage requirements will attract a fine of up to £1000 or a fixed penalty fine of £200.

What should employers do next?

Decide on whether you are going to allow smoking anywhere on site. As an employer you have no obligation to provide smoking breaks or outside smoking areas. You may feel that having your smokers standing outside the main entrance will create a bad public image. In addition visitors to your building will have to walk through a cloud of smoke. Allowing smokers to take breaks away from their workstation may cause dissent amongst non smokers.

Ensure that, if you provide a smoking shelter, it is positioned away from the public entrance and at least 50% of the wall area is open. Be aware that your current shelter, and many of the smoking shelters currently advertised on the internet, may not comply with the new legislation.

Consult with employees on what you propose your new smoking policy will be. It would be advisable to implement your new policy ahead of the legislation to allow a 'honeymoon period' where, if employees need a period of adjustment to the new policy, you are not actually in breach of the legislation. Consider starting consultation with employees as soon as possible with a view to introducing your new policy early next year, giving ample time for employees to either give up smoking or get used to only smoking at break/lunchtimes ahead of the legislation.

Offer support to those wishing to give up smoking. The NHS Smoking helpline is 0800 169 0169. In addition there are several useful websites:

www.givingupsmoking.co.uk www.quit.org.uk www.click2quit.co.uk

If an employee does not have access to the internet at home, you could provide supervised access during work hours. You may wish to consider contributing to any alternative therapies such as counselling or hypnosis.

Communicate the policy to all employees. The policy should be clear and explain what action will be taken for breaches of the policy.

Implement the policy. Depending on when your policy is implemented this may mean informal warnings ahead of the statutory ban. However, once the statutory ban is in place you must deal with breaches through your disciplinary procedures.

For further information, please speak to one of our advisors, call our offices on 01790 754740 or visit our website (www.jwcope.co.uk).