

# HR Newsletter

## November 2015:

### E-Cigarettes

#### **E-Cigarettes – How should we use/ monitor/allow them to be used by staff?**

Electronic cigarettes (e-cigarettes) are increasingly popular with ex-smokers and those who are still trying to kick the habit. But with expert opinion on the safety of these devices sharply divided, it can be difficult for employers to decide how to treat e-cigarettes in the workplace.

E-cigarettes are battery-operated devices that turn nicotine into a vapour that can be inhaled. A recent evidence review published by Public Health England concluded that they are 95 per cent less harmful than tobacco products and could be a “game changer” in helping smokers quit. Others argue that since the risks associated with e-cigarettes are not yet fully known, these products should be treated in the same way as conventional cigarettes. The British Medical Association, for example, has called for smoke-free legislation to be extended to include vapour from e-cigarettes, which would place “vaping” under the same restrictions as smoking in the workplace.

#### **Ban**

E-cigarettes are not covered by the statutory ban on smoking in enclosed spaces, but many employers nonetheless prohibit vaping on their premises in order to protect employees and others from being exposed to the vapour emitted by the devices. However, with evidence suggesting that many people use e-cigarettes as a way to help them stop smoking, some employers may consider a complete ban on using the devices in the workplace to be counter-productive.

#### **Designated areas**

An alternative is to permit e-cigarette use in certain designated areas. However, employers who take this approach would be **well advised not to** send e-cigarette users to the same areas as regular smokers. One of the key aims of the Health Act 2006, which introduced the statutory ban on smoking in enclosed public spaces was to minimise people’s exposure to second-hand smoke and give them the right to a smoke-free workplace. Designating a single area for the two groups could therefore result in users of the electronic devices bringing grievances, or even constructive dismissal claims, because they are being exposed to second-hand smoke.

## **Breaks**

Employees taking excessive smoking breaks, whether to smoke or use e-cigarettes, present another potential challenge for employers. Employers should review their no-smoking policies to ensure that employees understand that excessive or unauthorised breaks will result in disciplinary action. Alternatively, they may wish to follow the example of organisations such as Nottinghamshire County Council, which is proposing to ban employees from taking breaks either to smoke or use e-cigarettes during working hours.

## **Around the UK**

All employers need to ensure they have no-smoking policies that include details of their approach to e-cigarettes. However, it is becoming increasingly complicated for employers with sites in different parts of the UK to introduce such policies. In Wales, the devolved government is proposing to outlaw use of e-cigarettes in enclosed public spaces, and Scotland appears to be moving in a similar direction, with use of e-cigarettes largely prohibited in hospital grounds. While there is currently no such ban in England, many companies, including All Bar One, JD Wetherspoon, Starbucks, National Express and Virgin Trains are reported to have banned use of e-cigarettes by customers and employees.

For organisations with offices throughout the UK, a single, UK-wide policy would need to take these different approaches into account. Otherwise, separate policies may have to be put in place.