

Latest changes to the South African Tobacco Control Laws: the potential effect of these changes on employers

The *Tobacco Products Control Act, 83 of 1993* ('the Act'), was amended during 2009 by respectively the *Tobacco Products Control Amendment Act, 23 of 2007* and the *Tobacco Products Control Amendment Act, 63 of 2008* ('the Amendment Acts'). Both the Amendment Acts came into effect on 21 August 2009. We have had quite a number of queries this year about the implications of these latest changes. What follows is a brief discussion of the most important changes which are important for employers.

The Amendment Acts confirm that an employer will be guilty of an offence if it fails to implement, or act in terms of, any of the provisions of the tobacco control laws. Fines have been increased up to R50 000 and R100 000 respectively, depending on which part of the Act an employer contravenes.



In summary, it seems that there is, after the amendments, now a more stringent obligation on employers to ensure that employees who do not smoke, or who do not want to be exposed to smoke in the workplace, are protected from it. A reading of the amendments in terms of the Amendment Act of 2007 would seem to suggest that in order to protect employees from smoke in the workplace, employers now only have one of two options. First, employers could declare the whole workplace (any buildings which an employer occupies for the running of its businesses) smoke-free environments, which would mean that there would not be any designated smoking areas ('smoking rooms'). Employees would therefore only be allowed to smoke outside the premises. Secondly, employers could still designate certain areas as *designated smoking areas* within the workplace, but the duty on employers would then be to ensure that such areas are completely and fully separated and cut off from other parts of the workplace, to the extent that those designated areas also have separate air ventilation and, where applicable, air conditioning, systems. In other words air flowing to and from designated smoking areas should be completely separated from air flowing to and from the rest of the employer's premises. This would also mean that if any smoke escape from the designated smoking areas, this smoke should in no way flow into the rest of the employer's premises. Practically and in order to fully comply with the legislation as well as the protection of non-smokers, the easiest option would be for employers to declare all its premises smoke free.

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