Smoke-free workplaces

A guide for union representatives   June 2014

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Background

Second-hand tobacco smoke is a major cause of heart disease and lung cancer amongst non-smokers who work with people who smoke. It is estimated that around 700 workers a year die as a direct result of second-hand tobacco smoke in their workplace.

Second-hand smoke is also responsible for many thousands of episodes of illness. For example, Asthma UK reports that it is the second most common asthma trigger in the workplace. 82% of people with asthma say that other people's smoke worsens their asthma and 1 in 5 people with asthma feel excluded from parts of their workplace where people smoke.

Since 2007 all parts of the UK have had some form of ban on smoking in enclosed workplaces and public places. The ban has been welcomed by the vast majority of people and compliance has been high. Around 80% of people asked have indicated support for the restrictions.

It has also begun to have an effect on the health of those who are no longer exposed to tobacco smoke. There has been a marked fall in hospital admissions due to heart problems. Research from Scotland reported 17% decrease in heart attack admissions in the year after its ban.

However around a quarter of workers still smoke, although not necessarily in the workplace. That is why, despite the ban, smoking is an important workplace issue that can cause problems for union workplace representatives.

This guide explains what the regulations say, what they mean to workers and employers, and what steps safety representatives and stewards should take now to ensure that employers policies comply with the law but are also proportional and practical.

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What the law says

The smoke-free provisions of the Health Act cover not only tobacco in cigarettes, pipes and cigars but also herbal tobacco. These are all prohibited when lit, even if the person is not smoking at the time. So wandering through the workplace with a lit cigarette would be an offence. They do not cover electronic cigarettes. The legislation in Scotland Wales and Northern Ireland are almost identical to the law in England.

Smoking is not be permitted in any workplaces or public places which are "enclosed" or "substantially enclosed" This means premises that have a ceiling or walls at least half the way around, including doors and windows. This means that there cannot be "smoking rooms".

The regulations also cover work vehicles, although there is an exemption for vehicles that are only ever used by one person with no passengers. It does not cover an employee's own vehicle unless it is being used for hire or as a work vehicle by more than one person.

Employers will have to put up "no smoking" signs or face a fine and it is the responsibility of the employer or operator to ensure the signs are there.

There are also offences of smoking in a smoke-free place and failing to prevent smoking in a smoke-free place. The second offence applies to employers or occupiers of premises as well the drivers of smoke-free vehicles.

There are some exemptions under the new regulations. These mainly relate to situations where a person's workplace is also their, or someone else's, home. This will include residential homes, long-term residential mental health units, prisons, offshore platforms and hospices. Although smoking will be allowed in either a bedroom or a designated smoking room, there are strict conditions. The exemptions relate to residents and their guests only and employees will not be able to smoke on the premises (except off-shore platforms). The regulations will not cover designated hotel bedrooms or employees visiting people in their own homes. There are also exemptions for theatre and film performances where smoking is necessary for "artistic" reasons, some research and testing facilities and specialist tobacconists.

What should union representatives do?

Although almost all workplaces have been smoke-free for a number of years, problems can still arise from the law or employers attitudes to smoking and it is good policy to have a negotiated policy in place that deals with the issue in a practical and effective way. Smoking policies should not victimise smokers but seek to eliminate employee exposure to tobacco smoke, although they can also support smokers who want to quit. They also have to deal with issues such as the use of electronic cigarettes.

The main aims of a smoke-free policy are to:

- Protect all staff from the harmful effects of second-hand tobacco smoke.
- Ensure that all parties including employers, smokers and non-smokers have a clear understanding of their rights and responsibilities and prevent problems arising.
- Ensure that the workplace complies with the law.

A negotiated policy involving union representatives is more likely to be practical and acceptable to the workforce.

Negotiating a smoking policy will vary depending on the workplace. The overall aim should be to eliminate employee exposure to environmental tobacco smoke, and at the same time comply with the legislation. Policies should not be used to stigmatise smokers or discriminate against them.

