

BREAKS/REST PERIODS

Break or rest period policies should reflect the following consideration, either as an explicit part of the policy or as an "implementation guideline" to be followed in each department:

"Breaks and rest periods, where provided, shall be at the supervisor's discretion, consistent with the personnel and production needs. No breaks or rest periods shall be taken without the supervisor's knowledge and approval."

NOTE: UNDER THE WAGE AND HOUR LAW, REST PERIODS OF TWENTY MINUTES OR LESS ARE COUNTED AS HOURS WORKED.

NOTE: EMPLOYEES INJURED DURING BREAKS OR REST PERIODS ARE ENTITLED TO WORKMEN'S COMPENSATION COVERAGE.

Management should be considerate of employees who do not drink coffee but who are likely to request "equal time" rest periods and possible alternate beverage or refreshment choices.

If the break or rest period has been established as part of the bargaining activity between the union and the employer, management should consider that any unilateral changes in the break sequence, time, pattern, or the type of refreshments provided is very likely a negotiable matter, or at least subject to grievance procedure challenge. Unions have historically been upheld in their appeals when unilateral changes have been made in areas covered by collective bargaining, including the issues of the types of sandwiches or beverages made available. Such appeals are based on the "comparable or equal cost benefit" principle.

ABUSES AND CORRECTIVE ACTION

___ Abuse of break or rest period privileges is a proper cause for job performance counseling and corrective action. Base corrective action upon:

- 1) violation of clearly published and posted rules (time limits exceeded, areas or boundary limits not honored, housekeeping guidelines violated, supervisory notification and approval procedures not followed, etc.),
- 2) serious impairment of production, including lost time and efficiency loss (not necessarily direct economic losses),
- 3) laxity in housekeeping or hygiene and safety procedures.

___ The recommended corrective action approach is job performance counseling and a verbal warning from the employee's immediate supervisor with periodic general reaffirmation announcements or tailgate session reminders of break policy and regulations.

___ Break rules and rest period procedures should be posted in break areas. Such rules or procedures should include housekeeping provisions.

___ Arbitrators have supported grievances of employees who had been making coffee in their own brewing devices at their job stations and were suddenly told to remove their coffee pots. This has been true in cases where the Agreements included a past practice clause or where the company had provided, free of charge, either the coffee or the brewing devices.

___ An additional point to include in rules and policies where employees are permitted personal brewing devices is to require such devices to meet UL-approved requirements and to be approved by the supervisor.

CHECKLIST AND GUIDELINES FOR ESTABLISHING A BREAK POLICY

- ___ Unless specifically prohibited in the Agreement or in the policies, supervisors may require employees to take their breaks at different times. Employees should be required to obtain approval of each break time by the immediate supervisor.
- ___ Set a time limit for all breaks. Start and end the breaks on time (beginning with departure from and ending with return to the employee's work station), all based on the supervisor's discretion, unless otherwise stated by the Collective Bargaining Agreement or the employer's policy.
- ___ Schedule break times sensibly. (Disabling injuries occur most frequently toward the middle and end of work periods, when weariness reaches its peak.) Do not schedule breaks close to starting time, lunch time, or quitting time.
- ___ Where coffee brewers or vending machines are involved, keep the coffee conveniently located. Consider installing vending machines in convenient locations, and make sure that break locations are visible and easily accessible, and provide convenient trash receptacles.
- ___ For office workers, consider allowing unlimited coffee breaks, but insist that they be at the employee's desk.
- ___ Discourage sleeping, card-playing groups and magazine sharing on breaks. Staggering breaks helps here. (Do not encourage potential sexual harassment situations. Do not provide break areas that are "hidden".)
- ___ Don't hesitate to warn and reprimand, and discipline those who violate break/rest period policies. Treat late returns from breaks the same as being late to work or as extending the lunch period.
- ___ Don't be afraid to take charge of the break. Remember most often the employees are being paid while on break and are therefore under management's direction and control. Do not be apprehensive about interrupting breaks/rest periods if production or personnel requirements demand interruption, but don't abuse this privilege.
- ___ Make sure management team members and supervisors set a good example.
- ___ Whatever system is ultimately decided upon, introduce it as a trial and call it such. This eliminates the danger of establishing a past practice, and it enables management to cancel the trial if it creates problems.

SAMPLE BREAK/REST PERIOD CLAUSES OR POLICIES

___ Companies are encouraged to communicate their break or rest period policy to employees and to implement such policies through the immediate supervisor in each department. Sample verbal "implementation guidelines" which may be utilized by supervisors in announcing or reaffirming such policies include:

- ... "We recognize that short rest periods or breaks are necessary. We ask you to limit them to ten minutes in the morning and again in the afternoon and, further, to confine them to periods between 9:30 a.m. to 10:30 a.m. and 2:30 p.m. to 3:30 p.m. With the exception of single-employee departments, rest periods and breaks should be staggered to ensure at all times that no department goes unmanned. All breaks should be approved by the employee's supervisor."
- ... "A ten-minute rest period or break will be permitted in mid-morning and mid-afternoon. You should consult your supervisor about the times assigned you and your department. Please remain in the building during your break."
- ... "You will be allowed two fifteen-minute rest periods daily. Please do not exceed this allotted time. Your supervisor will inform you of the exact time each day."
- ... "The company allows two fifteen-minute breaks during each shift. The supervisor may request an employee to remain on the job or in the work area during a regular break period. The supervisor will attempt to provide equivalent alternate time for a break."

