

Tea and other breaks – Are they paid?

Question: Are employees entitled to be paid for tea and other breaks that occur in the working day?

Answer: As a general rule employees are not entitled to pay for tea and other breaks. There are certain exceptions, though.

Brief explanation: Section 14 of the Basic Conditions of Employment Act (BCEA) regulates meal intervals (which are unpaid unless employees are required to be available for work). The BCEA says nothing about tea or other breaks. Employers and employees are therefore free to enter into their own agreements regarding such breaks. In accordance with common law such breaks would be unpaid ('no work, no pay') unless the parties agree that they should be paid. There are, however, certain exceptions. An example is SD9: Wholesale and Retail Sector, which states that, in addition to their daily unpaid meal interval, employees are entitled to two 15 minute breaks that are regarded as working time; and the Main Collective Agreement in the Metal and Engineering Industry Bargaining Council which provides for two 10 minutes breaks at full pay.

Alternative argument: Some argue that tea and other breaks should be paid. They rely on Section 14(4) of the BCEA which states the following: "*For the purposes of subsection (1) work is continuous unless interrupted by an interval of at least 60 minutes.*" According to the argument a short break (such as a tea break) is indeed the type of 'interruption' envisaged – which means that it should be regarded as continuous work and should therefore be paid. However, in our view this argument overlooks an important aspect. The introductory phrase "*For the purposes of subsection (1)*" is important in this context, because subsection 1 specifically regulates meal intervals. For there to be merit in the argument that tea and other breaks should be paid, one would expect the BCEA to make reference to such breaks. It does not.

Also see a discussion on this point at http://www.youtube.com/watch?v=Vs2_L025b1g

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