What should be included in a smoke-free policy?

A comprehensive smoke-free policy will cover some or all of the following:

- The rights of non-smokers to breathe air that is free from tobacco smoke
- Compliance with all legislation relating to smoking in the workplace
- Control of the use of electronic cigarettes
- What time is allowed for smoking breaks for indoor workers who have to leave the workplace to smoke
- The support that is to be provided by the employer for smokers who wish to stop smoking
- What happens to employees who do not comply with it
- Procedures for monitoring the effectiveness of the policy and for reviewing it
- Procedures for resolving complaints and disputes

The following steps will be useful when negotiating a smoke-free policy at work in workplaces that do not have one at present:

The commitment of the employer to health promotion

The smoke-free policy should not be an isolated action but part of a comprehensive approach to promoting health and preventing risks at work. Specific measures on smoking should be part of the employer's overall plan for health and well-being at work. The smoke-free policy should seek to protect or promote the health of both the smoker and the non-smoker. However while an employer may reasonably wish to support employees by helping them give up they should also accept that the decision whether to smoke outside of work is for the individual.

Set up a working group

The group should be responsible for co-ordinating the various phases of the programme – development, implementation and monitoring. The working group should be made up of trade union representatives, smokers and non-smokers, health and safety and human resources staff and the senior management team.

Inform the workforce

Rather than just notify the workforce about the smoking policy, it is important that everyone in the workplace is informed about the health hazards associated with second-hand tobacco smoke. This can be done via health promotion programmes, displaying and distributing educational literature, articles in in-house publications or via an intranet.

Consult the workforce

It is important to find out employees' opinions on the policies to be implemented by the employer. A questionnaire could be drawn up and distributed by union representatives to find out:

- The number of smokers and ex-smokers
- The proportion of smokers who wish to give up smoking
- Attitudes to smoking in the organisation
- Opinions on issues such as outside smoking and breaks

Other ways of gauging employees' views are meetings, interviews or group discussions. These should be run by the union, rather than by management, so that people feel freer to express their views openly and honestly.

Working towards a policy

With the information from the consultation process a policy can start to be formulated. The draft policy should:

- Comply with the law
- Protect all non-smokers in the workplace
- Describe how disagreements and breaches of the policy will be dealt with
- Describe what help is available for smokers
- Have a clear timetable for implementation with a phase-in period
- Name the person responsible for monitoring and receiving feedback

Provision for smokers

Research shows that smoke-free workplaces help smokers to give up or reduce the amount they smoke, however some people will still want to smoke during working hours and many will find it very difficult to cut down or stop. Each organisation will deal with this issue differently depending on the culture and the nature of the work. However, with very few exceptions, no smoking can take place at all inside an enclosed building, so any permitted smoking area will have to be outside. If it is to be outside then provision will have to be made for ash and cigarette ends. If smoking is permitted outside in designated areas, the working party will need to consider whether to specify how often and for how long smokers may take breaks.

Some employers have attempted to use smoking bans as an excuse for banning outside workers from smoking while on duty. There is no legal requirement to do this and outside smokers are only harming their own health, not that of others. If employers do propose this then safety representatives should consider this carefully, as it is not an

occupational health and safety issue but a health promotion issue, or, if the outside worker can be identified with the employer through a uniform or other means, then simply one of image for the employer.

If representatives from all areas and all levels of the organisation are involved in the working group it is more likely that the most appropriate policy will be drawn up and conflict will be reduced.

The TUC does not support smoking policies that state that the employer will not employ smokers. If smokers restrict their smoking to outside working hours there is no reason this should affect their work or their ability.

Support for smokers who want to give up

Helping smokers to give up if they wish is an essential element of a successful smoking policy. You are recommended to work with your local NHS Stop Smoking Services on this. Ideally this will be offered both in the period leading up to the implementation of a smoking ban, as well as immediately after. There are various ways of doing this:

- Provide advice on giving up smoking from a doctor or health professional
- Developing programmes for giving up smoking which could consist of group meetings run by professionals
- Supplying free or subsidised nicotine replacement therapy such as gum, patches or electronic cigarettes.
- Distribute self-help guides for giving up smoking.
- Multi-component programmes including all of the above and tailored to the individual

Implementing the policy

Once the policy is finalised it needs to be communicated to the workforce and a date set for implementation. Good practice is to provide at least a 12-week gap between the policy being finalised and it coming into operation, although given that all workplaces are now smoke free there may be little change. At this stage the necessary adjustments should be made such as publicising the policy and organising support for smokers. Copies of the policy should be displayed in key areas around the workplace. All new employees should be given a copy of the policy.

Evaluation and monitoring

The policy must be monitored and evaluated jointly by unions and management to ensure that it is working effectively. Any changes should be made in consultation with the workforce and any complaints or problems should be handled promptly and fairly. The following areas may be included in an evaluation:

- Have there been any reports of non-compliance?
- Are the signs clear and do they cover all areas including public areas?
- Are new staff told about the policy at induction?
- Are existing staff reminded about assistance available to help them stop smoking?

- Have there been problems over the use of breaks by smokers?
- If outside areas are available for smoking, are they being used and is litter removed regularly?

Electronic cigarettes.

In recent years electronic cigarettes have become more popular, with a threefold increase in sales in 2013. These are not covered by the legal ban on smoking in enclosed workplaces but it is important that employers have a policy on their use.

Their sale is unregulated and there is very little evidence as to their safety. Also the ingredients and quality of electronic cigarettes can vary considerably.

Nevertheless, it is likely that they are less harmful to users than smoking tobacco as it is the smoke from burning tobacco that poses the most risk to health, rather than the nicotine. That does not however mean that they are safe. It can take many years for cancers and other lung disorders to develop and be recognised. Some research indicates that electronic cigarettes do in fact cause lung damage, but whether this is significant or can cause cancer is not yet known. However because quality varies considerable there is no consistency in the pollutants that electronic cigarettes emit. However studies do indicate that over half of the vapours do get to the lungs. So although they might be the lesser of the two evils, they may not be benign.

It is likely that electronic cigarettes help existing smokers quit tobacco cigarettes, although evidence from the USA indicates that a small number of users are new smokers who were not previously addicted to nicotine. It is also claimed that they are more likely to appeal to young people and some manufacturers seem to be targeting that market through the use of colours and flavours such as bubblegum and candy floss. Certainly there has been a big increase in reported poisonings from electronic cigarettes in the UK, with 139 calls in 2013 compared to 29 in 2012 and 36 over the five years before that.

The TUC strongly recommends that unions should negotiate that electronic cigarettes are subject to the same general restrictions in the workplace as tobacco. They should not be used in any indoor place. This is not just because the risk to others is unknown, but also because it can be confusing if people are seen to be "smoking" what can look like a cigarette. This undermines the smoking ban.

We do however support the idea that separate areas should be made available for users of electronic cigarettes away from any outside smoking area. If a worker is using electronic cigarettes to help them give up smoking tobacco then it is not going to help forcing them to go outside in the same area as smokers.

Unions should also welcome any attempts by employers to promote the use of electronic cigarettes for existing smokers to help them give up, in the same way as they sometimes help subsidise nicotine patches or chewing gum, but this should be on the understanding that they only use them when they would normally smoke a cigarette and not anywhere that smoking is restricted.

Dealing with exemptions

Where your employer can claim an exemption from parts of the smoke-free restrictions in the Health Act 2006, then it is important that the union is involved in discussions on how the exemptions will be introduced.

