



SMOKING IN THE WORKPLACE – IMPLICATIONS FOR EMPLOYERS AND EMPLOYEES

The purpose of the smoking ban is to provide a safe place of work for all workers, customers and visitors by protecting them from the effects of second hand smoke. With the implementation of the Health Act 2006 ('HA 2006') it became illegal to smoke in certain premises, places and vehicles from 1 July 2007. The ban on smoking applies to all substances which a person can smoke, including manufactured and hand-rolled cigarettes, pipes, cigars and herbal cigarettes. A person in possession of a lit cigarette (or other such substance) is deemed to be "smoking".

1. Smoking in a smoke free place

Smoking in the workplace is prohibited at all times if the premises:

- are used as a place of work by more than one person; or
- are a place that members of the public might attend to either seek or receive goods or services from a person working there.

This ban is limited to areas in the workplace that are "enclosed" or "substantially" enclosed.

2. Who does the Act apply to?

All individuals regardless of their position within a business, whether they work full time, part time or undertake volunteer work must abide by the no smoking policy at their place of work.

3. Can individuals smoke outside the workplace?

It is specifically prohibited for an individual to smoke outside the entrance of a premises used as a place of work. Please note that this includes the back and any side entrance of the premises.

The HA 2006 does not prohibit smoking in any other place outside the smoke-free premises unless it is classified as substantially enclosed. It is presumed that if over half of the walls of a structure are present, smoking is not permitted. An example of this can be seen by the fact that smoking has been banned at bus shelters.

Employers may choose to introduce a designated smoking place so that they can regulate where their employees smoke. The benefit of this is that employers can ensure that employees smoking outside the workplace are not disturbing the non smokers.

4. Additional smoke-free places

The HA 2006 allows a local authority to designate a place that is not enclosed or substantially enclosed as smoke free if in the authority's opinion without designation persons would be exposed to significant quantities of smoke.

5. Obligations imposed on Employers

Anyone who controls or is concerned in the management of smoke-free premises has a duty to stop anyone from smoking on the premises. A failure to comply with this duty is an offence.

An employer or occupier must show that they have taken reasonable steps to meet the requirements of the HA 2006. Such steps might include:

- Introducing a no-smoking policy and imposing appropriate disciplinary sanctions for any breach are likely to be regarded as reasonably practical steps.
- Training staff to understand the law and what their responsibilities are to ensure the workplace is kept smoke free.
- Acting on complaints.
- Assistance and support to employees wishing to give up smoking.
- Ensure that the consequences of breaching the no-smoking policy have been made clear to staff.

6. What are the penalties?

The HA 2006 creates three potential criminal offences for employees, employers and anyone who manages or controls the premises.

1. An individual who is caught smoking in smoke-free premises will be fined £50 (reduced to £30 if paid in 15 days) with a maximum fine of up to £200 if prosecuted and convicted at court.
2. If an employer or anyone who controls or is concerned in the management of smoke-free premises is found guilty of failing to prevent smoking on the premises they can be fined up to £2,500.
3. A failure by anyone who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs are correctly displayed will be fined £200 (reduced to £150 if paid within 15 days) or could face a fine of up to £1,000 if prosecuted and convicted at court.

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