

Can my employees vape at work?

The days of smoking inside a crowded bar, in airplanes or in the work lunchroom are long gone. While smokers were pushed outside in the 1990s for the safety of others, New Zealand has been undecided until recently on how to treat people who vape.

Employers are obliged to take all reasonably practicable steps to ensure that workplaces are smoke-free. There are minor exceptions to this rule. Smoking is allowed in dedicated rooms in hospitals, rest homes and care facilities, or in vehicles with no public access by request of employees.

Last year, these smoke-free obligations were extended to include vaping. Employers need to consider how they will address the inclusion of vaping under the new legislation.

Employers are only obliged to manage internal areas of the workplace. Employers and business owners can make their own decisions about vaping in outdoor parts of the workplace (except in some circumstances, like schools, where all outdoor areas must be smoke-free).

It is advisable for employers to have a smoke-free policy. That policy should also cover the workplace policies on vaping. Employers should consider the role of vaping in supporting employees to quit smoking. Having policies that support employees to quit smoking has clear benefits for businesses (for instance, by reducing the amount of sick leave taken).

Policies should also account for others who are sensitive to vapour. Policies can specify set distances that employees must avoid smoking or vaping near an entry or exit to the workplace. Care should be taken around what that distance should be in the circumstances.

Employers can get some guidance from the Ministry of Business Policy Builder online. This contains a draft Smoke-free at work policy. At the date of writing, the draft has not been updated for the new legislation. Employers should take care to amend that policy (or any existing policies they have) to ensure vaping is included.

If an employer fails to take all reasonably practicable steps (which is likely to include having a clear policy on the matter), they may be prosecuted or a complaint may be made to them or the Director-General. If a complaint is made, it needs to be properly investigated. Failure to do so can lead to a fine of up to \$1,000.¹ If an employer is prosecuted for their failure, the maximum fine for each instance is \$4,000.²

¹ A lesser maximum fine of \$100 applies to individuals who are not body corporate.

² A lesser maximum fine of \$400 applies to individuals who are not body corporate.