

Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (the Amendment Act)

A guide to compliance for employers working in theatre, film and television production

Three-quarters of New Zealanders do not smoke, but many are exposed to the health risks of second-hand smoke. The Smoke-free Environments Act 1990 (the Act) extends the protections for workers, volunteers and the public, particularly against exposure to second-hand smoke. The Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (the Amendment Act) extends the requirement of ALL Smokefree workplaces to be Vapefree. The intention is to send a positive message about a Smokefree/Auahi Kore and a Vapefree/Hākohu Kore lifestyle being both desirable and the norm.

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 a bedroom or suite in a hotel, or a dwelling house occupied by the employer.

From 28 November 2021, it is illegal to smoke or vape in a vehicle carrying an occupant under the age of 18 years (whether the vehicle is moving or stationary).

Volunteers will be covered by the Act if:

- they work in an internal area
- there is an employer who arranges for volunteers to undertake work and the volunteer performs any work arranged by or on behalf of the employer
- the volunteer frequents the internal area, and performs the work on a regular basis.

Does the Act apply to theatres, film, and television workplaces?

The Act applies to all workplaces as defined above.

Does the smoking ban apply to independent contractors?

Yes, if they work in an indoor workplace that has at least one employee.

Does the smoking ban apply to herbal cigarettes?

Yes.

Is the use of imitation cigarettes allowed under the Act?

Imitation cigarettes which cannot be lit and which do not contain tobacco product, weed or plant are not prohibited by the Act.

A guide to compliance for employers

Employers must take 'all reasonably practicable steps' to ensure that no person smokes or vapes at any time in any internal area of a workplace. This includes green rooms, stages, film and television sets, cafeterias, corridors, lifts, stairwells, toilets, and other internal areas

associated with the workplace. For the purposes of the Act, a reasonably practicable step is defined as a step that a reasonable and prudent person would take in similar circumstances. Failure to take all reasonably practicable steps will be a breach of the law under the Act. The following checklist will assist you with checking your compliance.

Steps employers should consider

Do you:

- prominently display 'smokefree' and 'vapefree' signs in all workplaces (eg: studio sets, indoor locations, green room, theatre foyers etc.), and at every entrance to the workplace premises, to notify employees and visitors?
- include reference to the smokefree and vapefree policy in your workplace employment agreements and/or workplace policies and/or workplace disciplinary codes of practice?
- notify your workforce (temporary, part-time and full-time employees and contractors) of their obligations under the Act?
- include reference to the smokefree and vapefree policy in your recruitment processes?
- notify all service contractors who access your premises of the smokefree and vapefree policy?
- train your managers and supervisors on what to do if someone does smoke or vape in your workplaces?

Areas where smoking and vaping may be permitted

The following are limited exceptions to the Act, provided that certain conditions are met:

Specified Work Vehicles

The provision of specified work vehicles in which smoking or 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 (employees and volunteers) of the vehicle is obtained.

This means that it will be up to the employer to decide whether they will allow smoking 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. These obligations are complementary to employers' existing obligations under the health and safety in employment legislation, and complementary to 'good employer' obligations.

Which work-related areas or people are not covered by the smokefree provisions?

The Act does not apply:

- outdoors – any outdoor areas (eg, film, television or theatre work conducted outdoors, decks, verandahs), except school grounds, which are 100 percent smokefree and vape-free 24 hours a day, seven days a week
- in private homes, a cabin or suite, for the time being assigned to a passenger or passengers, on a ship; or a sleeping compartment, for the time being assigned to a passenger or passengers, on a train; or a cabin, for the time being assigned to only 1 employee or volunteer, or to the master or owner, on a ship; or individual prison cells, foster homes, community/church hall, Marae etc. (provided they are not being used as a workplace for theatre, film or television)
- to areas not defined as being ‘substantially enclosed’.

Complaints relating to workplace smoking

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 Smokefree Enforcement Officers and must specify the particulars of the complaint.
- The employer has 20 working days to investigate if a breach of the Act has occurred, and to try to resolve the complaint.
- Where the breach is on the part of the employer, the employer shall try to settle the complaint, or give an assurance 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.
- 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 contact the Ministry of Health Smokefree Enforcement Officers.

Where employment relationship problems arise in respect of smoking and vaping in the workplace, employers and employees will deal with those in terms of the Employment Relations Act 2000.

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).

Where theatres and film or television premises are covered by the workplace provisions and are available for hire to outside organisations, both the owner of the premises and the hirer may be liable to a fine for any breaches of the Act.

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

Smoking or vaping in a vehicle carrying a child under the age of 18 years may result in a fine of up to \$50.

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 regulations see:

smokefreelaw.co.nz | moh.govt.nz | healthed.govt.nz or the Public Health Unit at your local District Health Board.

Public Health Service contact details: