



A-Z OF EMPLOYING

Smoke Free Environments Act

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

Smoke Free Environments Act

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Contents

This is only a guide.
It should not be a
substitute for
professional advice.

Please seek advice
from our AdviceLine
Team if you require
specific assistance.

Use this guide to understand	3
What is the Smoke-Free Environments Act?	3
Minimum Obligations	3
Workplaces	3
Vehicles	4
Other areas.....	4
Complaints	4
Offences	5
Conclusion.....	5

Smoke Free Environments Act

Our guide for Employers and Managers

Use this guide to understand

- ▶ Your obligations under the Smoke-free Environments Act 1990 and the consequences of failing to meet those obligations
- ▶ How to address smoking in the workplace while complying with the law

What is the Smoke-Free Environments Act?

The Smoke-free Environments Act 1990 (“the Act”) was designed so that non-smokers could be protected from the harmful effects of smoking. The Act imposes a positive duty on you to control cigarette smoking and its effects in the workplace. This includes a ban on smoking in indoor workplaces. The Act addresses smoking in the conventional sense and does not include use of an ignited product customarily used as incense.

Minimum Obligations

Workplaces

As an employer or a person who arranges for volunteers to undertake work, you have a duty to take all practicable steps to ensure that no person smokes at any time in your workplace. This includes all persons entering the workplace, not just employees and volunteers.

The duty does not apply to a workplace that is a dedicated smoking room in hospital care or residential disability care institutions, and rest homes. This is an internal area used solely to enable patients or residents to smoke, or to socialise with each other in a place where smoking is permitted.

For the purposes of the Act “workplace” has a broad definition and includes an “internal area” of most conventional types of work places. It also includes an internal area within or on a vehicle that is provided by you and normally used by your employees or volunteers.

“Workplace” does not include the following:

- ▶ A motel, or a bedroom or suite in a hotel
- ▶ A cabin or suite, for the time being assigned to a passenger or passengers on a ship
- ▶ A sleeping compartment, for the time being assigned to a passenger on a train
- ▶ A cabin, for the time being assigned to only one employee or volunteer, or to the master or owner, on a ship
- ▶ A sleeping compartment, for the time being assigned to only one employee or volunteer, or to the master or owner, on a train
- ▶ A dwellinghouse occupied by the employer.

The Act does not provide any guidance on what “all reasonably practicable steps” means, however the Ministry of Health has indicated that you will not be prosecuted if you have, in order to prevent unlawful smoking:

- ▶ Displayed no-smoking signs; and
- ▶ Not supplied ashtrays; and
- ▶ Take disciplinary action against “offending” smokers.

Smoke Free Environments Act

Our guide for Employers and Managers

You can still agree with your employees on a policy that permits smoking in open areas at prescribed times and/or in specified circumstances. Many employers have an open area set aside for smoking. While you do not have to provide such an area, you may wish to consider it in order to prevent your employees standing on the street in front of your business to smoke.

Vehicles

You may permit smoking in a vehicle provided by you which is normally used by employees or volunteers if:

- ▶ The public does not normally have access to any part of it, and
- ▶ All the employees and volunteers who use have given you written notice asking you to permit smoking in it, or stating that they do not object to other employees and volunteers smoking in it.
- ▶ Any employee who uses the vehicle can notify you that they no longer wish smoking be permitted in the vehicle and you must comply with such a request.

Other areas

Under the Act smoking is also prohibited in or on the following premises:

- ▶ Any area located within an enclosed travel terminal
- ▶ Any area that is not an open area on licensed premises
- ▶ Any area that is not an open area of a restaurant
- ▶ Any area that is not an open area of a casino
- ▶ Any area that is not an open area in gaming machine venues.
- ▶ On passenger aircraft.
- ▶ Any internal or open area at schools and early childhood centres

Complaints

Any person can complain to you, or the Director General of Health if they believe that anyone has contravened the provisions of the Act as it relates to your workplace. If you receive such a complaint you must investigate within 20 working days. If you find that the Act has been breached, you must try to resolve the complaint.

If you have breached the Act you must settle the cause of the complaint, or give assurance that satisfies the complainant that there will be no repetition of the breach.

Where an employee or volunteer has breached the Act, you must obtain from the employee or volunteer an assurance that satisfies the complainant that there will be no repetition of the breach. Any representative of your employees shall be entitled to be present at any meeting for the purpose of resolving a complaint and avoiding future cause for complaint.

If within 40 working days after receiving a complaint you are unable to investigate and resolve it by agreement, you must refer it, in writing, to the Director General of Health.

Smoke Free Environments Act

Our guide for Employers and Managers

Offences

It is an offence to not take all reasonably practicable steps to ensure that no person smokes in a workplace where smoking is prohibited by the Act. Your company may be fined up to \$4,000, or an individual up to \$400.

If you do not refer a complaint in writing to the Director General of Health within 40 working days and being unable to investigate and resolve the complaint by agreement, your company may be fined up to \$1,000, if you are a sole trader up to \$100.

Conclusion

This guide provides non-industry specific information about your obligations relating to smoking in the workplace. The Act includes additional and greater obligations for schools, early childhood centres, licensed premises and restaurants, all of which may affect employers.

If you require more information than this in order to fully appreciate your obligations, please contact Business Central Advice.

Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.org.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to BC Learning courses and conferences designed for those who manage employees.

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