

[OHS INSIDER February 2019 Workplace Smoking & Vaping: The 5 Things You Must Do to Comply with New Smoke-Free Laws](#)

As an OHS manager, you need to ensure your company complies with these smoke-free laws—especially now that recreational cannabis has been legalized. Here’s how to do that.

Back in 2000, a BC arbitrator shocked the world by ruling that a banning workplace smoking was a form of disability discrimination banned by human rights laws [*Cominco Ltd. v. U.S.W.A., Local 9705*]. Things sure have changed since the *Cominco* case. What’s illegal today isn’t *banning* workplace smoking but *tolerating* it. This total 180° turn is the result of the smoke-free laws that have sprouted up in every part of Canada. As an OHS manager, you need to ensure your company complies with these smoke-free laws—especially now that recreational cannabis has been legalized. Here’s how to do that.

Defining Our Terms

Laws banning workplace smoking are similar but go by different names—smoke-free, tobacco control, non-smokers’ protection, etc. For simplicity’s sake, we’ll refer to them collectively as “smoke-free.”

THE 5 THINGS YOU MUST KNOW TO COMPLY

First, let’s look at 5 crucial aspects of the workplace smoking laws OHS managers need to understand to keep their companies compliant.

1 Which Law Bans Workplace Smoking?

Answer: Every jurisdiction but Sask. has adopted a smoke-free law that bans smoking in public places and indoor workplaces. (Sask. has similar rules but they’re contained in the OHS regulations rather than a separate piece of legislation.) But the ban is only part of the story. The real significance of these laws, at least from an OHS program perspective, is that employers are responsible for enforcing the ban. So, if workers or other people defy the ban and smoke in your workplace, you’re subject to fines and other penalties.

Don’t Forget Local Laws

In addition to the provincial smoke-free law, local or municipal smoking ordinances may apply. Rule of thumb: In case of conflict, follow the law with the stricter requirements.

2 What Exactly Does the Law Ban?

Answer: The original provincial smoke-free laws covered smoking of tobacco products but have since been expanded to include:

- E-cigarettes and vaping; and
- Smoking of non-tobacco products, including cannabis.

Defining Our Terms

For the rest of this article, the term “smoking” means smoking and vaping.

Table 1: No-Smoking Zone Halo

Table 1: The Smoking Halo Rule

| Jurisdiction | Halo Radius (within doorway, window, air intake) |
|--------------|--|
| Nunavut | 3 metres |
| Alberta | 5 metres |
| Yukon | 5 metres |
| BC | 6 metres |
| Yukon | 9 metres |

4 Does Smoking Ban Cover Work Vehicles?

Answer: In all but 3 jurisdictions (FED, NL and PEI) the ban on workplace smoking applies to vehicles used for employment—although there may be strings attached such as how many workers are in the vehicle.

Table 2: Smoking Ban in Work Vehicles

| No Ban in Vehicles | Ban in Vehicles | Ban if Vehicle Is: |
|--------------------|--------------------|---|
| FED, NL, PEI | AB, ON, SK, NT, NU | *Carrying 2 or more employees: MB, NB, NS, QC *Carrying 2 or more persons: YK *Enclosed: BC |

5 Is a Designated Smoking Room/Area (“DSR”) Allowed?

Answer: Seven jurisdictions (FED, NL, NS, ON, PEI, QC, NT) make exceptions to smoking bans by allowing employers to establish DSRs in the workplace as long as they meet specific conditions, which typically include ensuring that the DSR:

- Is structurally separate from building areas where smoking is banned;
- Independently and effectively ventilated—ON, NS, NL, NT and NU require DSR ventilation systems to meet rigorous standards;
- Isn’t located in a thoroughfare or place that non-smokers need to occupy or access to do their job duties.

AB, BC, MB, NB, SK, NU and YK don’t allow DSRs.

THE 5 THINGS YOU MUST DO TO COMPLY

Your basic obligation under the smoke-free laws is to ensure that people don’t smoke where they’re not allowed to. If a violation occurs, e.g., an inspector catches somebody smoking in your workplace, it’s evidence that you tolerated smoking. But as with an OHS violation, you can rebut this by showing that you didn’t actually know about the offence and exercised due diligence, i.e., took all reasonable steps. to prevent it. At a minimum. there are 5 “reasonable steps”

you must take.

It's all about due diligence

1 Notify People of Smoking Ban

First, you must notify people in the building, including workers, contractors and visitors, that smoking is banned or limited to DSRs, as the case may be, by:

- Posting the required signs (to be discussed immediately below);
- Creating a clear written smoke-free policy for your workplace;
- Distribute the policy to workers, supervisors and management—and don't forget to include new hires;
- Make sure the policy also applies to contractors, clients, guests and other people who visit your workplace; and
- Have each worker sign an acknowledgement of having received, read and understood the policy and distribute it to workers and supervisors.

2 Post Required No-Smoking Signs

Smoke-free laws (BC is the lone exception) specifically require employers to post signs at entrances to and in strategic places inside the workplace using text and/or the universal no-smoking symbol, i.e., red circle around cigarette

bisected diagonally against a white or clear background.  to make it clear that smoking is prohibited. Many jurisdictions also list detailed specifications for the size of the sign and lettering, the diameter of the red circle, the background colour, etc. ([Click here](#) to see what your province requires.)

Signs also must be posted at entrances to DSRs (assuming DSRs are allowed) indicating that the location is a DSR. No-smoking signs are *not* required inside company vehicles. Employers must also ensure signs are:

- Posted in conspicuous locations where people are likely to see them;
- Unobstructed by other signs, ads or notices;
- Not defaced; and
- Removed only by authorized personnel.

3 Strictly Enforce Your Smoking Ban

You need to enforce your ban and discipline workers that commit violations.

Important caveat: Human rights laws require employers to accommodate workers with disabilities to the point of undue hardship. While smoking itself isn't generally considered a disability, workers may need to smoke to treat a condition that is. Thus, for example, a doctor may authorize a worker to use medical cannabis to treat PTSD.

Result: You may have to make exceptions to your smoke-free policy to accommodate these workers. But you can and should require workers to verify the disability. If workers want permission to use medical cannabis for the disability, you should also require them to provide a copy of the written physician record authorizing the particular use. Of course, if the use isn't legally

authorized, you don't have to accommodate it. You also don't have to make accommodations that subject other workers to second hand smoke. Imposing a health risk on a third party, in other words, is an undue hardship.

4 Get Rid of Ashtrays

Employers must ensure that there are no ashtrays, receptacles, lighters or other smoking equipment in areas where smoking is banned. This is something you should specifically instruct JHSC members, supervisors and workers to check while conducting workplace inspections.

5 Avoid Reprisals

You're not allowed to retaliate or take reprisals against workers for doing things the smoke-free law allows them to do, including asking a supervisor or manager to enforce it in the workplace. Protection against reprisal (aka, "discrimination"), is expressly spelled out in 6 jurisdictions (MB, NL, ON, PEI, NU, YK) and implied in the rest. Accordingly, make sure your workplace smoking policy includes a non-reprisal statement.

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