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AM I REQUIRED TO PROVIDE MEAL AND REST BREAKS TO MY EMPLOYEES?

Contrary to popular employee belief, **federal law does not require employers to provide employees with meal or rest breaks.** It just may seem like it, since providing such breaks is par for the course for most employers (because if they didn't, they'd have a tough time finding anyone to work for them).

Many employees have it wrong regarding how many breaks they should get and how long these breaks must be. Take a closer look at the facts behind employees' standard thinking when it comes to providing breaks and whether they must be paid. Plus, check on breaks as an accommodation for religious or disability-related reasons, and the always-hot debate between smokers and non-smokers.

WHAT DOES THE LAW REQUIRE?

Employers in Florida are governed by the federal law, which does not require you to provide rest or meal breaks. But, despite the fact that the federal Fair Labor Standards Act ("FLSA") does not require you to provide breaks, the law does have something to say about how breaks are to be compensated. Rest periods of short duration, running from 5 minutes to about 20 minutes, promote the efficiency of the employee and are customarily paid for as work time. They must be counted as hours worked for determining if any overtime is due. Compensable time of rest periods may not be offset against other working time, such as compensable waiting time or on-call time.

On the other hand, bona fide meal periods are not work time. They should meet these 2 criteria in order to be considered unpaid:

- The employee must be completely relieved from duty for the purposes of eating regular meals.
- The meal period should be 30 minutes or more.

An employee is considered not completely relieved from duty if he/she is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at her machine is considered to be working while eating. These are not true "meal periods" and should be paid.

Even though breaks are not required by law in Florida, there may be instances in which you will be required to provide breaks. For example, you may have to provide a reasonable accommodation for an employee's religious or disability needs.

Case in point #1: A Muslim employee requested to use his breaks for prayer and to combine his Friday breaks so that he could attend prayer services. His employer granted the accommodation with the stipulation that his breaks not exceed 10 minutes and time in excess of an hour for his Friday services would not be paid.

A short time later, the employee was terminated in a reduction-in-force based on prior disciplinary actions because of poor performance. The employee sued under Title VII, claiming religious discrimination, but the case was dismissed. Reason: the employer granted his requested accommodations with minimal limitations in order to work within the company schedule. Plus, he was not disciplined for requesting an accommodation.

Case in point #2: A diabetic employee requested permission to take more breaks in order to monitor his blood sugar and inject himself with insulin. The company continually denied his requests.

Eventually, the employee requested a leave of absence, which was granted.

Two months later, the employee provided a doctor's note, which stated he could return to work. The company, however, did not approve the request for another 2 months. When the employee finally did come back to work, he again requested more breaks to control his diabetes. The company refused, and he was eventually terminated.

The employee sued under the Americans with Disabilities Act, and an appeals court sent the case for trial. Said the court: The company's reason for terminating the employee may not have been discriminatory, but the fact that the employer refused to accommodate the employee's disability warrants further investigation.

Accommodation advice: In order to be fair to all employees and ward off legal liability, keep the following in mind when an employee requests breaks as an accommodation:

- Ask for accommodation requests in writing with appropriate documentation (e.g., from a doctor, priest, rabbi, etc.) if you are unsure of the validity of the employee's needs.
- Remember that you don't always have to accommodate. If you have a legitimate business reason (such as being short-staffed, a bona fide seniority system, etc.), giving more breaks or allowing them to be longer may not be a reasonable accommodation.
- Make sure co-workers understand why an employee is allowed to bend the break policy to prevent resentment. Do not give out specific medical information.

BATTLE OF THE BREAKS: SMOKERS VS. NON-SMOKERS

According to a survey by Vault.com, 20.5% of non-smoking employees who were polled stated that their biggest complaint against smokers in the

workplace was that the smokers were always taking breaks, while the non-smokers didn't get any. The perception that smokers get more breaks than non-smokers can cause a lot of consternation in the ranks. How can you be fair to both sides?

If non-smokers think smokers are getting extra breaks, remind them that they are free to take breaks, too – to get coffee, stretch their legs, etc. If that doesn't quiet complaints, ask the non-smokers for suggested solutions.

You may, however, need to create a fair and reasonable policy. In fact, Florida law requires businesses to have a policy on smoking in the workplace. The decision about how to handle it are totally up to you, but you should have a written policy that you share with your employees.

If you are going to allow a set number of breaks for smokers, non-smokers should be given the same number of short breaks. Set a time limit, such as four 5-minute breaks a day, to avoid having employees take too many breaks.

Equally fair is to not allow any employees to take extra breaks.

Whatever you decide is best for your company, put it in writing so that all employees are aware. The policy should also spell out the consequences for violations. Counsel repeat offenders and dole out discipline when necessary.

If non-smokers decide to take breaks with smokers and you wind up having too many employees running out the door at the same time, require that only a set number of employees may take a break (whether to smoke or not) at the same time. Or, you could designate specific times where business is slower to be used for short breaks, such as mid-morning, mid-afternoon, etc.

Finally, remind all employees that spending too much time on breaks will be held against them if their quality of work or quantity of work starts to suffer.

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