



Mineral



Question of the Week

April 24, 2024

Question

What can we do about an employee who is taking too many restroom breaks?

ANSWER

Start by asking yourself if the employee's restroom breaks are *genuinely* causing problems. Focus on the employee's productivity and performance (as well as any coverage issues) rather than the amount of time spent in the restroom. If the employee is getting their work done and productivity is not negatively impacted, we'd suggest not addressing this subject at all.

If the employee's bathroom breaks are causing issues with productivity, performance, or coverage, you should talk with the employee to find out what's going on. However, the laws below may come into play, so keep them in mind:

- The Occupational Safety and Health Act requires that employees be allowed to use the restroom as needed, though an employer can still have reasonable restrictions on use and access to the restroom. What's reasonable is determined on a case-by-case basis and will consider, among other things, how long employees are being asked to wait between bathroom trips and the employer's reasoning for the limitations.
- The Pregnant Workers Fairness Act will apply if the employee is pregnant or has a condition related to pregnancy or childbirth, in which case extra bathroom breaks must be provided, without documentation, and almost without exception.

- The Americans with Disabilities Act will come into play if the employee has a medical condition that qualifies as a disability. If that's the case, you'll likely need to accommodate the employee by providing more time for bathroom breaks, unless the extra or longer breaks would be an undue hardship to your business. **Undue hardship** means significant difficulty or expense and is a high bar to meet.

If the employee doesn't cite any medical issue, then explain your expectations, referring to any handbook or company policies that apply, and make sure they understand that there will be consequences for not meeting those expectations in the future.

This Q&A does not constitute legal advice and does not address state or local law.