In prisons, mental health units, oil and gas platforms, hospices and care homes, while smoking by residents will be permitted, this does not mean that the employer does not have a duty to protect staff. Workers in these areas have exactly the same rights to work in a smoke-free environment as other workers and any designated areas must be the exception rather than the rule. They cannot be rooms used by other residents for other purposes such as TV, games, rest or eating. Staff should not work in areas where smoking is permitted. Nor can they use these rooms to smoke themselves. Any designated smoking rooms must have mechanically closing doors and preferably separate ventilation.

Within the entertainment industry, unions should ensure that smoking is only permitted when it is a genuine artistic requirement and that non-addictive herbal tobacco substitutes are used to ensure that the artists do not get addicted to nicotine.

Other issues

Visiting clients in their home

Workers visiting clients in their home are not directly covered by the provisions of the Health Act. However union representatives will wish to ensure that employees are protected when visiting clients in their homes. Obviously staff should not be able to smoke while with a client.

Safety representatives and stewards will not wish to restrict the right of individuals to take part in a legal activity in their own homes, but employees also have a right not to be exposed to second-hand tobacco smoke. This is best done by seeking agreement with the employer that they will introduce guidance on this issue. In some cases it may also be appropriate to add smoke-free conditions into any service agreements with clients. All those who are visited regularly should be notified of the guidance or conditions in advance. The employer should ask any service users or clients who are visited regularly not to smoke for a certain period prior to any pre-arranged visit and during a visit. The client should also ensure that no-one living in the house with them smokes. Clearly where a client or patient is suffering from dementia or some other illnesses this may be difficult to enforce and some tact may be required.

A draft policy on smoking

The following is a draft policy that you might want to use as a template for one within your workplace.

Policy on a smoke-free workplace

Effective from [date].

Second-hand exposure to tobacco smoke has now been shown to be a risk factor for lung cancer and heart disease in non-smokers, as well as many other illnesses.

This organisation acknowledges that breathing people's smoke is a public health hazard. Therefore, the following policy has been agreed between [name of employer] and [name of union(s)] concerning smoking in the workplace.

General principle

This smoking policy seeks to guarantee non-smokers the right to work in air free of tobacco smoke, while also taking account of the needs of those who smoke. It will also support those employees who wish to stop.

All premises have been designated smoke free in accordance with the law. However this includes not only the smoking of tobacco in all forms, but also the smoking of herbal substitutes and electronic cigarettes. Smoking will not be allowed in any part of any building. Smoking while on duty will only be allowed outdoors in designated areas and while on official breaks. A separate area will be allocated to those who wish to use electronic cigarettes. This will not apply to staff working outdoors as part of their job.

Vehicles

All official vehicles will be smoke free at all times.
Or
All official vehicles will be smoke free at all times unless only ever used by one person and where passengers are never carried.

Informing staff of the policy

All induction sessions will refer to the smoking policy and the reasons for it, and notices will be placed at all entrances and at selected places within all buildings. In addition the employer will inform staff of the policy in the following ways: [list them here]

Clients and members of the public

Employees will not smoke while in the homes of clients. In addition the employer will take the following steps to limit staff exposure to second-hand smoke from clients/members of the public: [list them here]

Help for those who smoke

It should be noted that this policy is not about whether anyone smokes, but with where they smoke and the effect that this has on non-smoking colleagues. It does however recognise that nicotine is highly addictive and staff who wish to stop may need help and support. In an effort to help those individuals the following help is being provided: [list them here]

Enforcement of the policy

Breaches of the policy will normally be dealt with through education and counselling. As a last resort, if counselling and negotiation fail, employees who refuse to observe the policy on smoking will be subject to normal disciplinary procedures.

Implementation, monitoring and review

Responsibility for implementing and monitoring this policy rests with senior managers. Senior managers will carry out the monitoring of this policy at three, six and twelve months following implementation with a formal review after eighteen months. The trade unions will be consulted over the results of the monitoring and review.

12 weeks' notice will be given of the introduction of this policy and of any changes subsequently made to it. Changes will only be made after consultation with the trade unions.