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REGSDIENSTE NUUSBRIEF | LEGAL SERVICES NEWSLETTER

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ROOK OP DIE SKOOLPERSEEL	SMOKING ON THE SCHOOL PREMISES
Rook en die gebruik van tabakprodukte word deur Die Wet op Beheer van Tabakprodukte 83 van 1993, soos gewysig deur die Wysigingswet op die Beheer van Tabakprodukte, Wet 23 van 2007, gereguleer. Die wysigings gemaak in September 2000 (GN R975, G. 21610 (1 January 2001) - *Notice Relating to Smoking of Tobacco Products in Public Places*) het aansienlike beperkings geplaas op persone wat rook en sodanige beperkings is ook van toepassing op skole.	Smoking and the use of tobacco products are regulated by the Tobacco Products Control Act 83 of 1993, as amended by the Tobacco Products Control Amendment Act, Act 23 of 2007. The amendments made in September 2000 (GN R975, G. 21610 (1 January 2001) - Notice Relating to Smoking of Tobacco Products in Public Places) placed significant restrictions on persons who smoke and these restrictions also apply to schools.
LEERDERS	**LEARNERS**
Skole moet, as deel van die gedragskode, 'n rookbeleid in plek hê om te verseker dat erkenning gegee word aan die waardes in die Grondwet van die Republiek van Suid-Afrika, Wet 108 van 1996, asook die toepaslike wetgewing en regulasies rondom die rook van tabakprodukte. Leerders wat 18 jaar of ouer is, is steeds onderhewig aan die skool se gedragskode en mag daarom nie op die skoolperseel rook nie. **E-sigarette** Skoolbeheerliggame word aangeraai om die skool se bestaande rookbeleid aan te pas om voorsiening te maak vir 'n verbod op e-sigarette en ander soortgelyke toestelle. E-sigarette val onder dieselfde beperkinge as tabakprodukte aangesien die veiligheid daarvan nog nie wetenskaplik bewys is nie. Verder kan e-sigarette die slegte gewoonte van rook en afhanklikheid daarvan, bevorder. Dit kan ook 'n kultuur van rook by die skool skep en jonger leerders indirek aanmoedig om ook te begin rook.	Schools must, as part of the code of conduct, have a smoking policy in place to ensure that the values in the Constitution of the Republic of South Africa, Act 108 of 1996, as well as the applicable legislation and regulations regarding smoking of tobacco products, are observed. Learners aged 18 and over are still subject to the school's code of conduct and therefore prohibited from smoking. **E-cigarettes** School governing bodies are advised to amend the school's existing smoking policy to stipulate a ban on e-cigarettes and other similar devices. E-cigarettes fall under the same restrictions as tobacco products as their safety has not yet been scientifically proven. Furthermore, e-cigarettes can reinforce the smoking habit and the dependence on it. It can also initiate a culture of smoking at school and indirectly encourage younger learners to start smoking as well.
OPVOEDERS	**EDUCATORS**
Artikel 2 van Die Wet op Beheer van Tabakprodukte 83 van 1993 (No. R. 975 – 29 September 2000) bepaal dat rook verbode is in: • Openbare plekke: Enige plek wat toeganklik vir die publiek is, asook enige plek van gemeenskaplike gebruik	Section 2 of the Tobacco Products Control Act 83 of 1993 (No. R. 975 - 29 September 2000) provides that smoking is prohibited in: • Public places: Any place that is accessible to the public, as well as any place of common use • An area within a prescribed distance of a window, air inlet, entrance or exit to a public place

- 'n Area binne 'n voorgeskrewe afstand van 'n venster, luginlaat, in- of uitgang tot 'n openbare plek
- In 'n motor waar 'n kind of kinders onder die ouderdom van 18 jaar is of waar daar meer as een persoon in 'n motor teenwoordig is
- Multi-residensiële wonings (bv. woonstelblokke)
- Privaatwonings (indien die perseel gebruik word as kommersiële kindersorgfasiliteit, huishoudelike indiensneming, onderrig of tutorskap)

Die eienaar, die persoon in beheer van die perseel of die werkgewer moet verseker dat geen persoon in die plekke aangedui soos hierbo, rook nie.

Verder rus daar 'n verpligting op die eienaar, bestuurder of werkgewer om toe te sien dat:

- Werknemers die reg het om beswaar aan te teken teen rook in die werkplek indien dit strydig is met die Wet, sonder blyke van vergelding van enige aard
- Werknemers wat nie aan rook blootgestel wil word nie, gerespekteer word
- Daar nie 'n uitdruklike of geïmpliseerde diensvoorwaarde is dat daar van 'n werknemer verwag word om 'n vrywaring te onderteken teen werk wat in 'n gedeelte van die werkplek plaasvind waar rook toegelaat word nie

Let ook dat die werkgewer, in hierdie geval die skoolhoof, moet verseker dat geen persoon onder die ouderdom van 18 jaar teenwoordig is in 'n gedeelte van die werkplek waar rook toegelaat word nie.

Rookbeleid

'n Rookbeleid en 'n toegewyde rookarea vir opvoeders kan verseker dat nie-rokers in 'n veilige rookvrye omgewing werk terwyl die behoeftes van persone wat rook ook in ag geneem word. 'n Afskrif van die beleidsdokument moet aan alle werknemers van die skool voorsien word.

