Discrimination against non-smokers?

**Question:** I work in an office of about 25 people. I am in charge of HR responsibilities and other duties. A question came to me regarding paid time for people to smoke. Right now, we have 4 or 5 smokers in our office and they have normally taken two smoking breaks during the course of the day. Each break is for 15 minutes. While our policy manual does not specifically state that employees are allowed to smoke, it refers to brief coffee breaks. Are we required to pay our employees while they are outside smoking? I am afraid our non-smoking employees will say they are being discriminated against because they work a full 8 hours and the smokers are only working 7.5. Can we change this situation in the middle of the year or do we have to revise our policy manual and wait until the beginning of a new year? Can anyone give me some suggestions on how they handle this in their office or how their policies read regarding smoking? -- *Anonymous*

**Comments**

I honestly think that the smokers could ALSO bring a discrimination case against you - many classify smoking as an addiction/disease. While I disagree, and feel frustrated at my own job where the 2 smokers work an hour less than I do because of 5 or 6 smoke breaks a day, I would say if you offer brief breaks for coffee/smoking and regulate them no one should complain. If person A takes 15 minutes to get a smoke break, and person B gets a coffee break..... How can anyone disagree?

*Posted by: | February 02, 2007 at 02:58 PM*

I understand the law allows workers 2 15-minute breaks per day but it should not be up to the employer what an employee does during these breaks as long as the employee does not leave the premises (to run errands, run to McDonald's, etc.) If anything, maybe the verbiage in the policy manual should state "breaks". Our company policy states that we honor fire codes regarding smoking which dictate where employees can smoke. The building management has provided appropriate ash trays and a small sign designating the area as a smoking area.

*Posted by: Anita | February 02, 2007 at 02:59 PM*

At our business (Hospital), employees are given two (15-minute) breaks for working an 8-hour shift. Employees may choose to use their breaks any way they wish (smoking, reading magazines, stepping outside for fresh air, etc.). Therefore, there is no discrimination, as everyone is entitled to the same amount of break time, and can spend it any way they wish. Of course, taking longer breaks or breaks in excess of the two 15-minute breaks would be abuse of the system by the employee and dealt with on an individual basis. Hope this helps!

*Posted by: CC | February 02, 2007 at 03:01 PM*
Most employers offer a few paid breaks for their employees. If your employer's policy offers breaks to ALL employees, than what they do on their "break time" or choose not to do on that break time is up to them. If they choose to work, that is their decision. Don't forget that you could be discriminating against the smokers... as this works both ways.

**Posted by: K Jacoby | February 02, 2007 at 03:01 PM**

I don't understand the dilemma. Basically all employees have been allotted 2 15 minute breaks per work day. Why does it matter if they use it to smoke, read a book, take a walk or not use it at all? The nonsmokers have the same privilege as the smokers, so there shouldn't be an issue.

**Posted by: | February 02, 2007 at 03:01 PM**

Our policy gives all of our employees a paid 20-minute break per day, regardless of what they do while they are on it. They can take all 20 minutes at one time, or, if they prefer (which the smokers do), they can break it into 2 10-minute breaks, or 4 5-minute breaks throughout the day. As far as when you change the policy, I don't see why you would have to wait until the beginning of a year. Hope this helps.

**Posted by: M Clarke | February 02, 2007 at 03:03 PM**

We just passed a No Smoking Law - in this state - you will not be able to smoke within 30 feet of our business. If both the smoker and the non smoker get the same amount of breaks - it should not matter what they do. Obviously our people will not be smoking, unless they go to their car to do so.

**Posted by: Pam Dooley | February 02, 2007 at 03:07 PM**

Our company went totally non smoking a few years ago which meant no smoking on the property. That also meant no smoking in your vehicle. They did build a smoke shack just outside the company but the smokers are only allowed to use it during their non-paid lunch. Since the breaks are paid, they must stay on company property during that time. Hope this helps.

**Posted by: Lena | February 02, 2007 at 03:14 PM**

If you allow 2 15 minutes breaks to smokers you have to offer it to all your staff. What we do at our office is we made our facility a non-smoking facility. You may use your provided break to smoke if you choose but the only spot on the property is your car. Smokers should not be afforded more paid break time then other staff. Going outside to smoke to me isn't the same as refilling your coffee. If you have to leave the building you are on break.

**Posted by: | February 02, 2007 at 03:24 PM**

"Federal law does not require lunch or coffee breaks. However, when employers do offer short breaks (usually
lasting about 5 to 20 minutes), federal law considers the breaks work-time that must be paid”.

In our company policy the only stipulation is that the employee cannot leave the premises. What they choose to do on company grounds during their break time is their own business (e.g. go for walk, get coffee, sit down in cafe, smoke, etc). If they choose not to take a break that is also their own prerogative.

