

- The employer has 20 working days to investigate whether a breach of the Act has occurred, and to try to resolve the complaint. If the complaint was received by the Director-General, it will be referred to the employer in the first instance.
- Where the breach is on the part of the employer, the employer shall try to settle the complaint, or give an assurance that satisfies the complainant that there will be no repetition of the cause of the complaint.
- Where the breach is on the part of an employee or volunteer, the employer should obtain from the employee or volunteer an assurance that there will be no repetition of the cause of the complaint.
- The representatives of the employees in the workplace are entitled to be present at any meeting called by the employer for the purpose of resolving the complaint and avoiding future cause for complaint.
- If within 40 working days after receiving the complaint the employer is unable to investigate it and resolve it by agreement, the employer must refer it, in writing, to the Director-General.

Where employment relationship problems arise in respect of smoking in the workplace, employers and employees will deal with those in terms of the Employment Relations Act.

OFFENCES AND FINES

It will be up to employers to take 'all reasonably practicable steps' to ensure that no one smokes in the workplace. Failure to do so may result in the employer being liable for a fine of up to \$400 (individual) or \$4,000 (body corporate).

An employer who without reasonable excuse fails to refer an unresolved workplace smoking complaint to the Director-General of Health is liable for a fine of \$100 (for individuals) or \$1,000 (for a body corporate).

FURTHER INFORMATION

This information is a guide only, and may not be accurate for all situations. It should not be used as a substitute for legal or other expert advice.

Other pamphlets include *Information for Employers*, code 1601.

For further information on tobacco, health and the Smoke-free Environments Act 1990 contact:

www.smokefreelaw.co.nz

www.moh.govt.nz

www.healthed.govt.nz

Public Health Service at your local District Health Board.

Public Health Service contact details:



INFORMATION FOR EMPLOYERS

About the **smoke-free law relating to hospitals, rest homes and residential disability care institutions**

INFORMATION FOR EMPLOYERS COVERING:

- a guide to compliance for employers
- areas where smoking may be permitted
- complaints relating to workplace smoking
- offences and fines.



Three-quarters of New Zealanders do not smoke, but many are exposed to the significant health risks of second-hand smoke. The Smoke-free Environments Act 1990 (the Act) extends protection for workers, volunteers and the public against exposure to second-hand smoke. The intention is to send a positive message about a smokefree/auahi kore lifestyle being both desirable and the norm.

From 10 December 2004, all internal workplaces (with some limited exceptions, which are outlined below) will be required to be 100 percent smokefree. This includes licensed premises, factories, offices, warehouses, 'smoko' rooms and work canteens.

A 'workplace' is an 'internal area' occupied by an employer, and usually frequented by employees or volunteers during the course of their employment. This does not include a motel or bedroom or suite in a hotel, or a dwelling house occupied by the employer.

An 'internal area' in relation to any premises or vehicle, means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by-

- a ceiling, roof or similar overhead surface; and
- walls, sides, screens or other similar surfaces; and
- those openings.

A GUIDE TO COMPLIANCE FOR EMPLOYERS

From 10 December 2004, employers must take 'all reasonably practicable steps' to ensure that no person smokes at any time in an internal area. For the purposes of the Act, a reasonably practicable step is defined as what a reasonable and prudent person would do in similar circumstances. Failure to take all such steps will be a breach of the law under the Act.

AREAS WHERE SMOKING MAY BE PERMITTED

The following are limited exceptions to the prohibition against smoking in the workplace, provided that certain conditions are met:

Smoking rooms in hospitals, rest homes, and residential disability care institutions

Hospitals with two people or more, rest homes with three people or more, and residential disability care institutions with five people or more may provide one or more dedicated smoking room(s) for patients or residents of the facility, provided that

- the smoking only takes place in the dedicated smoking room(s)
- a mechanical ventilation system is installed in the smoking room(s)
- the employer has taken 'all reasonably practicable steps' to minimise the escape of smoke from the smoking room; and
- for each dedicated smoking room, an equivalent smoke-free room is made available.

No person other than a patient or resident will be able to smoke in a dedicated smoking room, including employees and visitors.

Specified work vehicles

The provision of specified work vehicles in which smoking is permitted is not mandatory, but is allowed for. An employer may permit smoking in a work vehicle, provided that:

- the public does not normally have access to the work vehicle; and
- the written consent of all regular users of the vehicle is obtained.

This means that it will be up to the employer to decide whether they will allow smoking in work vehicles, even if the written consent of all users is obtained. If at any time a person wishes to withdraw their consent, they must do so by giving the employer written notice.

These obligations are complementary to employers' existing obligations under the Health and Safety in Employment legislation; and complementary to 'good employer' obligations.

COMPLAINTS RELATING TO WORKPLACE SMOKING

The Act sets out the process for complaints relating to workplace smoking.

- Complaints relating to workplace smoking can be made to the employer of the workplace, or the Director-General of Health, and must specify the particulars of the complaint.