

The Smoking Ban: Six Months On

The ban on smoking in the workplace is now six months old. Recently published research commissioned by the Department of Health shows that implementation has been largely positive with 98% of employers in England complying with the new law.

Inevitably however, not all employees have welcomed the ban but employers can face both employment claims and fines if they do not ensure that their staff comply with the new law.

It is important to have a clear no-smoking policy in place and make sure this is communicated to all employees, warning that smoking in the workplace is against the law and that failure to comply will result in disciplinary action. Some employers may wish to categorise smoking in

the workplace as gross misconduct. If they do, it should be clearly stated in the policy. If the policy is clear and a fair procedure is followed, a tribunal is more likely to find such a dismissal fair.

The policy should also address smoking breaks. Colleagues may feel that smokers receive an additional benefit if they are allowed to take frequent cigarette breaks during the day. If an employer allows employees to take smoking breaks the policy should clearly state the rules on taking such breaks, for example, how many a day and for how long and this should be closely monitored.

It is important that employers ensure all employees are aware that a no-smoking policy is in place and the consequences of breaching the

policy, and that they ensure it is properly implemented and monitored. The consequences for not doing so could be far-reaching. Employers are liable for statutory fines if the ban is breached or not properly enforced. They may also find themselves on the wrong end of claims brought by non-smoking employees on the basis that their health is detrimentally affected by their employers' failure to implement adequate procedures or to respond when that procedure is breached.

If you are concerned with anything raised here or any other aspect of employment law the Employment Group at Solnick LLP will be happy to assist. For further information please contact Jonathan Keighley on 020 8996 4706