ALL SUCH POLICIES SHOULD INCLUDE THESE STATEMENTS:

- ... "It is the supervisor's responsibility to assign breaks or rest periods as production and personnel requirements permit; and there may be instances when breaks or rest periods may, at the supervisor's discretion, be canceled. Length of the break or rest period may be changed at the supervisor's discretion."
- ... "No one is to take a break or rest period without the approval of the supervisor."
- ... "Breaks and rest periods should be recognized as privileges which, if abused, may be curtailed by management."
- ... "Employees should conduct themselves during break periods in such a manner that does not interfere with ongoing production or with other employees who may remain working."

SMOKING BREAKS

___ Because breaks of all kinds which may occur during an employee's work period have been deemed to be a mandatory subject for bargaining, employers are facing challenges in their attempts to unilaterally promulgate rules and in their attempts to enforce rules which deal with smoking in the workplace.

___ Several states have passed laws which make it illegal for an employer to ban employment for or to discipline a current employee for smoking away from the workplace.

___ Employers are coming under increasing pressure, through legal requirements and threat of civil penalties and lawsuits, to take steps to restrict, regulate, or prohibit smoking in the workplace, or to at least be able to demonstrate that positive, effective steps have been taken to protect the health of employees from dangers caused by passive smoke.

- ___ Major issue areas include:
 - ___ the employer's duty to provide a safe work environment
 - ___ worker's compensation liabilities ___ common law
 - ___ handicap discrimination, ___ disability benefits
 - ___ unemployment insurance ___ Collective Bargaining Agreements
 - ___ the "duty to bargain"

___ The majority of states have enacted laws limiting smoking in public places.

CHECKLIST OF EMPLOYER CONSIDERATIONS/SMOKING IN THE WORKPLACE

- ___ Designate smoking areas and non-smoking areas.
- ___ Draft housekeeping policies that address discarding of cigarette butts.
- ___ Draft policies (and use of tailgate sessions to publicize such policies) which encourage employees to seek the assistance of supervisors (rather than resorting to "self-help") in solving problems of any nature whatsoever which may occur between employees. Develop a complaint procedure specifically for smoking complaints.
- ___ Posting signs (obtainable from the American Cancer Society and others) warning of the dangers of cigarette smoking (especially in areas where employees eat and in both smoking and non-smoking break areas and in rest rooms).
- ___ Posting warning signs in designated smoking areas, such as "WARNING: This area contains tobacco smoke, a chemical known to the State of _____ to cause cancer."
- ___ Sponsor "Quit Smoking" programs as a part of health care programs/wellness programs or employee assistance programs.
- ___ Give employees ample notice of newly developed smoking regulations or of rules banning smoking before the effective date of such rules and regulations.
- ___ Determine the existence of state and local laws governing smoking in public which may apply to the workplace.
- ___ Consider "allergic reaction" claims under the employer's policy dealing with handicap employees and "reasonable accommodation" (examples: separating desks of smokers and non-smokers, use of voluntary agreements between employees coordinated by the supervisor, ventilation and exhaust improvements, use of floor-to-ceiling partitions, relocating desks nearer to windows, and provision of a job which is largely an outside job).
- ___ Employers are not likely to be required to consider smoking itself as a handicap, as it is self induced and is likely to be excluded as a handicap using the same definition of handicap as under the Federal Rehabilitation Act of 1973. However, at least one district court has ruled that an employee who was a non-smoker and severely sensitive to tobacco smoke could be regarded as handicapped under the Vocational Rehabilitation Act of 1973.

CHECKLIST FOR DEVELOPMENT OF RULES REGULATING SMOKING

- ___ A smoking rule should be reasonable, in that it should be related to a management objective. Some legitimate management objectives include improving worker safety, health, productivity, fire prevention, increased efficiency.
- ___ Because smoking/no smoking rules are mandatory topics for bargaining, an employer may not unilaterally promulgate such rules over the objections of recognized bargaining agents. The basic negotiating principles, under the law, apply in these areas, including "to notify," "to bargain in good faith," "impasse," etc.
- ___ Total bans on smoking have been deemed reasonable when the no-smoking restrictions were phased-in over a one-year period:

Phase 1 - six months of smoking only in designated areas.

Phase 2 - after one year, smoking entirely eliminated and employees were given full assistance to break the smoking habit.

- ___ Consider the use of sick leave or other personal leave to allow employees to enter into a quit-smoking program.
- ___ Consider allowing smoking off-site during breaks.
- ___ Employers should consider as rationale for prohibiting smoking that: "While an employee is smoking, the smoker is unable, without undue burden to the employer, to perform his or her job in a manner, which would not endanger the health or safety of others."

NOTE:

- ... Courts have rejected non-smokers' claims that they have rights to a smoke-free environment under the Federal Constitution.
- ... There were no Federal statutes that regulate smoking in the workplace as of January 1, 1992.
- ... Courts have regularly upheld the constitutionality of statutes and rules which restrict or prohibit smoking in the workplace.
- ... Some courts have entertained claims by employees who were injured due to cigarette smoke at work for negligence based on their employer's failure to maintain a safe and healthy work environment.
- ... A court found claimant's evidence of newspaper articles stressing the effects of cigarette smoking provided the basis for the claimant's reasonable belief that there was a health hazard on the job.
- ... A court held that an employee whose employment was terminated due to a cigarette smoke allergy was entitled to unemployment insurance benefits.