

Requirements of the Smokefree Environments and Regulated Products Act 1990

Work vehicles and Transportation - Information for Employers

Most New Zealanders do not smoke, but many people are still exposed to the significant health risks of second-hand smoke. The Smokefree Environments and Regulated Products Act 1990 extends the protections for workers, volunteers and the public, particularly against exposure to secondhand smoke and vaping. The intention is to send a positive message about a smoke-free/ auahi kore lifestyle being both desirable and the norm.

Key areas for employers

From 10 December 2004 all indoor workplaces (with some limited exceptions, which are outlined below) were required to be 100 percent smoke-free. From 11 November 2020 this law was extended to vaping as well.

A 'workplace' is an 'internal area' occupied by an employer, and usually frequented by employees or volunteers during the course of their employment. This does not include a motel or bedroom or suite in a hotel, or a dwelling house occupied by the employer.

An internal area, in relation to any premises or vehicle, means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by:

- a ceiling, roof or similar overhead surface, and
- walls, sides, screens or similar surfaces, and
- those openings.

There are some places that are specifically excluded from the definition of 'workplace', and therefore the general restrictions on smoking and vaping in workplaces do not apply. These include passenger accommodation on ships and trains, and individual staff accommodation on ships and trains.

These exemptions are all based on the principle that the excluded area is a person's home, either temporarily or permanently. However, this does not prevent the owners or managers of these places from choosing to make this accommodation 100 percent smoke and vape-free.

Ships

Smoking and vaping are prohibited in all internal areas of a ship with the exception of individual passenger

cabins and cabins occupied by sole employees or volunteers. The outdoor areas (eg, open deck areas) are not covered by the workplace prohibition on smoking.

Trains

Smoking and vaping are prohibited in all internal areas of a train with the exception of individual passenger cabins and cabins occupied by sole employees or volunteers. Any outdoor areas are not covered by the workplace prohibition on smoking and vaping.

Aircraft

Smoking and vaping are not permitted on internal flights carrying passengers.

Operating taxis

No person (including the passenger/s and driver) shall smoke or vape at any time in an operating taxi, whether it is carrying passengers or not. This includes travelling between fares and waiting time. Drivers must smoke and vape outside the taxi unless the taxi ceases to be an operating taxi, for example, when it is being used as a private family car.

Passengers under 18 years

From 28 November 2021 it will be illegal to smoke or vape in a vehicle with children under the age of 18 present. This applies if the vehicle is moving or stationary, and on a public road.

Specified work vehicles

The provision of specified work vehicles in which smoking and vaping is permitted is not mandatory, but is allowed for. An employer may permit smoking or vaping in a work vehicle provided that:

- the public does not normally have access to the work vehicle, and
- the written consent of all regular users of the vehicle is obtained.

This means that it will be up to the employer to decide whether they will allow smoking or vaping in work vehicles, even if the written consent of all users is obtained. If at any time a person wishes to withdraw their consent, they must do so by giving the employer written notice.

Small passenger service vehicles

Smoking is permitted in small passenger service vehicles (i.e. shuttle buses) that carry fewer than 12 people, provided that the driver and every passenger in the vehicle agrees that smoking shall be permitted.

Passenger service vehicles

Smoking is not permitted in passenger service vehicles (ie, buses) that carry more than 12 people.

Travel premises

Smoking and vaping is prohibited in the following areas within an enclosed travel terminal:

- booking areas
- passenger queuing areas
- passenger waiting rooms
- passenger lounges.

These obligations are complementary to employers' existing obligations under the health and safety in employment legislation; and complementary to 'good employer obligations'.

Complaints relating to workplace smoking or vaping

The Act sets out the process for complaints relating to workplace smoking and vaping.

- Complaints relating to workplace smoking and vaping can be made to the employer of the workplace, or the Director-General of Health, and must specify the particulars of the complaint.
- The employer has 20 working days to investigate whether a breach of the Act has occurred, and to try to resolve the complaint. If the complaint was received by the Director-General, it will be referred to the employer in the first instance.
- Where the breach is on the part of the employer, the employer shall try to settle the complaint, or give an assurance that satisfies the complainant that there will be no repetition of the cause of the complaint.
- Where the breach is on the part of an employee or volunteer, the employer should obtain from the employee or volunteer an assurance that there will be no repetition of the cause of the complaint.
- The representatives of the employees in the workplace are entitled to be present at any meeting called by the employer for the purpose of resolving the complaint and avoiding future cause for complaint.

- If within 40 working days after receiving the complaint the employer is unable to investigate it and resolve it by agreement, the employer must refer it, in writing, to the Director-General.

Where employment relationship problems arise in respect of smoking or vaping in the workplace, employers and employees will deal with those in terms of the Employment Relations Act.

Offences and fines

It will be up to employers to take 'all reasonably practicable steps' to ensure that no one smokes or vapes in the workplace. Failure to do so may result in the employer being liable for a fine of up to \$400 (individual) or \$4,000 (body corporate).

The only individual smoking or vaping offence is for smoking or vaping on an aircraft (under the Civil Aviation Act 1990) which carries a maximum fine of \$2500.

Fines will not be imposed on smokers or vapers for smoking or vaping in other places.

An employer who without reasonable excuse fails to refer an unresolved workplace smoking or vaping complaint to the Director-General of Health is liable for a fine of \$100 (for individuals) or \$1,000 (for a body corporate).

Further information

This information is a guide only, and may not be accurate for all situations. It should not be used as a substitute for legal or other expert advice.

For further information on tobacco, health and the Smokefree Environments and Regulated Products Act 1990 contact:

www.smokefreelaw.co.nz

www.moh.govt.nz

www.healthed.govt.nz

or the Public Health Service at your local District Health Board.

Public Health Unit contact details: