

Rights of smokers and non-smokers: let us create healthy working environment (3/47/18)

Smoking is a common workplace problem for both smokers, who are desperate for at least a couple of smoke breaks during the workday, and for non-smokers, who hate to find themselves choking in smoke or vapour. This article explores the rights of smokers and non-smokers at work and the employer's obligations.

Smoking at work can destroy the workday rhythm, reduce productivity, and damage workmate relationships. It is up to the employer to create a favourable working environment by striking a fair balance between the rights of smokers and non-smokers.

A smoking ban

The Smoking Act, which governs the circulation of tobacco products, herbal products for smoking, vaping devices and e-liquids, requires employers to provide a workplace that is free of smoke and vapour. The Act gives employees the right to refuse to work in a place where others smoke, and such refusal must not be considered a breach of discipline.

Everyone is entitled to working conditions that are not damaging to health under article 7(1) of the Labour Code.

These rules imply that non-smokers' rights take precedence over smokers' rights, and the employer is therefore permitted to ban smoking at work during working hours. A smoking ban may be described in the employment manual, which the employer should present to an employee before they enter into an employment contract. A smoking ban may be due to workplace hazards, such as work done in the chemical or timber industry.

The Cabinet of Ministers' Regulation No. 260¹ provides that an employer imposing a smoking ban should display either a sign that prohibits smoking



or the symbol



at the entrance to the building.

A smoking room

Without a total ban on smoking at work, the employer should provide a smoking room – one that is isolated from other rooms, specially designed for smoking, and meets the following requirements of the Smoking Act:

- The smoking room is marked as a structurally separated room in the technical drawings for the building;

- The smoking room is fitted with local exhaust ventilation to keep the smoke or vapour out of other rooms;
- The smoking room displays either a sign that allows smoking



or the smoking symbol with a complementary sign which says that smoking kills and you should quit now!



- Core services of any institution, trader, entity or self-employed person must not be provided in the smoking room.

The employer has the option of designating a smoking area that is fitted according to fire regulations and displays the same signs and symbols as a smoking room. The smoking area should be situated out of doors.

The employment manual

Regardless of the company's policy, a smoking habit is no excuse for ignoring the employment manual (e.g. taking a break more often or for longer than permitted).

Under article 145(1) of the Labour Code, every individual employed for a workday of over six hours (over four and a half hours for a minor) is entitled to a break from work, and article 145(2) explains that a break should be given no later than four hours after the work began and should be at least 30 minutes. The employment manual may offer more generous terms for giving breaks than the Labour Code.

Although the Labour Code permits employees to leave their workplace during a break, the employment contract, collective agreement or employment manual may prescribe a different procedure. In exceptional cases, the employer may completely prohibit employees from leaving their workplace during breaks. Usually imposed for security reasons in jobs such as a security guard or a dispatcher, this prohibition does not require the employee's consent.² If an employee ignores the smoking ban or goes for a smoke or vape before an official break starts, the employer may consider dismissal under paragraph 1, 2 or 5 of article 101(1) of the Labour Code. Paragraph 1, for example, permits the employer to terminate the employment contract in writing if an employee has committed a substantial breach of the employment contract or employment manual without a good cause.

Before dismissal, the employer should demand a written explanation from the employee. When deciding to dismiss the employee, the employer should evaluate the gravity and circumstances of the offence, as well as the employee's personal characteristics and previous work under article 101(2) of the Labour Code.

Smoke breaks cost a fortune

A Dutch study shows that smokers have lower productivity and more frequent sick days. A survey conducted in the US finds that smokers more often than non-smokers suffer from depression, which adversely affects their productivity.³ According to German estimates, smoke breaks cause losses of over EUR 9.6 billion.⁴

Interestingly, an average smoker spends six days a year on smoke breaks at work.⁵ Don't you think non-smokers deserve an extra day of leave? Any employer is interested in taking measures to minimise smoking, for example:

- Place warning posters in working rooms and the smoking room;
- Hand out brochures explaining the dangers of smoking;
- Organise a lecture on how to quit smoking;
- Encourage smokers to attend a quit-smoking programme, seminar or counselling session;
- Provide non-smokers with incentives, such as gift cards, lottery tickets, cinema tickets, extra days of leave, and pay increases; or
- Impose a complete ban on smoking at work during working hours.

Although a smoking habit must not become a reason for not employing someone, smoking is a serious problem the employer should tackle to boost productivity and create a healthy working environment.

1 Rules for placing signs or symbols that prohibit or permit smoking, as well as sample signs and symbols

2 The Labour Code with comments, 2010, p. 267

3 Effect of Smoking Status on Productivity Loss, 2006, pp. 1103-1104

4 The January 2017 study "Benefits of quitting smoking on work productivity and activity impairment in the United States, the European Union and China"

5 Americans' Perceptions of Smoke Breaks in the Workplace