

## **How to avoid choking on the smoke free law**

Employers who fully comply with the Health Act 2006 will avoid prosecution for the offences under the Act, namely a failure to display no smoking signs and to prevent smoking on smoke free premises. However, the arrangements employers make to comply, and how these are implemented, pose different risks and, in some cases, could give rise to other claims. Follow our Top10 tips to keep you and your employees safe!

### **1. Order surplus signs**

Don't get caught out if a sign is removed or vandalised. Have extra signs readily available and designate someone with responsibility to check signs regularly and erect new signs if needed. Display additional signs in other areas, not just at entrances, where a person may have a reasonable expectation that smoking is permitted without any evidence to the contrary.

### **2. Encompass doorways in the ban**

The distance from smoke free premises at which smoking is allowed is not specified in the legislation. On a strict interpretation, unless the entrance/exit is "substantially enclosed" people will be permitted to light up the instant they get outside and smoke in the immediate area. However, this will expose others entering or exiting the building to second hand smoke and is against the spirit of the law. Avoid any potential problems by prohibiting smoking within a specific area of all entrances e.g. 5 metres.

### **3. Manage and control smoking outdoors**

Smoking outdoors could damage the image and reputation of the business. If cigarette litter builds up around your premises you may be fined, so adequate provision should be made for proper disposal of cigarette butts and other litter generated in outdoor smoking areas. Precautions should also be made to prevent other pollution, such as noise, odour and light. In some cases, it may be necessary to control antisocial behaviour.

### **4. Introduce rules on when employees can smoke**

The regulations are only concerned with where smoking is permitted but you should also advise employees when smoking is permitted. If you do not allow breaks during working hours you should confirm that smoking is only permitted in the employee's own time. If breaks are permitted these should be applied consistently to smokers and non-smokers and have clear rules. Smoking at unauthorised times, taking long or too many breaks should be communicated as a disciplinary offence.

### **5. Record all incidents and any action taken**

Employers may be able to avoid prosecution for a failure to prevent smoking if they can show that they took reasonable steps to do so. You should therefore make it a condition that any known breaches are recorded, together with any action taken. This can then be used in evidence to show due diligence in support of a defence.

### **6. Agree action to be taken in the event of a breach**

Be prepared to deal swiftly and effectively with any breaches. Enforce your rules with employees through use of the disciplinary procedure. Contractual terms with

other organisations or consultants should confirm the consequences of breaching your company's smoke free workplace policy. Ensure arrangements are in place to deal with the lawful expulsion of any person, if the need arises.

#### **7. Provide adequate guidance on confronting smokers**

Managers and other staff in control of smoke premises have a legal duty to prevent smoking and will be expected to confront smokers, if the need arises. However, employers also have a statutory duty to care for the employee's safety and they should not be exposed to unnecessary risks. Breaching this duty could give rise to a claim of constructive unfair dismissal and/or personal injury claims. Therefore, it is important that you give adequate information or training to staff on how to deal with such situations. You should also confirm that, if there are genuine concerns for personal safety, the matter should be reported and will be dealt with by more appropriate personnel or the police.

#### **8. Consult staff on proposals to implement the Heath Act 2006**

Although prohibiting smoking is necessary to ensure legal compliance, employers are advised to consult with staff and/or trade unions on the specific provisions of the policy, particularly where any current smoking permissions are to be withdrawn. Failing to consult could lead to formal grievances which take up valuable management time. Unilaterally changing terms and conditions is a breach of contract, which in some cases could entitle an employee to resign and claim constructive unfair dismissal. Changing terms includes the withdrawal of a right or privilege which the employee has come to regard as part of their terms and conditions through custom and practice, even if the right is not confirmed in writing, and could apply to smoking breaks.

#### **9. Effectively communicate your expectations**

Employers are advised to develop a comprehensive Smoke Free Workplace Policy to confirm the arrangements in place and to ensure all employees are aware of their responsibilities and the consequences of non-compliance. Your policy should be communicated to all employees and brought to the attention of any other users of the premises. Potential applicants should be advised during the recruitment process if smoking is prohibited or restricted to certain areas and at certain times.

#### **10. Be consistent**

Finally, treat employees who breach the policy in a fair and consistent manner through the application of your disciplinary procedure. Make sure the information you give to employees is not ambiguous. Your disciplinary policy, and any home working and/or car policies, should also be updated to include any provisions you make in the Smoke Free Policy.