



Employers, do you have to give your staff cigarette breaks?

Many workers look forward to their short tea breaks as a time to recharge their batteries before getting back to work. But if smokers are regularly nipping out to have a quick cigarette this can become irritating to both you, as their employer, and their co-workers. So, what does the law say?

As an employer, do I have to give my employees cigarette breaks?

The short answer is - no.

An employee has no legal right to a specific break in order to smoke - unless their contract specifies so.

Working Time Regulations generally stipulate that, if an employee works more than 6 hours, they have the right to take a 20 minute "rest break" away from their desk or workstation. This can be paid or unpaid, but it is up to the employee how they choose to spend their break. If they want to smoke, they are entitled to do so, as long as it is not on your work premises (this can include outside the workplace if your company policies state that it creates an unprofessional image, for example) or in any enclosed workspace.

WORKING TIME REGULATIONS REGARDING BREAKS

Workers over 18 are usually entitled to the following three types of break:.

Rest breaks: Workers have the right to one uninterrupted 20 minute rest break during their working day, if they work more than 6 hours a day. This could be a tea or lunch break.

Daily rest: Workers have the right to 11 hours rest between working days. For most people this will be the overnight between two work days. For example, if they finish work at 8pm, they shouldn't start work again until 7am the next day.

Weekly rest: A whole day or two days when you don't come into work. For most of us, this is the weekend.

You cannot prevent a worker from taking their statutory rest break. But if they regularly take additional breaks – ie: going outside to smoke every hour - you could technically treat it as misconduct.

In practice, it will really be up to the employer's discretion as to whether smokers can nip out for unofficial breaks.

According to ACAS, one study found that smokers spent on average an hour a day puffing on the pavement. Usually this was four breaks of fifteen minutes, which over a smoker's whole working life made a year's worth of breaks. Other more recent research found that 30 per cent of smokers surveyed spent more than an hour a day on cigarette breaks and a significant number were smoking up to 20 cigarettes during work hours.

Experts maintain it boosts concentration to stretch the legs every now and then, and get time away from the computer screen. It's also crucial that colleagues have a chance to socialise with each other, helping to build team morale and the exchange of views and ideas.

Some employers get around the issue by giving all employees chance to have, say, a 10-15 minute break in the morning and another in the afternoon as well as their statutory rest break/lunch break. This ensures that all employees are treated equally and, again, it is up to you whether you offer this as paid or unpaid.

So, do I have to provide a smoking shelter?

Again, the short answer is - no.

There is no requirement for you to provide outdoor smoking shelters for employees.

However, if you do provide a smoking shelter it must comply with the Smoke Free legislation.

All enclosed workplaces are required by law to be smoke free. And it is worth noting that employees can be fined up to £200 for smoking in the office.

How about smoking in work vehicles?

If employees share the work vehicle with a colleague or colleagues - regardless of whether they are actually in the vehicle at the same time - then they are not allowed to smoke in it.

What about e-cigarettes and vaping?

E-cigarettes and similar products are seen as a tool to help people stop smoking, which means they aren't covered by the same legislation.

They produce a vapour, including flavoured aromas either with or without nicotine, rather than traditional smoke.

For now, this means that you, as an employer, are free to decide if they can be used in the workplace or in shared vehicles. This could be communicated to employees through your own no smoking policy.

We hope you found this information useful, but if you still have questions about this, or any other recruitment-related issue, please don't hesitate to contact Angela Harraway or Christine Deighton

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