



*Row ignites over smoking at work.
Should e-cigarettes be allowed in the Workplace?*



***A FREE E-Book
giving advice and guidance to employers.***

1. Introduction

Employers would be forgiven for thinking that the issue of smoking in the workplace is one of a bygone era.

We are all well versed in the Smoking ban, which took place in England and Wales in 2007, making it illegal to smoke in substantially enclosed public places, with the aim to reduce passive smoking and exposure to secondhand smoke, which is known to be harmful.

However, the rise in popularity of electronic cigarettes (E-cigarettes) as an alternative to cigarettes is leaving businesses with something of a dilemma: it does not break the law, but should it be allowed?

2. The Legal Position

Whilst E-cigarettes contain nicotine, this is not from lit tobacco. There is no smoke and it is the smoke and by-products from smoking contained in it that are of concern in relation to the health risks of passive smoking. The smoking ban was introduced to prevent passive smoking and create a statutory right to a smoke-free working environment.

The ban includes manufactured and hand rolled cigarettes, pipes (including shisha and hookah water pipes), cigars and herbal cigarettes. The definition of smoking under the Act refers to tobacco and other substances in a lit form, which are capable of being smoked.

Electronic cigarettes are unlikely to be covered by the ban. Employers may also find that electronic cigarettes fall outside their existing definitions of drugs in their drug and alcohol policies.

E- cigarettes appear not to be covered by the anti-smoking legislation. However, they do emit a vapour. It is not against the law but is it harmful or desirable?

E-cigarettes work by heating a cartridge filled with liquid nicotine. A vaporised mist provides the body with the addictive stimulant, and according to some reports they do not release tar, carcinogens and other conventional smoking by-products. They are also reportedly not harmful to others.

3. Questions about E-Cigarettes within company policy

We are receiving questions from employers and employees alike

- What is the etiquette for e-cigarettes?
- Is it socially acceptable to take a battery-assisted puff, 'vape' on a plane, in a

restaurant or in the office?

- Does the use of e-cigarettes conform to the business culture i.e. ethos, professional image etc.
- Can we ban it? What do we do if people object to the ban?

Organizations such as Caerphilly Council, NHS, JD Weatherspoon pubs have banned the use of e cigarettes extending their no smoking policy to cover e-cigarettes. Recently, train operators have also announced a complete ban stating using nicotine devices made other travellers feel “uneasy”.

4. Yes or No?

At **HCHR** we have debated the various positions business owners could take on the issue and are pleased to share our thoughts with you.

Many employers are reluctant to allow e-cigarettes into a working environment and prefer them to be treated in exactly the same way as conventional cigarettes. Our advice to them is to be very clear about the business case for implementing a ban.

A valid business case for many businesses is if e-cigarettes make it unreasonably difficult for the employer to police adherence to their legal obligations under the smoking ban. Some-cigarette models can, particularly from a distance, look like real cigarettes. Consideration can also be given to company image impression for visitors, customers or other employees that it is acceptable to smoke on the premises.

Other employers may wish to consider the benefits of permitting e-cigarettes to be used; it may assist employees who are trying to cut down or give up smoking to manage their nicotine cravings and work more effectively and significantly. Also, if an employer does permit employees to take smoking breaks, use of e-cigarettes could allow an employee to carry on working without smoking breaks.

Unlike alcohol and illegal drug abuse, the biggest risk of e-cigarettes is unlikely to be employees becoming too intoxicated to perform their roles. It is much more likely that the problem will be employees taking excessive breaks. Whether or not employers include e-cigarettes in their substance abuse policies, they should make it clear that unauthorised or excessive breaks will result in disciplinary action.

Smoking breaks themselves can sometimes cause resentment amongst other employees who do not smoke and do not see why smoking colleagues should be given breaks to permit them to smoke. So, what if non-e-smoking colleagues

complain about being subjected to e cigarette vapours? Our advice is to understand the concerns and draw up a policy that is relevant to your business.

Permitting e-smoking at the desk or not, is similar to permitting eating and drinking at the desk. There is no specific law to support the policy either way, so a sensible business decision must be made mindful to respect the needs of the employees and the Company.

5. Tips for Employees

5.1 Designated smoking areas

Employers with designated smoking areas, who decide to ban e-cigarettes in the workplace must think about where e-smokers will smoke. E-cigarette smokers forced to use designated smoking areas could bring grievances, or even constructive dismissal claims, based on the employer's failure to provide them, as 'non-smokers', with a smoke-free environment; or they could challenge any disciplinary action arising from using e-cigarettes outside of a designated smoking area. To avoid this risk, employers could assign a separate area for e-cigarette users, well away from the designated smoking areas.

5.2 Restrictions

Employers who decide to allow the use of e-cigarettes, should clearly set out any parameters of use restrictions. E.g. Heathrow Airport allows smoking on premises but not beyond the gate.

5.3 Wellbeing Policy

Employers should take time to understand the use of e-cigarettes. They can be used as a device for quitting smoking and if supporting employees to quit sits within your Organizations culture i.e. in line with your Wellbeing Policy, they may want to support their use if it enables employees to stop smoking.

5.4 Smoking Policy

Ensure your Smoking Policy is clear, up to date and has been communicated to all employees. Whatever your decision is about e-cigarettes in the workplace this should be set out clearly in Smoking Policy as should the consequences for breaching the rules. Policies work best when they are clear and simple to understand.

5.5 Checklist

Personnel Today have provided a useful checklist which you can apply within your business:

- to prohibit e-cigarettes expressly in all workplaces, company vehicles and where staff are supplied out to client sites or take a lighter touch approach. This may be an amendment to extend the scope of an existing drug and alcohol policy to include e-cigarettes or creating a new set of rules if no such policy is in place
- to designate a separate area for e-cigarette users if the organisation has a place for conventional smoking
- to permit staff to use e-cigarettes in certain social contexts (for example, during client entertainment). If so, policy rules should be carved out clearly and employees made aware that failing to adhere to them may result in disciplinary action
- to apply the policy to contractors and agency workers who are not your employees. It may not be possible to subject these workers to disciplinary sanctions (and doing so could risk them being considered employees), but it may be possible to set up other mechanisms within the commercial agreements under which they operate
- to provide additional support to employees struggling with addictions, including addiction to nicotine.

This free e-book has been brought to you by HR Policy experts:

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