As long as your company doesn’t have a policy against smoking then no one has any reason for a grievance.

Also, a policy can be amended at "any" time.

**Posted by: Tracie | February 02, 2007 at 04:12 PM**

You should review your state's labor laws. If the law requires that employers provide employees two fifteen-minute breaks, then EVERYONE should get breaks. It doesn't matter what they DO on these breaks (within the law of course). If your office or building or community has a no-smoking policy or ordinance, then the smokers must either NOT smoke or go somewhere where smoking is allowed. If there are no breaks required by law in your state for employees in general, then your smokers are outta luck. It is an unhealthy habit and an employer should not be "enabling" it. When these smokers get sick, it will affect everyone else's health insurance costs and premiums will increase. I was able to quit because it got to the point there was nowhere convenient for me to smoke during the day. When the amount of nicotine in my body was reduced, as a result of not being able to smoke during the day, I was finally able to kick a 30-year habit. You would be doing them a favor by discouraging their smoking...though they might not realize it at the moment...

**Posted by: Former Smoker | February 02, 2007 at 04:13 PM**

This would probably something that I would look up on your state's or federal government's labor site. There are all sorts of rules and regulations regarding the numbers of hours worked and the breaks involved. A lot of companies have had legal cases brought up against them for not paying employees time to prepare for their job (ie putting on uniforms and so on). My other thought is to encourage the other employees to take their breaks. If everyone is entitled to a break but they choose not to take it . . . then I would personally think it is their loss.

**Posted by: Jeannette | February 02, 2007 at 04:13 PM**

California law is that we are allowed 2 paid 10 minute breaks. You cannot go off property because should something happen, we are liable. But whatever they do on their break (as long as it is not illegal) its up to them. Same thing with the non smokers..

**Posted by: Karen | February 02, 2007 at 04:17 PM**

I think the issue here is that the non-smokers are not taking advantage of the allowed "brief coffee break". I would would change your policy immediately to state specifically how many breaks and how long each may be. Most common is two 15 minute breaks per 8 hour shift. Your policy is vague, and unfortunately, many 'intelligent' adults are unable to function without well defined parameters and ultimately take advantage of the situation or feel slighted.
We allow everyone one 10 minute break for every 4 hours worked. So normally everyone would get 2 paid 10 minutes. If you go over that it's not paid. We have a number of smokers and they understand this rule. We require that smoking outside and you must pass through our time clock system. Therefore anytime you are in the kitchen or outside you are punched out. It sounds like you (the company) need to re-word what a few coffee breaks mean. Do it mean 2 minutes, or does it mean 2 total breaks. Sounds like people are doing what the manual says but it sounds like management needs to clarify.

First, it may be prudent to check on laws governing working and breaks. The intention of breaks is usually to refresh a worker. As stated in other’s comments, breaks do not usually specify what is done 'legally' on breaks. ‘Legally’ is referring to government laws and company policies.

As far as changing your policy mid-year, you may want to check the legal status on this situation. Our company does change policies throughout the year. When there is a change in policy, it is always announced ahead of time. Numerous changes are also often combined in one update to our employee handbooks.

A trend in the industry has been to go forbid tobacco use on any company property. For our company, going tobacco-less extends to company cars, leased cars and leased spaces. At our company, this was announced a year ahead before the policy went into effect. ‘Quit smoking’ classes was available to workers. In addition, ‘quit smoking’ arm patches are available.

Why are the breaks separated? What different does it make if it's a coffee break or cigarette break. Why isn't just a break?

I agree with those who say you should check state & federal law about break time. However, either everybody gets a break or nobody gets a break. We have two 10-minute paid breaks at our company. We are a no-smoking workplace with 1 designated outdoor area for smokers. Nobody complains: the smokers have a place to go and everybody gets a break. Breaks are especially important for those employees who have high-stress jobs.

Washington State law requires two 15-minute breaks and one 30-minute lunch break for a full-time employee. Most employers pay for the 15-minute breaks (one in the morning; one in afternoon). Employees have a designed place to smoke on our parking garage, which has open sides. People should be able to smoke or not smoke, eat or not eat, drink coffee or not drink coffee during their breaks, pretty much do whatever they can do in that 15 minutes as long as it follows the guidelines of the State and the employer.
We allow all employees to have one paid break of up to 20 minutes, and another paid break of up to 10 minutes. One can be taken in the morning and one can be taken in the afternoon. People can do whatever they want on the break. It is available to everyone, so those who do not take it cannot complain about working less time than those who do take the break(s).

Posted by: Mark | February 16, 2007 at 08:30 PM