



HR Broadcast – E-cigarettes in the workplace

I recently came across a new type of query from a client and that was that an employee had complained about a colleague who used an e-cigarette during a recent meeting. This caused offence to the client as he is an asthma sufferer and has operated a no smoking ban in the workplace for the past 10 years. The employee refused to stop using the e-cigarette and responded by saying that the company could not prevent him from using e-cigarettes in the workplace; he said he was trying to stop smoking and that there was no legislation which bans e-cigarettes use at work or in public places. Very relevant here, there was no company policy on e-cigarettes.

E-cigarettes are battery-powered devices designed to replicate the experience of smoking without the use of tobacco. They work by heating a cartridge of liquid nicotine, which emits an aerosol that users inhale or “vape”.

A number of organisations have banned the use of e-cigarettes including Nicholsons. Our Handbook was amended to say, “Nicholsons adopts a no smoking policy in its buildings. Smoking outside of the buildings in an area on view to the public is also prohibited, however, smoking is allowed in the smoking shelter in the Whisby Road car park. This area must be kept free of all waste paper and general rubbish which must be disposed of correctly. Smoking breaks do not form part of the daily working day. Anyone taking a smoking break does so in their own time. Please note that this no smoking policy includes e-cigarettes.”

Smoking in enclosed (or substantially enclosed) public places was banned in July 2007. The ban was extended to the workplace to ensure that they were smoke-free. Some employers do permit designated smoking areas as you can see from the Nicholsons policy. However, this legislation, does not apply to e-cigarettes as they do not appear to fall within the definition of “smoking” as set out in the legislation, which refers to “lit tobacco” or any other substance that can be smoked when lit. Therefore you as the employer cannot rely on the current anti-smoking legislation to take disciplinary action against vaping at work.

The current thinking on e-cigarettes is that if an employee is dismissed for smoking an e-cigarette without a company policy then that dismissal may well be unfair.

Therefore any protection for the employer must come from either the contract of employment or a policy contained within the Employee Handbook.

So please be aware that;

- the employer is under a statutory duty to protect the health and safety of the workforce
- whether or not e-cigarettes are permitted in the workplace is a matter for the employer to decide and to enforce through the organisation’s internal policies
- the employer has to recognise that there is liable to be some concern among the rest of the workforce (and not least if employees are pregnant or trying to give up conventional smoking) if the use of e-cigarettes is allowed at work
- the use of e-cigarettes at work may not fit in with the intended professional image of the organisation and its likely promotion of employee wellbeing.

So if the employer decides to ban e-cigarettes in the workplace, I suggest the following;

- Consult with any employee consultative body before introducing new rules.
- Amend the smoking policy. The amendments should include:
 - an express ban of the use of e-cigarettes in the workplace, in company vehicles and at any client locations where your employees are working
 - an explanation of the reasons for the ban on e-smoking and that the organisation wants to prevent any activity that creates the illusion of smoking
 - a clear statement that non-compliance with this policy may lead to disciplinary action.
- State in the policy that any unauthorised or excessive e-smoking breaks may result in disciplinary action.

The Health and Safety policy may need to be amended to cover the use of e-cigarettes.