Die doel van 'n rookbeleid vir opvoeders is om te verseker dat:

- Voldoen word aan artikel 24 (a) van die Grondwet van die Republiek van Suid-Afrika, 1996, asook die relevante tabakwet
- Tye wat personeel mag rook gereguleer en indien van toepassing beperk word tot tee- en etensbreuke of pouses

- In a car where a child or children under the age of 18 are present or if there is more than one occupant in the vehicle
- Multi-residential dwellings (e.g., apartment blocks)
- Private residences (if the premises are used as a commercial childcare facility, domestic employment, tuition or tutoring)

The owner, the person in charge of the premises or the employer must ensure that no person smokes in the above-mentioned areas.

Furthermore, there is an obligation on the owner, manager or employer to ensure that:

- Employees have the right to object to smoking in the workplace if it is contrary to the Act, without retaliation of any kind
- Employees who do not want to be exposed to smoking must be respected
- That there is no explicit or implied condition of employment that an employee is required to sign an indemnity against work that takes place in a part of the workplace where smoking is permitted

Also note that the employer, in this instance the school principal, must ensure that no person under the age of 18 is present in a part of the workplace where smoking is permitted.

Smoking policy

A smoking policy and a dedicated smoking area for educators can ensure that non-smokers work in a safe smoke free environment while also taking into account the needs of people who smoke. A copy of the policy document must be provided to all employees of the school.

The purpose of a smoking policy for educators is to ensure:

- Compliance with section 24 (a) of the Constitution of the Republic of South Africa, 1996, as well as the relevant tobacco law
- The regulation of times that staff may smoke and, if applicable, are limited to tea and meal breaks or breaks
- That where there is no designated smoking area available, reasonable measures are in place to protect the rights of non-smokers
- That learners receive education in a healthy environment and employees work in a healthy work environment

- Indien daar geen aangewese rookarea beskikbaar is nie, redelike maatreëls in plek is om die regte van nie-rokers te beskerm
- Leerders onderrig ontvang in 'n gesonde omgewing en werknemers in 'n gesonde werksomgewing werk
- Skole 'n gesonde onderwysomgewing vir leerders bevorder
- Daar nie in enige voertuig wat aan die skool behoort of waarin werknemers en/of leerders vervoer word, gerook word nie

Ten einde werknemers, leerders en besoekers te beskerm het die werkgewer twee opsies:

- Die werkgewer kan die hele werkplek as 'n rookvrye-omgewing verklaar. Dit sou beteken dat daar nie 'n aangewese rookarea op die perseel sou wees nie en werknemers, asook besoekers nie toegelaat word om enigsins op die skoolperseel te rook nie
- Alternatiewelik kan 'n toegewese rookarea aangewys word, maar daar moet verseker word dat so 'n area totaal verwyderd is van ander areas van werk asook voldoen aan alle vereiste soos bepaal deur die tabakwet

Toegewese rookarea

'n Toegewese rookarea moet aan die volgende vereistes voldoen:

- Die toegewysde rookarea mag nie meer as 25% van die totale vloeroppervlak van die publieke area uitmaak nie
- Die rookarea mag nie langs die ingang na die skoolgebou of -perseel wees nie
- Die rookarea moet afgesonder wees met 'n soliede afskorting waarop 'n teken "ROOK AREA" vertoon word. Die skrif, op 'n wit agtergrond, moet ten minste 2cm hoog en 1,5 cm breed wees
- Die lugsirkulasie van die area moet van so 'n aard wees dat die rook direk na buite sirkuleer en nie na 'n ander area in die publieke area nie (bv. 'n rookarea wat teen die personeelkamer is en rook dan by die personeelkamer se vensters inwarrel)
- 'n Kennisgewing, wat aandui dat toegewysde rookareas slegs vir personeel is en dat leerders en persone onder die ouderdom van 18 jaar oud nie in die rookarea teenwoordig mag wees nie, moet vertoon word

Kennisgewings en tekens waar rook toegelaat word, asook verbied word, moet die onderskeie areas duidelik aandui.

- That schools promote a healthy educational environment for learners
- That smoking is prohibited in any vehicle belonging to the school or in which employees and / or learners are transported

In order to protect employees, learners and visitors, the employer has two options:

- The employer can declare the entire workplace a smoke-free environment. This would mean that there would be no designated smoking area on the premises and employees as well as visitors would not be allowed to smoke on the school premises at all
- Alternatively, a designated smoking area may be allocated, but must it must be ensured that such an area is completely removed from other areas of work as well as comply with all requirements as regulated by the Tobacco Act

Dedicated smoking area

A dedicated smoking area must meet the following requirements:

- The designated smoking area may not exceed 25% of the total floor area of the public area
- The smoking area may not be next to the entrance to the school building or premises
- The smoking area must be secluded with a solid partition on which a sign "SMOKING AREA" is displayed. The font, on a white background, must be at least 2cm high and 1.5cm wide
- The air circulation of the area must be of such a nature that the smoke circulates directly to the outside and not to another area in the public area (e.g., a smoking area that is adjacent to the staff room where smoke flows into the staff room through the window)
- A notice, indicating that designated smoking areas are for staff only and that learners and persons under the age of 18 may not be present in the smoking area, must be displayed

Notices and signs where smoking is allowed, as well as prohibited, must clearly indicate the various areas.