



Hands-On HR

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Employment Update

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The smoking ban has been a hot issue ever since last year's ruling that England was to become smoke-free on 1st July 2007. Now that we are a few days into the ban businesses are already raising issues connected to the ban. I have therefore dedicated this Update to providing some practical support in relation to the ban along with facts and figures which may prove useful.

Smoking Policies

If you have not already finalised your smoking policy, then take note of the following elements for inclusion. A policy should:

- state why the policy has been introduced and confirm that it complies with the Health Act 2006 and accompanying regulations
- apply to all employees and others using company premises, including visitors
- Explain clearly where, if anywhere, smoking is permitted
- Remind all employees of the rules on rest breaks
- Warn of the consequences of a breach
- Support any employee who wishes to give up smoking
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Legal Q&A

Q. What if employees smoke in defiance of the ban?

A. If it is reported that individuals are smoking within the enclosed premises as a result of you failing to actively enforce the ban, then you could face fines of up to £2,500. Make it clear to employees that if they smoke in the premises (or allow others to), it will be considered a disciplinary offence.

Q. If an employer fails to take steps to ban smoking, can it be taken to a tribunal?

A. Employees can raise grievances and claim constructive dismissal if their working conditions are hazardous. There are also risks of whistleblowing and personal injury claims.

Q. Can employers do anything to get round the ban?

A. In short, no. Outside "smoking shelters" are the only option. To ensure these shelters are no "substantially enclosed" they must be no more than 50% enclosed along the sides (including the roof) and the sides of the structure need to be substantially open.

Q. Can employees still smoke in a company vehicle?

A. Where the vehicle is used primarily for private purposes then the ban does not apply, but if the vehicle is used by any other passenger or driver for work, then the ban will apply and smoking in the vehicle will be prohibited.

Facts and Figures

73% of employers would choose a non-smoking candidate over a smoker (source: YouGov)

34 million working days are lost in England and Wales through sickness absence caused by smoking

36% of employers plan to ban smoking breaks (source: Gee)

30 minutes a day is the average time a smoker takes in smoking breaks

Case Law

In *Dryden v Greater Glasgow Health Board*, an employee resigned after her employer implemented a complete smoking ban. She complained of constructive dismissal. The Employment Appeal Tribunal held that there was no right to smoke at work during work hours.

