

Case Study

Smoking policy

Ditch your Peter Stuyvesants, Vape, or Twisp. A new Bill is on the horizon which could potentially encourage you to think twice about lighting up, or at the very least it will regulate how frequently you take a smoke break.

In 2017, after a five-year legal battle, a landmark Australian law - which severely restricted the advertisement of tobacco products - was upheld by the World Trade Organisation on the ground that it was a legitimate public health measure.

According to the [World Health Organization's \(WHO\) fact sheet on tobacco](#), updated on 9 March 2018, Tobacco was listed as the cause of death for seven million people every year.

In light of the WHO ruling in 2017, and the changes in technology in the industry, it was a matter of time until South Africa followed suit. On 9 May 2018, Minister of Health, Dr. Aaron Motsoaledi, published the draft Control of Tobacco Products and Electronic Delivery Systems Bill 2018 ("**The Bill**"), for public comment.

The Bill sets out, amongst other things, to provide control over smoking, regulate the sale and advertising of tobacco products and electronic delivery systems (such as e-cigarettes) and make provision for the standardization of packaging. The Bill acknowledges that tobacco use is "extremely injurious to the health of smokers, non-smokers and other users" and that "it calls for strong action to deter people".

Quite controversially, the Bill addresses technological developments by extending the definition of smoking to include the inhale, exhale, hold or otherwise control over an ignited tobacco product or a heated but not ignited tobacco product that produces an emission of any sort. In other words, the definition is wide enough to include cigarettes, cigars, hook pipes, e-cigarettes, e-cigar or any device marked under a different name or descriptor.

Section 2 of the Bill prohibits smoking in any prescribed outdoor public place or workplace, or such portion of an outdoor place or workplace as may be described, where smoking may pose a health, fire or other hazard, or such other place where the minister considers it appropriate to prohibit smoking.

The Bill defines "workplace" as "any place in or which one or more persons are employed and performs their work, whether for compensation or voluntary, and includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area used during or incidental to the course of employment or work". The Bill even goes further and prohibits smoking from within a prescribed distance from any entrance/exit to the building, window or air-conditioning. These provisions rule out a company balcony, undercover parking area or even a company car.

Importantly for employers, smoking may put a hole in their pockets. Employers have been placed in a burdensome position to adhere to this Bill and could potentially face fines/imprisonment should they



fail to do so. Any employer who contravenes the Bill will be liable on conviction to a fine or imprisonment of up to one year.

If you're thinking you are safe as you do not consider yourself classified as an employer, we lastly draw your attention to section 2(1)(e) of the Bill which even prohibits smoking in your home if you have domestic employment.

While this may seem extreme, the Bill is on the rise. Employers should set fire to their old smoking policies and take heed of the changes to come by starting to implement the necessary amendments to their company policies.

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